

Committee Item No. 5  
Board Item No. 14

## COMMITTEE/BOARD OF SUPERVISORS

## AGENDA PACKET CONTENTS LIST

**Committee:** Budget & Finance Committee

**Date** January 28, 2015

## Board of Supervisors Meeting

Date February 3, 2015

## Cmte Board

<input type="checkbox"/>	<input type="checkbox"/>	Motion
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Resolution
<input type="checkbox"/>	<input type="checkbox"/>	Ordinance
<input type="checkbox"/>	<input type="checkbox"/>	Legislative Digest
<input type="checkbox"/>	<input type="checkbox"/>	Budget and Legislative Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Youth Commission Report
<input type="checkbox"/>	<input type="checkbox"/>	Introduction Form
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Department/Agency Cover Letter and/or Report
<input type="checkbox"/>	<input type="checkbox"/>	MOU
<input type="checkbox"/>	<input type="checkbox"/>	Grant Information Form
<input type="checkbox"/>	<input type="checkbox"/>	Grant Budget
<input type="checkbox"/>	<input type="checkbox"/>	Subcontract Budget
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Contract/Agreement
<input type="checkbox"/>	<input type="checkbox"/>	Form 126 – Ethics Commission
<input type="checkbox"/>	<input type="checkbox"/>	Award Letter
<input type="checkbox"/>	<input type="checkbox"/>	Application
<input type="checkbox"/>	<input type="checkbox"/>	Public Correspondence

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

[illegible]

**Completed by:** Linda Wong

**Date** January 23, 2015

Completed by: L.W.

Date January 29, 2015

1 [Customer Generation Agreement - Pacific Gas and Electric Company - Solar Power Project -  
2 Pier One]

3 **Resolution authorizing the General Manager of the San Francisco Public Utilities**  
4 **Commission to enter into a Customer Generation Agreement with Pacific Gas and**  
5 **Electric Company for a Solar Power Project at Pier One, to continue indefinitely, unless**  
6 **terminated.**

7  
8 WHEREAS, In 1998, the Port of San Francisco leased Pier One, a site which consists  
9 of a 153,000 foot maritime related office complex, to AMB Pier One LLC for a term of 50  
10 years; and

11 WHEREAS, In 2011, AMB Property Corp., the ultimate parent of AMB Pier One LLC,  
12 merged with Prologis Inc. and retained the Prologis name; and

13 WHEREAS, In 2012, Prologis notified the Port it would be installing an Energy  
14 Efficiency and Solar Array Project (Project) on the site in order to reduce energy costs and  
15 consumption; and allow Prologis to participate in the City's Property Assessment Clean  
16 Energy Program; and

17 WHEREAS, Prologis has installed a 185KW rooftop solar array with associated re-  
18 roofing on approximately half of the building roof; and

19 WHEREAS, The project has already begun producing electricity; and

20 WHEREAS, The San Francisco Public Utilities Commission (SFPUC) must enter into a  
21 Customer Generation Agreement – Third Party Generator on Premises Non-Exporting  
22 (Agreement) with PG&E in order to interconnect the Project to the electrical grid; and

23 WHEREAS, The term of the Agreement is of an indefinite duration in order to ensure  
24 that the Project can remain interconnected to PG&E's electrical system for its useful life,  
25 which is expected to exceed ten (10) years; and

1 WHEREAS, The Agreement is subject to termination by the City for any reason upon  
2 sixty (60) days notice; and

3 WHEREAS, Prologis has agreed to reimburse the SFPUC for any charges incurred as  
4 a result of the Project; and

5 WHEREAS, The Agreement is on file with the Clerk of the Board of Supervisors in File  
6 No. 141256, which is hereby declared to be a part of this motion as if set forth fully herein;  
7 now, therefore, be it

8 RESOLVED, That the Board of Supervisors authorizes the General Manager of the  
9 SFPUC to enter into the Agreement with Pacific Gas and Electric Company for  
10 interconnection of the Project at Pier One, pursuant to San Francisco Charter, Section  
11 9.118(b); and, be it

12 FURTHER RESOLVED, That within thirty (30) days of the agreement being fully  
13 executed by all parties, the General Manager of the SFPUC shall provide the final agreement  
14 to the Clerk of the Board for inclusion into the official file.  
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25



# San Francisco Water Power Sewer

Services of the San Francisco Public Utilities Commission

525 Golden Gate Avenue, 13th Floor  
San Francisco, CA 94102  
T 415.554.3155  
F 415.554.3155  
TTY 415.554.3155

**TO:** Angela Calvillo, Clerk of the Board

**FROM:** Erin Hagan, Policy and Government Affairs Manager

**DATE:** December 8, 2014

**SUBJECT:** Customer Generation Agreement – Pacific Gas and Electric Company – Solar Power Project – Pier One

Attached please find an original and one copy of a proposed resolution authorizing the General Manager of the San Francisco Public Utilities Commission to enter into a Customer Generation Agreement with Pacific Gas and Electric Company for a Solar Power Project at Pier One, to continue indefinitely, unless terminated.

The following is a list of accompanying documents (2 sets):

1. Board of Supervisors Resolution
2. Site Lease at Pier 1
3. Customer-Generator Acknowledgement
4. Customer Generation Agreement

Please contact Erin Hagan at 554-0706 if you need any additional information on these items.

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2014 DEC -8 AM 11:04  
AK

Edwin M. Lee  
Mayor

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President

Francesca Vietor  
Vice President

Vince Courtney  
Commissioner

Anson Moran  
Commissioner

Harlan L. Kell  
General Manager







**Pacific Gas and Electric Company**  
San Francisco, California  
U 39

Cancelling

Revised  
Original

Cal. P.U.C. Sheet No.  
Cal. P.U.C. Sheet No.

32041-E\*  
18919-E

**Electric Sample Form No. 79-992**  
**Customer Generation Agreement**  
**(Third Party Generator on Premises Non-Exporting)**

T  
T

**Please Refer to Attached**  
Sample Form

Advice Letter No: 4110-E  
Decision No. 12-09-018

Issued by  
**Brian K. Cherry**  
Vice President  
Regulatory Relations  
**947**

Date Filed September 20, 2012  
Effective September 20, 2012  
Resolution No. \_\_\_\_\_



**Pacific Gas and  
Electric Company™**

PG&E Log No. 30S122755  
Account # 4735612089  
Order # \_\_\_\_\_

**WE DELIVER ENERGY.™**

**CUSTOMER GENERATION AGREEMENT**  
**(3<sup>rd</sup> PARTY GENERATOR ON PREMISES,  
NON-EXPORTING)**

This *Customer Generation Agreement (3<sup>rd</sup> Party Generator on Premises, Non-Exporting)* (Agreement) is entered into by and between City & County Of San Francisco, a \_\_\_\_\_ (Customer), and Pacific Gas and Electric Company (PG&E), a California Corporation. Customer and PG&E are sometimes also referred to in this Agreement jointly as "Parties" or individually as "Party." In consideration of the mutual promises and obligations stated in this Agreement and its attachments, the Parties agree as follows:

**1. SCOPE, PURPOSE, AND RELATED AGREEMENTS**

This Agreement, in conjunction with the *Generating Facility Interconnection Agreement (3<sup>rd</sup> Party Non-Exporting)* (Form 79-988), identified in Section 2.2 and attached as Appendix A, allows the Producer (as identified in Section 2.2) to utilize Customer's electrical facilities to interconnect and operate the Generating Facility in parallel with PG&E's Distribution System. The purpose of the Generating Facility is to serve the Customer's electrical loads at the location identified in Section 2.1.

**2. SUMMARY AND DESCRIPTION OF THE PARTIES AND LOCATION OF GENERATING FACILITY**

- 2.1 The name and address used by PG&E to locate the Customer or electric service account where the Generating Facility interconnects with PG&E's Distribution System is:

City & County Of San Francisco  
Pier 1  
San Francisco, CA 94111

- 2.2 The Generating Facility shall be Interconnected with PG&E's Distribution System pursuant to the *Generating Facility Interconnection Agreement (3<sup>rd</sup> Party Non-Exporting)* between PG&E and City & County Of San Francisco, its successors or assigns (Producer) dated \_\_\_\_\_ (Producer Agreement).

## PACIFIC GAS AND ELECTRIC COMPANY

### CUSTOMER GENERATION AGREEMENT (3<sup>rd</sup> PARTY GENERATOR ON PREMISES, NON-EXPORTING)

2.3 Producer's contact information:

Prologis LP

3353 Gateway Blvd

Fremont, CA 94538

3. CUSTOMER ACKNOWLEDGEMENTS AND OBLIGATIONS

- 3.1 Customer acknowledges that it has authorized the Generating Facility to be installed and operated by Producer in accordance with PG&E's Electric Rule 21 on or adjacent to Customer's premises. Such Generating Facility shall be used to serve all or a portion of Customer's electrical loads associated with the electric service provided by PG&E at the location identified in Section 2.1, above, and any other purpose permitted under the *Producer Agreement*. Customer shall be solely responsible for the terms of any agreement between it and Producer.
- 3.2 Customer shall be solely responsible for any charges incurred under PG&E's electric service tariffs for the services provided to Customer by PG&E. Customer acknowledges that it is the sole end-use consumer of such tariffed services. This Agreement does not constitute an agreement by PG&E to provide any tariffed service to Producer.
- 3.3 Customer acknowledges the Generating Facility shall be operated in compliance with all PG&E tariffs, including but not limited to PG&E's Electric Rule 21, and any other regulations and laws governing the interconnection of the Generating Facility. Customer further acknowledges that it has been made aware of the charges and conditions related to the operation of the Generating Facility including, but not limited to Standby Tariff, Preliminary Statement "BB" Non-Bypassable Charges Tariff, and Electric Rule 2, and that the performance or lack of performance of the Generating Facility may affect the rates and charges billed by PG&E for the electric power delivered to Customer. Copies of such tariffs are available at [www.PGE.com](http://www.PGE.com) or by request to PG&E.
- 3.4 Any amounts to be paid, or refunded to, PG&E for the services received by Customer as a result of the Producer failing to operate the Generating Facility in accordance with the terms of the representations and warranties made under the *Producer Agreement* shall be paid to PG&E in accordance with PG&E's electric tariffs.
- 3.5 Customer shall make the Generating Facility reasonably accessible to PG&E's personnel, contractors or agents to perform PG&E's duties under Electric Rule 21.

## PACIFIC GAS AND ELECTRIC COMPANY

### CUSTOMER GENERATION AGREEMENT (3<sup>rd</sup> PARTY GENERATOR ON PREMISES, NON-EXPORTING)

#### 4. TERMS AND TERMINATION

4.1 This Agreement shall become effective as of the last date entered in Section 13 below. The Agreement shall continue in full force and effect until the earliest date that one of the following events occurs:

- (a) The Parties agree in writing to terminate the Agreement.
- (b) Unless otherwise agreed in writing by the Parties, at 12:01 A.M. on the day following the date the Customer's electric service account through which the Generating Facility is interconnected to PG&E's Distribution System is closed or terminated.
- (c) Unless otherwise agreed in writing by the Parties, at 12:01 A.M. on the 31<sup>st</sup> day following the date the *Producer Agreement* is terminated, unless the responsibility for such *Producer Agreement* is assigned to or replaced by a subsequent Producer. The Parties shall cooperate in obtaining an assignment or replacement agreement.
- (d) At 12:01 A.M. on the 61<sup>st</sup> day after Customer or PG&E provides written Notice pursuant to Section 6 below to the other Party of the Customer or PG&E's intent to terminate this Agreement.

4.2 Customer may elect to terminate this Agreement pursuant to the terms of Section 4.1(d) for any reason. PG&E may elect to terminate this Agreement pursuant to the terms of Section 4.1(d) for one or more of the following reasons:

- (a) A change in PG&E's applicable tariffs, as approved or directed by the Commission, or a change in any local, state or federal law, statute or regulation, either of which materially alters or otherwise affects PG&E's ability or obligation to perform PG&E's duties under this Agreement; or,
- (b) Unless otherwise agreed in writing by the Parties, Customer fails to take all corrective actions specified in PG&E's Notice provided in accordance with Section 6 that Customer is out of compliance with the terms of this Agreement within the time frame set forth in such Notice.

#### 5. LIMITATION OF LIABILITY

5.1 Each Party's liability to the other Party for any loss, cost, claim, injury, liability, or expense, including reasonable attorney's fees, relating to or arising from any act or omission in its performance of this Agreement shall be limited to the amount of direct

**PACIFIC GAS AND ELECTRIC COMPANY**

**CUSTOMER GENERATION AGREEMENT**  
**(3<sup>rd</sup> PARTY GENERATOR ON PREMISES,**  
**NON-EXPORTING)**

damage actually incurred. In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages of any kind whatsoever.

- 5.2 PG&E shall not be liable to Customer in any manner, whether in tort or contract or under any other theory, for loss or damages of any kind sustained by Customer resulting from termination of the *Producer Agreement* between Producer and PG&E, provided such termination is consistent with the terms of the *Producer Agreement*.

6. NOTICES

- 6.1 Any written notice, demand, or request required or authorized in connection with this Agreement ("Notice") shall be deemed properly given if delivered in person or sent by first class mail, postage prepaid, to the person specified below:

If to PG&E: Pacific Gas and Electric Company  
Attention: Generation Interconnection Services- Contract  
Management  
245 Market Street  
Mail Code N7L  
San Francisco, California 94105-1702

If to Customer: City & County Of San Francisco  
Attention: \_\_\_\_\_  
Address: 3353 Gateway Blvd  
City: Fremont, CA 94538  
Phone: ( 650 ) 618-1920  
FAX: (      ) \_\_\_\_\_

- 6.2 A Party may change its address for Notices at any time by providing the other Party Notice of the change in accordance with Section 6.1.
- 6.3 The Parties may also designate operating representatives to conduct the daily communications, which may be necessary or convenient for the administration of this Agreement. Such designations, including names, addresses, and phone numbers may be communicated or revised by one Party's Notice to the other.

7. RELEASE OF DATA

Customer authorizes PG&E to release to the California Energy Commission (CEC) and/or the California Public Utilities Commission (Commission) information regarding the Generating Facility, including Customer's name and location, and the size, location and operational characteristics of the Generating Facility, as may be requested from time to time pursuant to the CEC's or Commission's rules and regulations.

**PACIFIC GAS AND ELECTRIC COMPANY**

**CUSTOMER GENERATION AGREEMENT**  
**(3<sup>rd</sup> PARTY GENERATOR ON PREMISES,  
NON-EXPORTING)**

**8. ASSIGNMENT**

Customer shall not voluntarily assign its rights nor delegate its duties under this Agreement without PG&E's written consent. Any assignment or delegation Customer makes without PG&E's written consent shall not be valid. PG&E shall not unreasonably withhold its consent to Customer's assignment of this Agreement.

**9. NON-WAIVER**

None of the provisions of this Agreement shall be considered waived by a Party unless such waiver is given in writing. The failure of a Party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.

**10. GOVERNING LAW, JURISDICTION OF COMMISSION, INCLUSION OF PG&E's TARIFFS, DEFINED TERMS**

- 10.1 This Agreement shall be interpreted, governed, and construed under the laws of the State of California as if executed and to be performed wholly within the State of California without giving effect to choice of law provisions that might apply to the law of a different jurisdiction.
- 10.2 This Agreement shall, at all times, be subject to such changes or modifications by the Commission as it may from time to time direct in the exercise of its jurisdiction.
- 10.3 The interconnection and services provided under this Agreement shall at all times be subject to the terms and conditions set forth in the tariffs applicable to the electric service provided by PG&E. Copies of such tariffs are available at [www.PGE.com](http://www.PGE.com) or by request to PG&E and are incorporated into this Agreement by this reference.
- 10.4 Notwithstanding any other provisions of this Agreement, PG&E shall have the right to unilaterally file with the Commission, pursuant to the Commission's rules and regulations, an application for change in tariffs, rates, charges, classification, service, or any agreement relating thereto.
- 10.5 When initially capitalized, whether in the singular or in the plural, the terms used herein shall have the meanings assigned to them either in this Agreement or in PG&E's Rule 1 or Electric Rule 21 Section C. If any term is defined in both Rule 1 and Electric Rule 21, the definition in Electric Rule 21 shall prevail.

**PACIFIC GAS AND ELECTRIC COMPANY**

**CUSTOMER GENERATION AGREEMENT**  
**(3<sup>rd</sup> PARTY GENERATOR ON PREMISES,**  
**NON-EXPORTING)**

11. AMENDMENTS AND MODIFICATION

This Agreement can only be amended or modified by a written agreement signed by both Parties. PG&E shall determine in its sole discretion whether prior commission approval is required for such amendments or modifications.

12. ENTIRE AGREEMENT

This Agreement, and the *Producer Agreement*, including any incorporated tariffs, contain the entire agreement and understanding between the Parties, their agents, and employees as to the subject matter of this Agreement. Each party also represents that in entering into this Agreement, it has not relied on any promise, inducement, representation, warranty, agreement or other statement not set forth in this Agreement, the *Producer Agreement*, or in the incorporated tariffs.

13. SIGNATURES

IN WITNESS WHEREOF, the Parties hereto have caused two originals of this Agreement to be executed by their duly authorized representatives. This Agreement is effective as of the last date set forth below.

_____	<b>PACIFIC GAS AND ELECTRIC COMPANY</b>
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

PACIFIC GAS AND ELECTRIC COMPANY

CUSTOMER GENERATION AGREEMENT  
(3<sup>rd</sup> PARTY GENERATOR ON PREMISES,  
NON-EXPORTING)

## APPENDIX A

*Generating Facility Interconnection Agreement*  
*(3<sup>rd</sup> Party Non-Exporting)*

BETWEEN

PRODUCER AND PACIFIC GAS AND ELECTRIC COMPANY





**Customer Self-Generation Pilot Program  
Customer-Generator Acknowledgement**

1a. Individual Residential Customers: I N/A ("Customer-generator") am a retail electricity customer of the San Francisco Public Utilities Commission ("SFPUC") and the owner and operator of a renewable energy facility ("Facility") located at N/A ("Property"). I acknowledge and agree that I understand the terms and conditions of the Customer Self-Generation Pilot Program and am eligible to take service from the SFPUC under the Program and agree to be bound by the terms and conditions of the Customer Self-Generation Pilot Program or any successor schedule or tariff adopted by the SFPUC for these purposes.

Or:

1b. Other Customers: I SCOTT SWENSON [authorized personnel's name] am the DEVELOPMENT MANAGER VP [authorized personnel's title] of PROLOGIS LP [name of SFPUC customer] ("Customer-generator") and am duly authorized to execute this Acknowledgement on its behalf. Customer-generator is a retail electricity customer of the San Francisco Public Utilities Commission ("SFPUC") and the owner and operator of a renewable facility ("Facility") located at PIER 2, EMBARCADERO, SF CA [facility address] ("Property"). Customer-generator acknowledges and agrees that that it understands the terms and conditions of the Customer Self-Generation Pilot Program and is eligible to take service from the SFPUC under the Program and agrees to be bound by the terms and conditions of the Customer Self-Generation Pilot Program or any successor schedule or tariff adopted by the SFPUC for these purposes.

2. I am the owner/lessee/tenant of the Property and have obtained, or will obtain, at my own expense, all licenses, permits, rights, authorizations, and approvals necessary to install, interconnect, own, and operate the Facility at the Property. Specifically, I represent that I have received or am in the process of obtaining all necessary permits and approvals from PG&E and/or the SFPUC, as the case may be, for the interconnection and energization of the Facility.

3. The design capacity of the Facility (CEC-AC) is 185 kW and the total expected annual generation is 303,000 kWh. I represent that the Facility is sized to offset part or all the annual electricity usage (kWh) of designated benefitting accounts, and not for surplus generation.

4. Customer-generator acknowledges and agrees that if it reasonably anticipates any significant permanent change in the output of the Facility or the electricity demand at the Property or the individual benefitting accounts, it will notify the SFPUC within 30 days of the significant change.

5. Customer-generator acknowledges and agrees that it is solely responsible for installing, interconnecting, owning, operating, and maintaining the Facility. Customer-generator also acknowledges and agrees that it is solely responsible for all costs and liabilities associated with installing, interconnecting, owning, operating, and maintaining the Facility, including but not limited to, all costs and liabilities arising from any Third Party Customer Generation Agreement between CCSF and PG&E related to the interconnection of customer-



San Francisco  
Water Power Sewer  
Services of the San Francisco Public Utilities Commission

CUSTOMER SELF-GENERATION PILOT PROGRAM  
ACKNOWLEDGEMENT

generator's Facility. Customer-generator shall indemnify, protect, defend and hold harmless the SFPUC, the City and County of San Francisco and its officials, employees, and agents from and against any and all losses, costs, liabilities and damages arising from, in connection with or caused directly or indirectly by any act or omission of the Customer-generator or its employees, subcontractors or agents in relation to the Facility.

6. I declare under penalty of perjury that all of the information provided on this Acknowledgement Form and all other required information submitted to the SFPUC related to service under the Customer Self-Generation Pilot Program or any successor schedule or tariff adopted by the SFPUC is true and correct.

Signed, [Signature]

Authorized representative of PROLOGIS LP (Customer-Generator),

Print Authorized Representative's Name and Title

Name: SCOTT SWANSON

Title: DEVELOPMENT MANAGER VP

Please submit this form completed with the following additional documents:

- A. Copy of the executed Interconnection Agreement with PG&E or SFPUC, as appropriate.
- B. If applicable, copy of permit issued for the Facility by the Department of Building Inspection or other applicable code enforcement agency.

CITY AND COUNTY OF SAN FRANCISCO  
WILLIE LEWIS BROWN, JR., MAYOR

**LEASE**

between the

**CITY AND COUNTY OF SAN FRANCISCO,  
THROUGH THE SAN FRANCISCO PORT COMMISSION**

Port

and

**AMB PROPERTY, L.P., a Delaware limited partnership**

Tenant

**for real property and improvements located at Pier 1**

Dated as of August 2, 1999

Douglas F. Wong  
Executive Director

SAN FRANCISCO PORT COMMISSION

Denise McCarthy, President  
Kimberly Brandon, Vice President  
Michael Hardeman, Commissioner  
Brian McWilliams, Commissioner  
Pius Lee, Commissioner

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## LEASE

THIS LEASE (this "Lease"), dated for reference purposes as of August 2, 1999, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City"), operating by and through the SAN FRANCISCO PORT COMMISSION ("Port"), and AMB PROPERTY, L.P., a Delaware limited partnership ("Tenant").

THIS LEASE IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES:

A. On June 24, 1997, the Port Commission approved the Waterfront Land Use Plan, including the Design and Access element. The Waterfront Land Use Plan was the culmination of an intensive seven year planning process for the San Francisco waterfront pursuant to Proposition H, adopted by the voters in November 1990. In the fall of 1997, the Planning Commission and the Board of Supervisors unanimously adopted amendments to the City's General Plan and Planning Code incorporating the Waterfront Plan policies and programs.

B. One of the first areas of Port land slated for development under the Waterfront Land Use Plan and implementing legislation is the Ferry Building Harbor Area, bounded by Pier 1 in the north, the Agricultural Building to the south, the Bay to the east, and a portion of the mid-Embarcadero roadway to the west. In addition to Pier 1, this area includes the Ferry Building, Ferry Building Plaza and ferry terminals.

C. The Mid-Embarcadero project, which will create a world class public plaza on the land side of the Ferry Building and allow completion of the new waterfront transit system, is presently under construction, and is anticipated to be completed in 2000. In addition, the Port Commission has approved and funded the Downtown Ferry Terminal Project, that adds two ferry berths, provides seismically-secure access to these two and four other berths, and creates full perimeter public access around the Ferry Building, generating a total of 36,000 new square feet of public access space. Phase II, as planned, will add another four ferry berths and expand public access by another 34,000 square feet. The Port plans to implement this phase as demand warrants.

D. The Ferry Building is the centerpiece of the Port's overall program of improvements for this area of the harbor. The Port's objectives for the Ferry Building are for a major rehabilitation of this historic landmark to a standard commensurate with the substantial public investment in the transportation facilities and public open space surrounding the building. Public-oriented uses on the ground floor will include a mix of public, retail, and commercial uses appropriate to a public gathering place to attract people to use the downtown ferry terminal and enjoy waterfront recreational opportunities. The Port Commission is negotiating with Wilson Cornerstone to yield a newly renovated Ferry Building, improved to federal historic preservation tax credit standards, to anchor San Francisco's waterfront, which renovation is anticipated to commence in 2001.

E. The Port's plan for improvements to the Ferry Building Harbor Area also includes an historic rehabilitation of the adjacent Pier 1 bulkhead and shed. The foremost objectives for the Pier 1 project are to achieve renovation of Pier 1 to preserve the historic integrity and aesthetic character of the Ferry Building Harbor Area, to implement the Port's public access plan for the Ferry Building Harbor Area, and to facilitate renovation of the Ferry Building and establish a highly visible public presence for the Port in the Ferry Building Harbor Area by accommodating Port's administrative offices.

F. By a Request for Interest and Qualifications ("RFI&Q"), dated January 21, 1998, the Port solicited submittal of interest and qualifications from qualified parties to develop and master lease Pier 1 as a maritime-related office complex. The Port Commission chose AMB Property, L.P. based on its commitment to occupy the building as a project manager and co-tenant and on its financial capacity, development concept, responsiveness to public access and public trust objectives, and shorter lease term (50 years), and the opportunity for the Port to participate in the economic benefits of the Project. AMB's office requirements were also uniquely adaptable to the architectural limitations that historic preservation imposes on this Project.

G. Based on the foregoing, the Project furthers the Burton Act and public trust purposes of preserving an historic marine resource, supporting maritime commerce in the form of high quality maritime office space for the Port and other maritime users, and promoting public access to the Bay and shoreline.

H. The Port and Tenant have entered into a Development Agreement, dated as of March 9, 1999 ("DA"), governing the conditions to delivery of the Premises to Tenant for development of the Initial Improvements, and the rights and obligations of the Parties to develop the Initial Improvements.

I. All conditions to delivery of the Premises pursuant to the DA have been satisfied or waived, and the Parties now desire to enter into this Lease, upon all of the terms and conditions hereof.

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

## SECTION 1. PREMISES; TERM

### 1.1 Premises.

(a) Lease of Premises; Description. For the Rent and subject to the terms and conditions of this Lease, Port hereby leases to Tenant, and Tenant hereby leases from Port, the real property in the City and County of San Francisco, California, located at Pier 1, as more particularly described in Exhibit A attached hereto (the "Property"), including

all existing buildings, structures and substructures affixed thereto, together with all rights, privileges and licenses appurtenant to the Property and owned by Port, and the Improvements hereafter constructed on the Property (subject to Section 9.2). The Property is comprised of approximately 127,692 square feet of pier, shed, bulkhead, water and land surface area, and is shown generally on the Site Plan attached hereto as Exhibit B. The Property and all other Improvements now and hereafter located on the Property are referred to in this Lease as the "Premises." The Parties reserve the right, upon mutual agreement of the Port's Executive Director and Tenant, to enter into one or more memoranda of technical corrections hereto to reflect any non-material changes in the legal description and square footages of the Property occurring during or after the development of the Project, and upon full execution thereof, such memoranda shall be deemed to become a part of this Lease.

(b) Permitted Title Exceptions. The interests granted by Port to Tenant pursuant to Subsections 1.1(a) are subject to (i) the matters reflected in Exhibit C (the "Permitted Title Exceptions"), and (ii) such other matters as Tenant shall cause or suffer to arise subject to the terms and conditions of this Lease.

(c) Subsurface Mineral Rights. Under the terms and conditions of Section 2 of the Burton Act, the State of California ("State") has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the Property. In accordance with the provisions of Sections 2 and 3.5(c) of the Burton Act, Tenant and Port hereby acknowledge that the State has reserved the right to explore, drill for and extract such subsurface minerals, including oil and gas deposits, solely from a single point of entry outside of the Property, and specifically located in Zone 3, California Grid System, at a point where X equals 1,453,500 and Y equals 477,500, extending 1,000 feet west, thence 1,000 feet south, thence 1,000 feet east, thence 1,000 feet north, ending at said point of beginning; provided that such right shall not be exercised so as to disturb or otherwise interfere with the leasehold estate, including the ability of the Property to support the Improvements. Port shall have no liability under this Lease arising out of any exercise by the State of such mineral rights (unless the State has succeeded to Port's interest under this Lease, in which case such successor owner may have such liability).

(d) "AS-IS WITH ALL FAULTS". TENANT AGREES THAT THE PREMISES ARE BEING LEASED BY PORT, AND ARE HEREBY ACCEPTED BY TENANT, IN THEIR EXISTING STATE AND CONDITION, "AS IS, WITH ALL FAULTS". TENANT ACKNOWLEDGES AND AGREES THAT NEITHER PORT NOR ANY OF THE OTHER INDEMNIFIED PARTIES, NOR ANY AGENT OF ANY OF THEM, HAS MADE, AND THERE IS HEREBY DISCLAIMED, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND, WITH RESPECT TO THE CONDITION OF THE PREMISES, THE SUITABILITY OR FITNESS OF THE PREMISES OR ANY APPURTENANCES THERETO FOR THE DEVELOPMENT, USE OR OPERATION OF THE PROJECT, THE COMPLIANCE OF THE PREMISES OR THE PROJECT WITH ANY LAWS, ANY MATTER AFFECTING THE USE, VALUE, OCCUPANCY OR ENJOYMENT OF THE PREMISES, OR, EXCEPT AS MAY BE SPECIFICALLY PROVIDED IN THIS LEASE OR THE DA, WITH

RESPECT TO ANY OTHER MATTER PERTAINING TO THE PREMISES OR THE PROJECT OR ANY APPURTENANCES TO THE PREMISES.

As part of its agreement to accept the Property in its "As Is With All Faults" condition, effective upon Delivery of the Property, the Tenant, on behalf of itself and its successors and assigns, shall be deemed to waive any right to recover from, and forever release, acquit and discharge, the Port, the City, and their Agents of and from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that the Tenant may now have or that may arise an account of or in any way be connected with (i) the physical, geotechnical or environmental condition of the Property, including, without limitation, any Hazardous Materials in, on, under, above or about the Property (including, but not limited to, soils and groundwater conditions), and (ii) any Laws applicable thereto, including without limitation; Hazardous Materials Laws.

In connection with the foregoing release, the Tenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

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

Tenant's Initials:

The Tenant agrees that the release contemplated by this Section includes unknown claims. Accordingly, the Tenant hereby waives the benefits of Civil Code Section 1542, or under any other statute or common law principle of similar effect, in connection with the releases contained in this Section. Notwithstanding anything to the contrary in this Lease, the foregoing release shall survive any termination of this Lease.

(e) Berthing Rights.

(i) Rights of Tenant. The Parties acknowledge that this Lease does not provide Tenant with water access or vessel berthing rights alongside the Premises. Tenant shall not berth or allow the berthing of vessels alongside the Premises without the Port's prior written consent, which consent may be given, withheld, or conditioned in Port's sole discretion. If Port grants its consent, Port may require that Tenant enter into a separate berthing agreement governing such berthing, including payment of berthing fees, in consideration for such berthing rights.

(ii) Reservation of Port Rights. Port reserves the right to allow the berthing of vessels alongside the Premises from time to time in the event of an emergency as determined by Port in its absolute discretion, at such location and for such duration as is determined by Port in its reasonable discretion to be necessary to accommodate such event of emergency. Port shall use good faith efforts and shall cooperate with Tenant to minimize

interference by any such emergency berthing with the operation or use of the Premises by Tenant or its Subtenants. Port may berth vessels alongside the Premises on a non-emergency basis with Tenant's prior written consent, not to be unreasonably withheld. It shall be reasonable for Tenant to withhold its consent if the berthing would materially interfere with the quiet enjoyment or views of Tenant or its Subtenants (other than Port), would materially interfere with dedicated public access on the Premises, or would materially increase Tenant's operating expenses for the Premises.

## 1.2 Term.

The Term of this Lease shall commence on the date Port delivers possession of the Property to Tenant in accordance with the DA (the "Commencement Date"). The Term of this Lease shall expire on the date that is fifty (50) years thereafter, unless earlier terminated in accordance with the terms of this Lease. The period from the Commencement Date until such expiration date is referred to as the "Term." Following the delivery of possession of the Property to Tenant, the Parties shall execute and deliver a memorandum confirming the date on which the Commencement Date occurred, provided that failure of the Parties to execute such memorandum shall not delay or modify the Commencement Date or affect the rights or obligations of the Parties under this Lease.

## 1.3 Definitions.

All initially capitalized terms used herein are defined in Section 44 or have the meanings given them when first defined.

## 1.4 Relationship of Lease to DA.

This Lease describes the rights and obligations of Tenant and Port during the Term. This Lease shall also be subject to the provisions of the DA until the Completion of the Improvements by Tenant in accordance with the DA. Until Completion, the DA will govern the development of the Initial Improvements in the event of any inconsistency between this Lease and the DA. From and after Completion, this Lease will govern the rights and obligations of the Parties with respect to the Premises. The recordation of a Certificate of Completion under the DA shall conclusively establish, for the purposes of this Lease, that all requirements of the DA relating to the construction and completion of the Improvements have been waived or satisfied, and that the DA is no longer applicable. If at such time, there exist any Deferred Items (as defined in the DA), Tenant shall be responsible under this Lease for completing such Deferred Items in a timely manner and in accordance with good construction and engineering practices. The Parties acknowledge that any and all provisions contained in the DA which the Parties intend to have continuing application following the recordation of a Certificate of Completion have been inserted by the Parties into this Lease as well.

1.5 Relationship of Lease to Port Sublease.

Concurrent with the Commencement Date hereof, Tenant, as sublandlord, and Port, as Subtenant, are entering into the Port Sublease of approximately 52,475 rentable square feet of the Premises (the "Port Sublease Premises"). Under the Port Sublease, Tenant will sublease the Port Sublease Premises to Port for a term that, upon delivery of the Sublease Premises to Port, will be coterminous with the Term hereof. The Port Sublease contains provisions under which Tenant will sublease the Port Sublease Premises to Port, including without limitation, Port's responsibility to reimburse Tenant its pro rata share of certain operating expenses and Port's responsibility for certain maintenance to the Port Sublease Premises.

SECTION 2. RENT

2.1 Tenant's Covenant to Pay Rent.

During the Term of this Lease, Tenant shall pay Rent for the Premises to Port at the times and in the manner provided in this Section 2.

2.2 Rent Definitions.

The following terms shall be defined as set forth below.

"Additional Rent" as defined in Section 2.10.

"Certified Construction Costs" as defined in Section 6.23(b) of the DA. —

"Projected Total Rental Income" means Five Million Five Hundred Seventy-Nine Thousand One Hundred Twenty-Seven and no/100 Dollars (\$5,579,127.00), subject to adjustment as set forth in Section 2.3(c)(ii) hereof, which is the total amount of base rent projected to be initially generated or imputed from the occupancy of the Premises by the Port, Tenant (based upon Tenant's Fair Rental Value as defined in Section 2.5(b)(iv)), and any other Subtenants, as more particularly described in the Budget attached as Exhibit D hereto.

"Minimum Rent" means the annual minimum rent specified in Section 2.3, payable by Tenant to Port.

"Participation Rent" means the participation rent payable to Port by Tenant under Section 2.5.

"Port Rent" means the monthly base rent and monthly amortization of Port tenant improvement costs over standard payable by Port to Tenant under Section 2.A and Exhibit B (Work Letter Agreement) of the Port Sublease, as adjusted from time to time pursuant to the provisions of the Port Sublease.

"Rent" means the sum of Minimum Rent, Participation Rent and Additional Rent.

"Total Construction Costs" means the amount of "Total Construction Costs" identified in the portion of the Budget identified as "Construction Budget" attached hereto as Exhibit D.

2.3 Minimum Rent.

(a) Minimum Rent. Commencing on the date of Completion of all or any portion of the Initial Improvements ("Rent Commencement Date"), and for the remainder of the Term, Tenant shall pay to Port, as Minimum Rent, the annual sum of One Million Seven Hundred Eighty-Two Thousand Eight Hundred Fifty Nine and 00/100 Dollars (\$1,782,859.00) subject to adjustment in accordance with Section 2.3(c). During the period between the Commencement Date and the Rent Commencement Date, no Minimum or Participation Rent will be due. If Completion of a portion of the Initial Improvements occurs prior to Completion of all of the Initial Improvements required to be constructed under the DA, the amount of Minimum Rent due and payable shall be prorated based upon the percentage that the Initial Improvements Completed bears to the entire Premises. In no event shall such proration of Minimum Rent continue for more than six (6) months after the Completion of any portion of the Initial Improvements, regardless of whether or not all of the Initial Improvements are Completed at such time, except to the extent that delay in the Completion of the Improvements occurs solely as a result of the Port's actions in its proprietary (but not regulatory) capacity. In such event, the Minimum Rent shall continue to be prorated based upon the percentage that the Initial Improvements Completed bears to the entire Premises only for the period of time that Completion of the Port's Improvements are delayed solely as a result of the Port's actions in its proprietary (but not regulatory) capacity.

(b) Share of Historic Tax Credits. Under the DA, Tenant is required to use good faith efforts to construct the Project in such a manner as to qualify for 20% federal income tax credits for historic rehabilitation, pursuant to Internal Revenue Code §§ 38 and 47, and 16 U.S.C.A. § 470 et seq. and applicable regulations ("Historic Tax Credits"). Tenant shall use its best efforts to diligently obtain an investor for, or otherwise take advantage of, such Historic Tax Credits at a value equal to or higher than that for comparable historic rehabilitation projects. Port and Tenant shall each be entitled to 50% of the total proceeds received from the entity investing in the Historic Tax Credits net of any sales commissions and other actual out-of-pocket costs incurred in obtaining the investor for the Historic Tax Credits (the "Historic Tax Credit Investment Proceeds"). Tenant shall retain the Port's 50% share of the Historic Tax Credit Investment Proceeds and apply such 50% share towards reducing the Total Construction Costs of the Project, thereby increasing Minimum Rent as further provided in Section 2.3(c)(iii) hereof.

(c) Minimum Rent Adjustments. The Minimum Rent set forth in Section 2.3(a) hereof is based upon the difference between (1) the Projected Total Rental Income and (2) a total return to Tenant of eleven percent (11%) per year on and of capital based on the Total Construction Costs; provided, however, that Tenant's administrative costs



and any costs involved in obtaining debt financing other than financing for construction of the Initial Improvements at customary rates for comparable construction-only loans shall be excluded from the Total Construction Costs and shall not be used for purposes of determining Minimum Rent under the Lease, but shall be the sole responsibility of Tenant. Notwithstanding Section 2.3(a) above, the Minimum Rent for the Term shall be adjusted as of the Rent Commencement Date in accordance with this Section 2.3(c). To the extent that Minimum Rent is adjusted in accordance with this Section 2.3(c), the Parties will execute an Addendum to this Lease to reflect such adjustments; however, failure to do so shall not relieve Tenant of its obligation to pay such adjusted Minimum Rent.

(i) Adjustment based upon Certified Construction Costs.

(A) Upwards Adjustment in Minimum Rent. If the final Certified Construction Costs (as defined in Section 6.23(b) of the DA) are less than the Total Construction Costs, then the Minimum Rent shall be adjusted upwards as of the Rent Commencement Date by eleven percent ( 11%) of the difference between the Total Construction Costs and the Certified Construction Costs until such point, if any, as the Minimum Rent equals the Port Rent due for the 1<sup>st</sup> year of the Port Sublease. After such point, Minimum Rent shall be further adjusted upwards by five and ½ percent ( 5.5%) of any difference between the Total Construction Costs and the Certified Construction Costs remaining after the foregoing 11% adjustment equals the Minimum Rent and the Port Rent due for the 1<sup>st</sup> year of the Port Sublease.

(B) Downward Adjustment in Minimum Rent; Floor. If the final Certified Construction Costs are more than the amount identified as Total Construction Costs set forth in the Budget, Minimum Rent will be adjusted downward as of the Rent Commencement Date by eleven percent (11%) of the difference between the Total Construction Costs and the Certified Construction Costs. In no event will Minimum Rent be adjusted under this Section 2.3(c)(i)(B) to be less than a guaranteed minimum of One Million Three Hundred Fifty-One Thousand Nine Hundred Sixty-Two and 00/100 Dollars (\$1,351,962.00); provided, however, such guaranteed minimum will be subject to further adjustment in accordance with Sections 2.3(b)(ii)-(iv) below. That guaranteed minimum amount is based upon a maximum guaranteed total construction cost of \$41,804,485.00, i.e. the Construction Costs subtotal shown on Exhibit D plus a maximum construction and design contingency of \$4,261,350.00 (representing a 15% construction and design contingency) rather than the \$0.00 contingency shown on Exhibit D.

(C) Administrative Matters. In the event the Certified Construction Costs are not available on the Rent Commencement Date, then within sixty (60) days after Tenant submits the Statement of Certified Construction Costs to Port in accordance with Section 6.03(b) of the DA, Minimum Rent will be adjusted upwards or downwards retroactively to the Rent Commencement Date. Actual construction costs shall be identified as line items in the revised Budget showing the Certified Construction Costs which shall establish the Minimum Rent for the Term and shall replace the Total Construction Costs shown on Exhibit D.

(ii) Adjustment Based upon Changes in Usable Square Footage. The amount of Projected Total Rental Income used to calculate the Minimum Rent set forth in Section 2.3(a) above relies upon the usable square feet of the Premises to be occupied by the Port, Tenant, and any Subtenants, as shown on the part of the Budget attached as Exhibit D under the heading of Tenant Rental Income (Triple Net). The Parties acknowledge that the actual amount of such usable square feet upon Completion allocated to each occupant may be different from the amounts shown on the Budget. If the actual usable square feet of any of the space occupied by Port, Tenant, other Subtenants or the Pier 1 Deli (all as identified in the Budget) differ from that shown on the Budget, then effective as of the Rent Commencement Date, the Projected Total Rental Income shown on Exhibit D shall be recalculated by taking the actual useable square feet as constructed for each space plus a 15% load thereon for each space and multiplying such figure for each space by the applicable rent per square foot shown on Exhibit D. Based on such recalculation, Minimum Rent shall be adjusted within ninety (90) days after Completion to reflect the difference between the Projected Total Rental Income as recalculated in accordance with this paragraph and 11% of the Total Construction Costs as adjusted in accordance with Sections 2.3(c)(i)(iii) and (iv) hereof.

(iii) Adjustment Based Upon Historic Tax Credits. The amount of "Total Construction Costs" set forth in the Budget used to determine Minimum Rent hereunder includes a contribution by the Port of its fifty percent (50%) share of the estimated twenty percent (20%) Historic Tax Credits Investment Proceeds, as described in Section 2.3(b). The Parties recognize that the Project will not qualify for the 20% Tax Credit unless and until the National Park Service ("NPS") certifies the historic rehabilitation of the Project after Completion of the Improvements and that the actual amount of tax credit will not be determined until such Completion. Therefore, on the Rent Commencement Date, Tenant shall pay to Port the Minimum Rent set forth in Section 2.3(a), subject to the adjustments of Sections 2.3(c)(i), (ii) and (iv). If as of or subsequent to the Rent Commencement Date the NPS certifies the Project for the 20% Historic Tax Credit and the Port's 50% share of the Historic Tax Credit Investment Proceeds received by Tenant for the 20% Historic Tax Credit from third Parties equals the amount shown in the Budget, then no subsequent adjustments to the Minimum Rent shall be made under this subsection (iii). If, as of or subsequent to the Rent Commencement Date, the NPS disapproves the Project for certification, or if the Historic Tax Credit Investment Proceeds is less than the amount of the Historic Tax Credit Investment Proceeds estimated in the Budget, then the Minimum Rent shall be adjusted downward by (i) 11% of that portion of the Port's 50% share of the tax credits that the NPS has not certified, or (ii) 11% of that portion of the Port's 50% share of the Historic Tax Credit Investment Proceeds estimated in the Budget not realized by Tenant through obtaining investors for such credits, as the case may be. If, as of or subsequent to the Rent Commencement Date, the NPS certifies the Project and Port's share of the Historic Tax Credit Investment Proceeds received by Tenant exceeds the amount of the Historic Tax Credit Investment Proceeds estimated in the Budget, then the Minimum Rent shall be adjusted upwards as of the Rent Commencement Date by 11% of the amount by which the Historic Tax Credit Investment Proceeds received by Tenant by a third party investor exceeds the Port's 50% share of the Historic Tax Credit Investment Proceeds estimated in the Budget. After certification and issuance of the historic tax credit, if any, there shall be no subsequent

adjustments in Minimum Rent if a recapture of the tax credit occurs for any reason, including, without limitation, a transfer of the Property or subsequent unapproved alterations to the Property (other than alterations undertaken directly by Port or City). Notwithstanding the foregoing, no adjustment in Minimum Rent shall occur if the NPS fails to certify the Project due to a material default in Developer's obligation to construct the Project in accordance with the plans approved by the NPS as more particularly described in Section 6.04(ix) of the DA. Any adjustments to Minimum Rent under this Section 2.3(c)(iii) shall be made within ninety (90) days after a determination of the tax credit in accordance herewith.

(iv) Adjustment Based Upon Capital Contributions by Port.

Port shall have the right to contribute capital towards the Construction Costs of the Project by paying a capital contribution to Tenant in such amount as determined by Port, in its sole discretion and as further limited by this subsection (iv), at any time within two (2) years following the Rent Commencement Date. If Port makes such a capital contribution, then within 30 days after such payment, the Minimum Rent shall be adjusted as of the date that Port paid the capital contribution to Tenant so that the calculation of Minimum Rent will reflect a decrease in the Certified Construction Costs by the amount of capital actually paid by Port towards the Certified Construction Costs. Notwithstanding the foregoing, the amount of capital that Port may contribute hereunder shall be limited to such amount as would increase the Minimum Rent payable hereunder to an amount not to exceed the Base Rent due to Tenant by Port under the Port Sublease for the first five (5) years of the Sublease Term.

(d) Manner of Payment. Tenant shall pay Minimum Rent to Port in advance, in equal monthly installments, beginning on the Rent Commencement Date, and thereafter on or before the first day of each and every calendar month during the Term. If the Rent Commencement Date occurs on a day other than the first day of a calendar month, or if the Term ends on a day other than the last day of a calendar month, then Minimum Rent for such fractional month shall be computed by dividing the annual Minimum Rent by 365 (or 366, if the year in question is a leap year), and multiplying the per-diem rental rate so computed by the number of days in such fractional month. In any instance where Minimum Rent is adjusted pursuant to Section 2.3(c)(i)-(iv) and such adjustment is to be effective as of the Rent Commencement Date, any amount due from Tenant to Port or from Port to Tenant by reason of such adjustment shall be payable within thirty (30) days after the date that such adjustment is made.

2.4 Rent Offset for Port Rent.

(a) The Parties acknowledge that Tenant is responsible to pay to Port Minimum Rent and Participation Rent under the terms of this Lease, and that Port is responsible to pay Port Rent to Tenant under the terms of the Port Sublease. Commencing on the rent commencement date of the Port Sublease, and thereafter on or before the first day of each and every calendar month during the Term, Tenant shall be entitled to offset against its monthly payment of Minimum Rent and Participation Rent, the Port Rent due to Tenant for that month, so long as Port exercises its right under the Port Sublease to offset against the Port Rent due for that month the amount of Minimum Rent and Participation Rent due hereunder.

Consequently, to the extent that Minimum Rent and Participation Rent hereunder for any given month exceed the amount of Port Rent for that month, the net Minimum Rent and Participation Rent due hereunder shall consist of the difference between the sum of Minimum Rent and Participation Rent, and the Port Rent, for that month, and Port's payment of Port Rent shall be \$0.00. To the extent that Minimum Rent and Participation Rent hereunder for any given month is less than the amount of Port Rent due for that month, then Tenant's payment of Minimum and Participation Rent hereunder shall be \$0.00, and Port's net payment of Port Rent due under the Port Sublease shall consist of the difference between the Port Rent and the Minimum Rent and Participation Rent due hereunder. The Parties acknowledge that Participation Rent is payable by Tenant on a quarterly basis, whereas Port Rent and Minimum Rent are payable monthly. Consequently, Port, at its election, may amortize such quarterly Participation Rent amounts due over a 3-month period commencing upon the first day of the month following the month in which the applicable Participation Rent payment is due for purposes of calculating the offset for the Port Rent. The following are examples of the foregoing concept:

**Example 1 (Lease Rent Exceeds Sublease Rent)**

Minimum and Participation Rent monthly payment due from Tenant under the Lease:	\$100,000.00
Monthly Port Rent due from Port under the Port Sublease:	\$80,000.00
Net Minimum and Participation Rent under this Lease:	\$20,000.00
Net Port Rent due under Sublease:	\$0.00

**Example 2 (Sublease Rent Exceeds Lease Rent)**

Minimum and Participation Rent monthly payment due from Tenant under the Lease:	\$100,000.00
Monthly Port Rent due under the Port Sublease:	\$120,000.00
Net Minimum and Participation Rent under this Lease:	\$0.00
Net Port Rent due under Sublease:	\$20,000.00

**2.5 Participation Rent.**

(a) Commencement. Commencing on the fifth anniversary date of the Rent Commencement Date and for the remainder of the Term, Tenant shall pay to Port, in addition to Minimum Rent, Participation Rent in accordance with this Section 2.5.

(b) Definitions.

(i) "Total Rental Income" means all payments, revenues, fees and amounts received by or for the account of Tenant from any Person for the Person's occupancy or use of any portion of the Premises. Total Rental Income includes, without limitation, all minimum rent, base rent, participation rent, percentage rent, parking charges, license fees, permit fees, and transfer premiums (described in Section 18.c. of the Port Sublease), received from any and all tenants, Subtenants, licensees, permittees, or parking users of the Premises, including without limitation, Port. If Tenant, or any Affiliate of Tenant, occupies a portion of the Premises, Total Rental Income will also include Tenant's Fair Rental Value of the portion of the Premises occupied by Tenant or its Affiliate. Total Rental Income also shall include Port's Fair Rental Value of the portion of the Premises occupied by Port. Total Rental Income shall exclude only the following items: (A) late fees and interest paid to Tenant from delinquent rental payments; (B) amounts refunded to Subtenants by Tenant for overpayment of minimum rent, percentage rent, or base rent; (C) payments to Tenant from Subtenants in excess of such Subtenants' base, minimum and percentage rentals that are attributable to the operating expenses of the Premises actually incurred by Tenant (without any profit to Tenant), including common area maintenance costs, taxes and insurance; (D) any customary leasing commissions and reasonable legal fees and expenses in connection with the subleasing of the Premises; and (E) payments to Tenant from Subtenants attributable to Tenant's actual costs incurred and paid for tenant improvements in excess of the Standard Tenant Improvement Allowance for areas of the Premises leased to Subtenants amortized over the term of such sublease on a straight-line basis pursuant to generally accepted accounting principles. For purposes hereof, the "Standard Tenant Improvement Allowance" will be Forty Dollars (\$40.00) per rentable square foot (inclusive of architecture and general conditions costs) for the initial subleases as of the Commencement Date, and for future subleases, will be as agreed to by the Parties based on comparable space at a comparable location in San Francisco, or if the Parties fail to agree, then as determined in accordance with the arbitration procedures set forth in Section 2.5(a)(v)(B) and (C).

(ii) "Excess Rental Income" means the Total Rental Income received by Tenant in excess of the Projected Total Rental Income.

(iii) "Participation Rent" means an amount equal to fifty percent (50%) of all Excess Rental Income, payable in accordance with this Section 2.5.

(iv) "Port's Fair Rental Value" means an initial triple net value for base rent payable under the Port Sublease as of the Commencement Date of Thirty Five and 00/100 Dollars (\$35.00) per square foot based upon the Rentable Area occupied by Port, which includes a fifteen percent (15%) load for common areas. Port's Fair Rental Value will be increased by eighteen and ½ percent (18.5%) effective the fifth (5<sup>th</sup>) anniversary of the Rent Commencement Date. On each ten-year anniversary of the Commencement Date (each, an "Adjustment Date"), Port's Fair Rental Value shall be adjusted upwards or downwards to equal the then Fair Market Value of the Premises until the next 10-year market rent adjustment, based upon the market rental rate for comparable office space in comparable

locations located in San Francisco. Determination of Port's Fair Rental Value shall also include a determination of the type, amount and frequency of built-in escalators to Port's Fair Rental Value (e.g. CPI increases or periodic percentage adjustments) for the applicable Adjustment Period based on comparable leases for comparable office space in comparable locations in San Francisco ("Interim Escalation"). Each 10 year adjustment to Port's Fair Rental Value and such Interim Escalation shall be determined in accordance with the procedures set forth in Section 2.B of the Port Sublease.

(v) "Tenant's Fair Rental Value" means an initial triple net value for base rent imputed hereunder as of the Commencement Date of Forty and 00/100 Dollars (\$40.00) per square foot based upon the Rentable Area occupied by Tenant, which includes a fifteen percent (15%) load for common areas. Tenant's Fair Rental Value will be increased by eighteen and ½ percent (18.5%) effective the fifth anniversary of the Rent Commencement Date. On each ten-year anniversary of the Commencement Date (each, an "Adjustment Date"), Tenant's Fair Rental Value shall be adjusted upwards or downwards to equal the then Fair Market Value of the Premises plus Interim Escalations until the next 10 year market rent adjustment, based upon the market rental rate and escalation terms for comparable office space in comparable locations located in San Francisco. Each 10 year adjustment to Tenant's Fair Rental Value, including the determination of the Interim Escalator, shall be referred to herein as Tenant's Adjusted Base Rent and determined as follows:

(A) Tenant shall determine the Adjusted Base Rent by using its good faith judgment based upon comparable office space in a comparable location in San Francisco, and Tenant shall submit to Port its determination of Tenant's Adjusted Base Rent no more than 180 days and no less than 90 days prior to each Adjustment Date. In the event Port and Tenant are unable to mutually agree on the Tenant's Adjusted Base Rent within thirty (30) days after delivery of the Tenant's notice to Port of its determination, then Tenant's Adjusted Base Rent of the Premises shall be set by appraisal, as provided below. In no event will the Adjusted Base Rent so determined be less than the base rent in effect as of the Rent Commencement Date.

(B) Within forty-five (45) days after the expiration of the thirty (30) day period specified above, each Party, at its cost and by giving notice to the other Party, shall appoint a real estate appraiser holding an M.A.I. designation with at least ten (10) years full-time commercial appraisal experience appraising comparable space in the City of San Francisco to prepare an appraisal of the Adjusted Base Rent for the ten (10) year period (the "Adjustment Period") succeeding the relevant Adjustment Date. If a Party does not appoint an appraiser within such 45 day period, the single appraiser appointed shall be the sole appraiser and shall prepare an appraisal of the Tenant's Adjusted Base Rent of the Premises for the Adjustment Period. Each appraiser shall conduct an independent appraisal within 45 days after appointment. If the Parties are unable to agree on the Tenant's Adjusted Base Rent for the Adjustment Period within sixty (60) days after receiving the appraisal(s), each appraiser shall notify the other in writing of its final appraisal for purposes of determining Tenant's Adjusted Base Rent in accordance herewith and the Parties shall attempt to elect a third appraiser meeting the qualifications stated in this paragraph. If they are unable to agree on the third appraiser, either Party, by giving ten (10) days' notice to the

other Party, may file a petition with the American Arbitration Association solely for the purpose of selecting a third appraiser who meets the qualifications stated in this paragraph. If a Party suggests the name of a third appraiser to the arbitration service, the Party shall also submit a declaration by the proposed third appraiser disclosing any work performed by such appraiser for either Party, any entity related to either Party, or their attorneys, principals, or officers, and any relationship between the third appraiser and either Party that could reasonably be construed as a conflict of interest. The Parties hereby waive any right to challenge the selection of the third appraiser, whether by the agreement of the first two arbitrators, or by the arbitration service, for any reason other than fraud, corruption or undue influence, and expressly waives any right to challenge the third appraiser based upon a conflict of interest by reason of work the third appraiser has performed for either Party, any entity related to either Party, or their respective attorneys, principals, or officers, and any relationship between the third appraiser and either Party that could be reasonably construed as a conflict of interest. Notwithstanding the foregoing, neither Party waives any challenge for a conflict of interest based on work performed by the third appraiser for either Party, any entity related to either Party, or their respective attorneys, principals, or officers, and any relationship between the third appraiser and either Party that could be construed as a conflict of interest, if the third appraiser fails to disclose such work to both Parties in the declaration. Each Party shall bear one-half (1/2) of the cost of any fee charged by the American Arbitration Association for appointing the third appraiser and one-half (1/2) of the third appraiser's fee.

(C) Within thirty (30) days after his or her appointment, the third appraiser shall conduct a hearing, at which Port and Tenant may each make supplemental oral and/or written presentations, with an opportunity for testimony by the first two appraisers and questioning by the Parties and the third appraiser. Within thirty (30) days following the hearing, the third appraiser shall select the appraised Tenant's Adjusted Base Rent determined by one or the other of the first two (2) appraisers that is the closer, in the opinion of the arbitrator, to the actual Tenant's Adjusted Base Rent. The determination of the third appraiser shall be limited solely to the issue of deciding which of the appraisals of the two appraisers is closest to the actual Tenant's Adjusted Base Rent. The third appraiser shall have no right to propose a middle ground or to modify either of the two appraisals, or any provision of this Lease. The Tenant's Adjusted Base Rent for the Adjustment Period so determined shall be conclusive, final and binding on the Parties, except as provided in California Code of Civil Procedure Section 1286.2(a) and (b) (as the same may be amended from time to time). Except as provided in California Code of Civil Procedure Section 1286.2(a) and (b) (as the same may be amended from time to time), the provisions of Title 9 of the California Code of Civil Procedure shall not have any application to the appraisal procedure set forth herein.

Upon determination of Tenant's Adjusted Base Rent for the Adjustment Period, the Parties shall acknowledge by an addendum hereto the Tenant's Adjusted Base Rent (to be retroactive to the applicable Adjustment Date if determined after such date), provided that failure to do so shall not affect the effectiveness of the new Tenant's Adjusted Base Rent.

(c) Agreement to Pay; Determination. In addition to Minimum Rent, Tenant shall pay to Port on a quarterly basis Participation Rent in accordance with this Section 2.5.

On or before the last day of April, July, October and January throughout the Term, Tenant shall deliver to Port a statement ("Participation Rent Statement"), certified by Tenant to be true and correct, setting forth the Total Rental Income, by month during the preceding calendar quarter, and calculating the amount of Participation Rent payable to Port for the applicable quarter. Tenant shall include with the Participation Rent Statement payment to Port of the applicable amount of Participation Rent for such quarter. If this Lease terminates prior to the end of a quarter, payment of the Participation Rent for that portion of the quarter during which Total Rental Income is payable shall be determined and reported by Tenant to Port within thirty (30) days after Tenant ceases to conduct business on the Premises, but if this Lease terminates as a result of Tenant's default, including Tenant's insolvency, any amounts due hereunder shall be payable forthwith. If Port does not receive the Participation Rent Statement and Participation Rent when due, Tenant shall pay a late charge calculated at the greater of 10% of the Minimum Rent or ten percent (10%) of the Participation Rent (using an average of the Participation Rent for the prior six months as a base figure). In no event shall the late charge be less than One Hundred Dollars (\$100.00) or more than Five Hundred Dollars (\$500.00) as Indexed annually.

(i) Books and Records. Tenant shall keep accurate books and records according to generally accepted accounting principles consistently applied. "Books and records" means all of Tenant's books, records, and accounting reports or statements relating to this Lease 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, including bank accounts, to allow a determination of expenses incurred and revenues generated directly from the Premises. If Tenant operates all or any portion of the Premises through a Subtenant or Agent (other than Port), Tenant shall cause such Subtenant or Agent to adhere to the foregoing requirements regarding books, records, accounting principles and the like.

(ii) Audit. 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 (hereinafter collectively referred to as "Port representative"), for the purpose of examining said books and records to determine the accuracy of Tenant's reporting of Total Rental Income. Tenant shall cooperate with the Port representative during the course of any audit. Said books and records shall be kept for four (4) years and shall be maintained and/or made available in San Francisco to Port's representative for the purpose of auditing or re-auditing these accounts. If an audit is made within said four-year period and Port claims that errors or omissions have occurred, the books and records shall be retained and made available until those matters are resolved. If Tenant operates the Premises through a Subtenant or Agent (other than Port), Tenant shall require such



Subtenant or Agent to provide the Port with the foregoing audit right with respect to the books and records of such Subtenant or Agent.

If an audit reveals that Tenant has understated its Total Rental Income for said audit period and has paid Port less than the amount of Participation Rent than it should have paid, Tenant shall pay Port, promptly upon demand, the difference between the amount Tenant has paid and the amount it should have paid to Port. Port shall bear the cost of the audit unless Tenant understates its Total Rental Income for any audit period by three percent (3%) or more, in which case, Tenant shall pay the cost of the audit.

## 2.6 Manner of Payment of Rent.

Tenant shall pay Minimum Rent, Participation Rent, and Additional Rent to Port in lawful money of the United States of America at the address for notices to Port specified in this Lease, or to such other person or at such other place as Port may from time to time designate by notice to Tenant. Minimum Rent and Participation Rent shall be payable at the times specified in Section 2.3 and 2.5 respectively without prior notice or demand. 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 ten (10) 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.

## 2.7 No Abatement or Setoff.

Tenant shall pay all Rent, including any and all Additional Rent, at the times and in the manner in this Lease provided without any abatement, setoff, deduction, or counterclaim, except as provided in Section 2.4, Section 12, and Section 13 hereof, and except as expressly provided under Article 31.O.2.c. of the Port Sublease (allowing Tenant the right to offset against its payment of Minimum Rent and Participation Rent hereunder damages, costs and expenses incurred by Tenant, as sublandlord thereunder, as a result of termination of the Sublease due to a failure of the City to appropriate and certify adequate funds).

## 2.8 Interest on Delinquent Rent.

If any installment of Minimum Rent or Participation Rent is not paid within ten (10) days following the date it is due, or if any Additional Rent is not paid within thirty (30) business days following written demand for payment of such Additional Rent, such unpaid amount shall bear interest from the date due until paid at an annual interest rate (the "Default Rate") equal to the greater of (i) ten percent (10%) or (ii) five percent (5%) in excess of the rate the Federal Reserve Bank of San Francisco charges, as of the date payment is due, on advances to member banks and depository institutions under Sections 13 and 13a of the Federal Reserve Act. However, interest shall not be payable to the extent such payment would violate any applicable usury or similar law. Payment of interest shall not excuse or cure any default by Tenant.

## 2.9 Late Charges.

Tenant acknowledges and agrees that late payment by Tenant to Port of Rent will cause Port increased costs not contemplated by this Lease. The exact amount of such costs is extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, without limiting any of Port's rights or remedies hereunder, Tenant shall pay a late charge equal to One Hundred Fifty Dollars (\$150.00), which charge shall be Indexed annually, plus reasonable Attorneys' Fees and Costs incurred by Port by reason of Tenant's failure to pay any Rent within ten (10) days of the due date of such Rent. Such late charge may be assessed without notice and cure periods and regardless of whether such late payment results in an Event of Default. The Parties agree that such late charge represents a fair and reasonable estimate of the cost which Port will incur by reason of a late payment by Tenant.

## 2.10 Additional Rent.

Except as otherwise provided in this Lease, all costs, fees, interest, charges, expenses, reimbursements and obligations of every kind and nature relating to the Premises that may arise or become due during or in connection with the Term of this Lease, whether foreseen or unforeseen, which are payable by Tenant to Port pursuant to this Lease, shall be deemed Additional Rent. Port shall have the same rights, powers and remedies, whether provided by law or in this Lease, in the case of non-payment of Additional Rent as in the case of non-payment of Minimum Rent.

## 2.11 Net Lease.

It is the purpose of this Lease and intent of Port and Tenant that, except as specifically stated to the contrary in Section 2.7, 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. Under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties, except as may be provided in this Lease or the Port Sublease, 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, except as otherwise expressly provided in Section 4.1(c), 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. Except as may be specifically and expressly provided otherwise in Sections 12 and 13, 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. 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.

### SECTION 3. USES

#### 3.1 Permitted Uses.

Tenant shall use the Premises for office, meeting, restaurant, and public access uses substantially in accordance with the Scope of Development (including the Schematic Drawing of the Site Plan and Ground Floor Plan), attached hereto as Exhibit E, (collectively, the "Permitted Uses"), subject to priority for public trust-consistent office uses as described in Section 3.6 hereof, and for no other use without the prior written consent of the Port, not to be unreasonably withheld.

#### 3.2 Advertising and Signs.

Tenant shall not allow the placement, construction or maintenance of any sign, advertisement, awning, canopy, banner or other exterior decoration on the Premises without obtaining Port's prior written consent. Any sign that Tenant or its Subtenants are permitted to place, construct or maintain on the Premises shall comply with all Laws relating thereto, including but not limited to Port's Sign Guidelines 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. Port shall not disapprove a signage request that otherwise complies with the Port's Sign Guidelines unless Port has other reasonable grounds for disapproval unrelated to the matters covered under the Port's Sign Guidelines.

#### 3.3 Limitations on Uses by Tenant.

(a) Prohibited Activities. Tenant shall not conduct or permit on the Premises any of the following activities:

- (i) any activity that creates a public or private nuisance;
- (ii) any activity that is not within the Permitted Use;
- (iii) any activity or object that will overload or cause damage to the Premises;
- (iv) any activity that constitutes waste or nuisance to owners or occupants of adjacent properties, including, without limitation, Subtenants of the Premises. Such activities include, without limitation, 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, subject to the provisions of Sections 10, 12 and 13 of this Lease, and without limitation on any right given Tenant to alter, modify, Restore, or construct Improvements;

(v) any activity that will in any way injure, obstruct or interfere with the rights of other Subtenants, or of other tenants, owners or occupants of adjacent properties, including rights of ingress and egress;

(vi) use of the Premises for sleeping or personal living quarters;

(vii) any auction, distress, fire, bankruptcy or going-out-of-business sale on the Premises without the prior written consent of Port; and

(viii) any activity that is inconsistent with the Public Trust.

(b) Land Use Restrictions. Tenant may not enter into agreements granting licenses, easements or access rights over the Premises if the same would be binding on Port's reversionary interest in the Premises, or obtain changes in applicable land use laws or conditional use permits for any uses not provided for hereunder, in each instance without Port's prior written consent, which consent may be withheld in Port's sole discretion, and subject to the provisions of Section 6.

### 3.4 Premises Must Be Used.

Tenant shall use the Premises continuously for the Permitted Use specified above, subject to customary vacancies of office space that may arise from time to time. Tenant shall use its best efforts to lease any vacancies at the Premises at prevailing market rents as quickly as practicable; provided, however, that Tenant may allow vacancies to accommodate pre-committed options to lease or expansion options where it is infeasible to lease such space to other third Parties due to the short amount of time available prior to exercise of such option.

### 3.5 Public Access Areas.

Port hereby reserves reasonable access rights over the portion of the Premises consisting of the Public Access Areas so as to permit use of such areas by the general public consistent with the Public Trust, specifically recognizing, however, that (i) the public access areas labeled "Historic Railroad Corridor" on Exhibit E may be closed to the public after regular business hours Monday-Friday, 8:00 a.m. – 5:00 p.m. and on holidays, and (ii) the public access areas labeled "North Apron" on Exhibit E may be closed to the public from dusk to dawn.

### 3.6 Public Trust Uses.

The Project shall be developed to promote Public Trust objectives as described in

Recital E. Consequently, it shall be reasonable for the Port to withhold its consent to any material change in the types or square footages of the permitted uses described in Section 3.1 and in the Scope of Development if such changes would result in a violation of the Port's authority as trustee under the Burton Act, as reasonably determined by the Port Commission.

3.7 Rules and Regulations. Tenant shall include in the Port Sublease rules and regulations for the Premises in a form reasonably satisfactory to Port. : Tenant may amend and/or supplement the rules and regulations from time to time, subject to the consent of Port which consent shall not be unreasonably withheld.

#### SECTION 4. TAXES AND ASSESSMENTS

##### 4.1 Payment of Possessory Interest Taxes and Other Impositions.

(a) Payment of Possessory Interest Taxes. Tenant shall pay or cause to be paid, prior to delinquency, all possessory interest and property taxes assessed, levied or imposed on the Premises or any of the Improvements or Personal Property (excluding the personal property of any Subtenant whose interest is separately assessed) located on the Premises or Tenant's leasehold estate (but excluding any such taxes separately assessed, levied or imposed on any Subtenant), to the full extent of installments or amounts payable or arising during the Term (subject to the provisions of Section 4.1(c)). Subject to the provisions of Section 5 hereof, all such taxes shall be paid directly to the City's Tax Collector or other charging authority prior to delinquency, provided that if applicable Law permits Tenant to pay such taxes in installments, Tenant may elect to do so. In addition, Tenant shall pay any fine, penalty, interest or cost as may be charged or assessed for nonpayment or delinquent payment of such taxes. Tenant shall have the right to contest the validity, applicability or amount of any such taxes in accordance with Section 5.

(i) Acknowledgment of Possessory Interest. Tenant specifically recognizes and agrees that this Lease creates a possessory interest which is subject to taxation, and that this Lease requires Tenant to pay any and all possessory interest taxes levied upon Tenant's interest pursuant to an assessment lawfully made by the City's Assessor. Tenant further acknowledges that any Sublease or assignment permitted under this Lease and any exercise of any option to renew or extend this Lease may constitute a change in ownership, within the meaning of the California Revenue and Taxation Code, and therefore may result in a reassessment of any possessory interest created hereunder in accordance with applicable Law.

(ii) Reporting Requirements. San Francisco Administrative Code Sections 6.63-1, 6.63-2, 23.6-1 and 23.6-2 require that Port report certain information relating to this Lease, and the creation, renewal, extension, assignment, sublease, or other transfer of any interest granted hereunder, to the County Assessor within sixty (60) days after any such transaction. Within thirty (30) days following the date of any transaction that is subject to such reporting requirements, Tenant shall provide such information as may reasonably be requested by Port to enable Port to comply with such requirements.

(iii) Exemption of Port Sublease Premises from Possessory Interest Taxes. Although Tenant is responsible for any and all possessory interest taxes levied upon Tenant's interest hereunder, the Parties also acknowledge that the portion of the Premises occupied by Port under the Port Sublease may fall within the exemption of Cal. Rev. & Tax Code §107.8(a) for so long as such premises are occupied and used by the Port. Cal. Rev. & Tax Code §107.8(a) provides that in evaluating the presence of independent possession necessary to establish a possessory interest under Rev. & Tax Code Section 107(a),

...the possession of, claim to, or right to the possession of, land or improvements pursuant to a lease is not independent if the lessee (1) is obligated simultaneously to sublease the property to the public owner of the property for all or substantially all of the lease period, (2) may not exercise authority and exert control over the management or operation of the property separate and apart from the policies, statutes, ordinances, rules and regulations of the public owner, (3) provides as part of the sublease that the public owner has the right to repurchase all of the lessee's rights in the lease, and (4) cannot receive rent or other amounts from the public owner under the sublease (including any amounts due with respect to any repurchase) the present value of which, at the time the lease is entered into, exceeds the present value of the rent or other amounts payable by the lessee under the lease.

The Parties intend that this Lease and the Port Sublease satisfy the requirements of Section 107.8(a) as follows: (1) the approximately fifty-year term of this Lease is coterminous with the Port Sublease; (2) the Port Sublease does not let Tenant exert any management or control over the Port Sublease premises other than the Rules and Regulations set forth in Section 3.7 and certain other property controls primarily derived from the Port's requirements set forth in this Lease; (3) the Port has the option to repurchase all of the Tenant's rights in the Port subleased premises at any time during the Term, pursuant to Article V of the Port Sublease; and (4) the base rent paid by Port under the Port Sublease will never exceed the Tenant's rent payable to the Port hereunder attributable to the portion of the Premises subject to the Port Sublease.

Notwithstanding such exemption, Tenant shall be responsible for any and all possessory interest taxes and other taxes as provided in this Lease to the full extent such possessory interest tax is assessed against all or any portion of the Property. Port's responsibility to pay any portion of such taxes, including any possessory interest taxes in the event the Port Sublease premises becomes subject to a possessory interest tax, shall be governed solely by the Port Sublease.

(b) Other Impositions. Without limiting the provisions of Section 4.1(a), Tenant shall pay or cause to be paid all Impositions (as defined below), to the full extent of installments or amounts payable or arising during the Term (subject to the provisions of Section 4.1(c)), which may be assessed, levied, confirmed or imposed on or in respect of or be a lien upon the Premises, any Improvements now or hereafter located thereon, any Personal Property now or hereafter located thereon (but excluding the personal property of any Subtenant whose interest is separately assessed), the leasehold estate created hereby, or any subleasehold estate permitted hereunder, including any taxable possessory interest which Tenant, any

Subtenant or any other Person may have acquired pursuant to this Lease (but excluding any such Impositions separately assessed, levied or imposed on any Subtenant). Subject to the provisions of Section 5, Tenant shall pay all Impositions directly to the taxing authority, prior to delinquency, provided that if any applicable Law permits Tenant to pay any such Imposition in installments, Tenant may elect to do so. In addition, Tenant shall pay any fine, penalty, interest or cost as may be assessed for nonpayment or delinquent payment of any Imposition. As used herein, "Impositions" means all taxes, assessments, liens, levies, charges or expenses of every description, levied, assessed, confirmed or imposed on the Premises, any of the Improvements or Personal Property located on the Premises, Tenant's leasehold estate, any subleasehold estate, or any use or occupancy of the Premises hereunder. Impositions shall include all such taxes, assessments, fees and other charges whether general or special, ordinary or extraordinary, foreseen or unforeseen, or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing of every character.

(c) Prorations. All Impositions imposed for the tax years in which the Commencement Date occurs or during the tax year in which this Lease terminates shall be apportioned and prorated between Tenant and Port on a daily basis.

(d) Proof of Compliance. Within a reasonable time following Port's written request which Port may give at any time and give from time to time, Tenant shall deliver to Port copies of official receipts from the appropriate taxing authorities, or other proof reasonably satisfactory to Port, evidencing the timely payment of such Impositions.

#### 4.2 Port's Right to Pay.

Unless Tenant is exercising its right to contest under and in accordance with the provisions of Section 5, if Tenant fails to pay and discharge any Impositions (including without limitation, fines, penalties and interest) prior to delinquency, Port, at its sole option, may (but is not obligated to) pay or discharge the same, provided that prior to paying any such delinquent Imposition, Port shall give Tenant written notice specifying a date at least ten (10) business days following the date such notice is given after which Port intends to pay such Impositions. If Tenant fails, on or before the date specified in such notice, either to pay the delinquent Imposition or to notify Port that it is contesting such Imposition pursuant to Section 5, then Port may thereafter pay such Imposition, and the amount so paid by Port (including any interest and penalties thereon paid by Port), together with interest at the Default Rate computed from the date Port makes such payment, shall be deemed to be and shall be payable by Tenant as Additional Rent, and Tenant shall reimburse such sums to Port within ten (10) business days following demand.

### SECTION 5. CONTESTS

#### 5.1 Right of Tenant to Contest Impositions and Liens.

Tenant shall have the right to contest the amount, validity or applicability, in whole or in part, of any Imposition or other lien, charge or encumbrance against or attaching to the Premises or any portion of, or interest in, the Premises, including any lien, charge or

encumbrance arising from work performed or materials provided to Tenant or any Subtenant or other Person to improve the Premises or any portion of the Premises, by appropriate proceedings conducted in good faith and with due diligence, at no cost to Port. Tenant shall give notice to Port within a reasonable period of time of the commencement of any such contest and of the final determination of such contest. Nothing in this Lease shall require Tenant to pay any Imposition as long as it contests the validity, applicability or amount of such Imposition in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition to be forfeited to the entity levying such Imposition as a result of its nonpayment. If any Law requires, as a condition to such contest, that the disputed amount be paid under protest, or that a bond or similar security be provided, Tenant shall be responsible for complying with such condition as a condition to its right to contest. Tenant shall be responsible for the payment of any interest, fines, penalties or other charges which may accrue as a result of any contest, and Tenant shall provide a statutory lien release bond or other security reasonably satisfactory to Port in any instance where Port's interest in the Property may be subjected to such lien or claim. Tenant shall not be required to pay any Imposition or lien being so contested during the pendency of any such proceedings unless payment is required by the court, quasi-judicial body or administrative agency conducting such proceedings. If Port is a necessary Party with respect to any such contest, or if any law now or hereafter in effect requires that such proceedings be brought by or in the name of Port or any owner of the Property, Port, at the request of Tenant and at no cost to Port, with counsel selected and engaged by Tenant, subject to Port's reasonable approval, shall join in or initiate, as the case may be, any such proceeding. Port, at its own expense and at its sole option, may elect to join in any such proceeding whether or not any law now or hereafter in effect requires that such proceedings be brought by or in the name of Port or any owner of the Property. Except as provided in the preceding sentence, Port shall not be subjected to any liability for the payment of any fines, penalties, costs, expenses or fees, including Attorneys' Fees and Costs, in connection with any such proceeding, and without limiting Section 17, Tenant shall Indemnify Port for any such fines, penalties, costs, expenses or fees, including Attorneys' Fees and Costs, which Port may be legally obligated to pay.

## 5.2 Port's Right to Contest Impositions.

At its own cost and after notice to Tenant of its intention to do so, Port may but in no event shall be obligated to contest the validity, applicability or the amount of any Impositions, by appropriate proceedings conducted in good faith and with due diligence. Nothing in this Section shall require Port to pay any Imposition as long as it contests the validity, applicability or amount of such Imposition in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition to be forfeited to the entity levying such Imposition as a result of its nonpayment. Port shall give notice to Tenant within a reasonable period of time of the commencement of any such contest and of the final determination of such contest. If Port undertakes any such contest, and any Law requires, as a condition to such contest, that the disputed amount be paid under protest, or that a bond or similar security be provided, Port shall be responsible for complying with such condition as a condition to its right to contest. Port shall be responsible for the payment of any interest, penalties or other charges which may accrue as a result of any contest, and Port shall provide a statutory lien release bond or other security reasonably satisfactory to Tenant in any instance where Tenant's interest in the Property may be subjected to such lien or claim. Port shall not be required to pay any Imposition or lien being so



contested during the pendency of any such proceedings unless payment is required by the court, quasi-judicial body or administrative agency conducting such proceedings. If Tenant is a necessary Party with respect to any such contest, or if any law now or hereafter in effect requires that such proceedings be brought by or in the name of Tenant, Tenant, at the request of Port and at no cost to Tenant, with counsel selected and engaged by Port, subject to Tenant's reasonable approval, shall join in or initiate, as the case may be, any such proceeding. Tenant, at its own expense and at its sole option, may elect to join in any such proceeding whether or not any law now or hereafter in effect requires that such proceedings be brought by or in the name of Tenant. Except as provided in the preceding sentence, Tenant shall not be subjected to any liability for the payment of any fines, penalties, costs, expenses or fees, including Attorneys' Fees and Costs, in connection with any such proceeding.

## SECTION 6. COMPLIANCE WITH LAWS

### 6.1 Compliance with Laws and Other Requirements.

(a) Tenant's Obligation to Comply. Tenant shall comply, at no cost to Port, (i) with all applicable Laws (including Regulatory Approvals), (ii) with all Mitigation Measures imposed on the sponsor of the Project, (iii) with the requirements of all policies of insurance required to be maintained pursuant to Section 18 of this Lease, and (iv) with the DA (so long as it remains in effect). The foregoing sentence shall not be deemed to limit Port's ability to act in its legislative or regulatory capacity, including the exercise of its police powers, nor to waive any claim on the part of Tenant that any such action on the part of Port constitutes a Condemnation or an impairment of Tenant's contract with Port. In particular, Tenant acknowledges that the Permitted Uses under Section 3.1 do not limit Tenant's responsibility to obtain Regulatory Approvals for such uses, including but not limited to, building permits, nor do such uses limit Port's responsibility in the issuance of any such Regulatory Approvals to comply with applicable Laws, including the California Environmental Quality Act. It is understood and agreed that Tenant's obligation to comply with Laws shall include the obligation to make, at no cost to Port, all additions to, modifications of, and installations on the Premises that may be required by any Laws regulating the Premises, subject to the provisions of Sections 6.1(b).

(b) Unforeseen Requirements. The Parties acknowledge and agree that Tenant's obligation under this Section 6.1 to comply with all present or future Laws is a material part of the bargained-for consideration under this Lease. Tenant's obligation to comply with Laws shall include, without limitation, the obligation to make substantial or structural repairs and alterations to the Premises (including the Improvements and the Bulkhead and Substructure), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or Port, the degree to which curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the Parties contemplated the particular Law involved, or the relationship between the Law involved and Tenant's particular use of the Premises. Except as provided in Sections 12 or 13, 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 otherwise seek redress against Port. 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, except to the extent provided in Sections 12, 13, 21.1 or 21.2.

(c) Proof of Compliance. Tenant shall promptly upon request provide Port with evidence of its compliance with any of the obligations required under this Section.

## 6.2 Regulatory Approvals.

(a) City Approvals. Tenant understands and agrees that Port is entering into this Lease in its proprietary capacity as the holder of fee title to the Property for the public benefit consistent with the terms of the Public Trust, and not in its capacity as a regulatory agency of the City. Tenant understands that the entry by the Port into this Lease shall not be deemed to imply that Tenant will be able to obtain any required approvals from City departments, boards or commissions which have jurisdiction over the Premises, including the Port itself in its regulatory capacity. By entering into this Lease, the Port is in no way modifying Tenant's obligations to cause the Premises to be used and occupied in accordance with all Laws, as provided herein.

(b) Approval of Other Agencies; Conditions. Tenant understands that the Project and Tenant's contemplated uses and activities on the Premises, any subsequent changes in permitted uses, and any alterations or Subsequent Construction to the Premises, may require that approvals, authorizations or permits be obtained from governmental agencies with jurisdiction, including, but not limited to, BCDC, RWQCB, and the Army Corps of Engineers. Tenant shall be solely responsible for obtaining Regulatory Approvals as further provided in this Section. In any instance where Port will be required to act as a co-permittee, or where Tenant proposes Subsequent Construction which requires Port's approval under Section 10, Tenant shall not apply for any Regulatory Approvals (other than a building permit from the Port) without first obtaining the approval of Port, which approval will not be unreasonably withheld, conditioned or delayed. Throughout the permit process for any Regulatory Approval, Tenant shall consult and coordinate with Port in Tenant's efforts to obtain such Regulatory Approval, and Port shall cooperate reasonably with Tenant in its efforts to obtain such Regulatory Approval, provided that Port shall have no obligation to make expenditures or incur expenses other than administrative expenses. However, Tenant shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit from any regulatory agency other than Port, if Port is required to be a co-permittee under such permit or the conditions or restrictions could create any obligations on the part of Port whether on or off the Property, unless in each instance Port has previously approved such conditions in writing in Port's sole and absolute discretion. No such approval by Port shall limit Tenant's obligation to pay all the costs of complying with such conditions under this Section. Subject to the conditions of this Section, Port shall join, where required, in any application by Tenant for a BCDC or other required Regulatory Approval, and in executing such permit, provided that Port shall have no obligation to join in any such application or execute the permit if the Port does not approve the conditions imposed by BCDC or other regulatory agency under such permit as provided herein. All costs associated with applying for

and obtaining any necessary Regulatory Approval shall be borne by Tenant. Tenant shall be responsible for complying, at no cost to Port or the City, with any and all conditions imposed by any regulatory agency as part of a Regulatory Approval. Tenant shall have the right to appeal or contest in any manner permitted by law any condition imposed upon any such Regulatory Approval. Tenant shall pay and discharge any fines, penalties or corrective actions imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval and Port shall have no liability for such fines and penalties. Without limiting the indemnification provisions of Section 17, Tenant shall Indemnify the Indemnified Parties from and against any and all such fines and penalties, together with Attorneys' Fees and Costs, for which Port may be liable in connection with Tenant's failure to comply with any Regulatory Approval.

## SECTION 7. TENANT'S MANAGEMENT AND OPERATING COVENANTS

### 7.1 Covenants.

Following Completion of the Initial Improvements, Tenant shall maintain and operate the Premises, or cause the Premises to be maintained and operated, in a first-class manner consistent with a quality office development located in the San Francisco Financial District, subject to the provisions of Sections 12 and 13 relating to damage and destruction and Condemnation. Tenant shall be exclusively responsible, at no cost to Port, for the management and operation of the Improvements except as otherwise set forth in the Port Sublease. In connection with managing and operating the Project, Tenant shall provide (or require others, including, without limitation, Subtenants of the Project, to provide), such services as may be necessary or appropriate for a quality office building development in the San Francisco Financial District, including, but not limited to, (a) repair and maintenance of the Improvements, as more fully described in Section 8, (b) utility and telecommunications services, (c) cleaning, janitorial, extermination, and trash removal, (d) landscaping and groundskeeping, and (e) security services for the Premises.

## SECTION 8. REPAIR AND MAINTENANCE

### 8.1 Covenants to Repair and Maintain the Premises.

(a) Tenant's Duty to Maintain. Throughout the Term of this Lease, Tenant shall maintain and repair, at no cost to Port except as otherwise set forth in the Port Sublease, the Premises (including, but not limited to, the Bulkhead and Substructure, pier, pier apron, the Public Access Area and all other Improvements), in condition and repair as is appropriate for a quality office building development in San Francisco's Financial District and in compliance with all applicable Laws and the requirements of this Lease. Tenant shall promptly make (or cause others to make) all necessary or appropriate repairs, renewals and replacements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, foreseen or unforeseen, except as otherwise provided in Sections 12 or 13. Tenant shall make such repairs with materials, apparatus and facilities as originally installed and approved by Port under the DA or this Lease, or, if not originally subject to Port approval or not commercially available, with materials, apparatus and facilities at least equal in quality, appearance and durability to the

materials, apparatus and facilities repaired, replaced or maintained. All such repairs and replacements made by Tenant shall be at least equivalent in quality, appearance, public safety, and durability to and in all respects consistent with the Initial Improvements.

(b) No Obligation of Port; Waiver of Rights. As between Port and Tenant, Tenant shall be solely responsible for the condition, operation, repair, maintenance and management of the Premises, including any and all Improvements, from and after the Commencement Date. Except as otherwise provided in the Port Sublease, Port shall have no obligation to make repairs or replacements of any kind or maintain the Premises (including the Bulkhead and Substructure, pier, pier apron, the Public Access Areas, or any other Improvements) or any portion thereof. Tenant waives the benefit of any existing or future law that would permit Tenant to make repairs or replacements at Port's expense, or (except as provided in Sections 12 and 13) abate or reduce any of Tenant's obligations under, or terminate, this Lease, on account of the need for any repairs or replacements. Without limiting the foregoing, Tenant hereby waives any right to make repairs at Port's expense as may be provided by Sections 1932(1), 1941 and 1942 of the California Civil Code, as any such provisions may from time to time be amended, replaced or restated.

(c) Notice. Tenant shall deliver to Port, promptly after receipt, a copy of any notice which Tenant may receive from time to time: (i) from any governmental authority (other than Port) having responsibility for the enforcement of any applicable Laws (including Disabled Access Laws or Hazardous Materials Laws), asserting that the Project is in violation of such Laws; or (ii) from the insurance company issuing or responsible for administering one or more of the insurance policies required to be maintained by Tenant under Section 18, asserting that the requirements of such insurance policy or policies are not being met.

## SECTION 9. IMPROVEMENTS

### 9.1 Tenant's Obligation to Construct the Initial Improvements.

Tenant shall construct the Initial Improvements in accordance with, and subject to all the terms, covenants, conditions and restrictions in, the DA. Port's issuance and recordation of a Certificate of Completion pursuant to the DA shall conclusively establish Tenant's satisfactory completion of such construction, except for the completion of any Deferred Items (as defined in the DA), which Tenant shall be obligated to complete under Section 1.4 of this Lease. Any Subsequent Construction shall be performed in accordance with Section 10.

### 9.2 Title to Improvements.

During the Term of this Lease, Tenant shall own all of the Improvements, including all Subsequent Construction and all appurtenant fixtures, machinery and equipment installed therein (except for trade fixtures and other personal property of Subtenants). At the expiration or earlier termination of this Lease, title to the Improvements, including appurtenant fixtures (but excluding trade fixtures and other personal property of Tenant and its Subtenants other than Port), will vest in Port without further action of any Party, and without compensation

or payment to Tenant. Tenant and its Subtenants shall have the right at any time, or from time to time, including, without limitation, at the expiration or upon the earlier termination of the Term of this Lease, to remove trade fixtures and other personal property from the Premises.

## SECTION 10. SUBSEQUENT CONSTRUCTION

### 10.1 Port's Right to Approve Subsequent Construction.

(a) Construction Requiring Approval. Tenant shall have the right, from time to time during the Term, to perform Subsequent Construction in accordance with the provisions of this Section 10, provided that Tenant shall not, without Port's prior written approval (which approval may be withheld by Port in its sole discretion):

(i) Construct additional buildings or other additional structures, other than to replace or Restore those previously existing;

(ii) Increase the bulk or height of any Improvements beyond the bulk or height approved for the Initial Improvements;

(iii) Materially alter the exterior architectural design of any Improvements (other than changes reasonably required to conform to changes in applicable Law);

(iv) Perform Subsequent Construction that would be inconsistent with preserving the historic character of the Premises or adversely affect the certification of the Premises for the Historic Tax Credit;

(v) Materially increase the load of the Improvements on the Bulkhead or Substructure;

(vi) Perform Subsequent Construction to the Public Access Areas that would materially adversely affect (other than temporarily during the period of such Subsequent Construction) the public access to, or the use or appearance of such Public Access Areas;

(vii) Materially decrease the building area or the Rentable Area, within the Premises or otherwise adversely affect the rental income to be generated by the Premises;

(viii) Materially increase the Gross Building Area within the Premises;

(ix) Perform Subsequent Construction involving replacement or reconstruction that involves design, colors, or materials not originally approved by Port in accordance with the Construction Documents, unless materials originally installed are not reasonably available or do not meet current code requirements, and Tenant uses materials of

equal quality, durability and appearance to the materials originally installed, as determined by Port.

(b) Notice by Tenant. At least thirty (30) days before commencing any Subsequent Construction which in Tenant's good faith judgment requires Port's approval, Tenant shall notify Port of such planned Subsequent Construction. Such notice shall be accompanied by Final Construction Documents for such Subsequent Construction. Within twenty (20) days after receipt of such notice from Tenant, Port shall have the right to object to any such Subsequent Construction, to the extent that such Subsequent Construction requires Port's approval.

(c) Permits. Tenant acknowledges that the provisions of this section are subject to Sections 6.1(a) and 10.7(a)(ii). In particular, Tenant acknowledges that Port's approval of Subsequent Construction (or the fact that Tenant is not required to obtain Port's approval) does not alter Tenant's obligation to obtain all Regulatory Approvals and all permits required by applicable Law to be obtained from governmental agencies having jurisdiction, including, where applicable, from the Port itself in its regulatory capacity.

#### 10.2 Minor Alterations.

Unless otherwise required under Section 10.1(a)(i)-(viii), but notwithstanding Section 10.1(a)(ix), Port's approval hereunder shall not be required for (a) the installation, repair, or replacement of furnishings, fixtures, equipment or decorative improvements which do not materially affect the structural integrity of the Improvements, (b) recarpeting, repainting the interior of the Premises, groundskeeping, or similar alterations, or (c) any other Subsequent Construction which does not require a building permit or BCDC permit (collectively, "Minor Alterations").

#### 10.3 Tenant Improvements.

Except as otherwise required under the Port Sublease, Port's approval hereunder shall not be required for the installation of tenant improvements and finishes to prepare portions of the Premises for occupancy or use by Subtenants, provided that the foregoing shall not alter Tenant's obligation to obtain any required Regulatory Approvals and permits, including, as applicable, a building permit from Port, acting in its regulatory capacity.

#### 10.4 Construction Documents in Connection with Subsequent Construction.

(a) Preparation, Review and Approval of Construction Documents. With regard to any Subsequent Construction which requires Port's approval under this Section 10, Tenant shall prepare and submit to Port, for review and written approval hereunder, reasonably detailed Schematic Drawings, and following Port's approval of such Schematic Drawings, Final Construction Documents which are consistent with the approved Schematic Drawings (collectively, Schematic Drawings and Final Construction Documents are referred to as "Construction Documents"). Port may waive the submittal requirement of Schematic Drawings if it determines in its discretion that the scope of the Subsequent Construction does not

warrant such initial review. Construction Documents shall be prepared by a qualified architect or structural engineer duly licensed in California. Port shall approve or disapprove Construction Documents submitted to it for approval within thirty (30) days after submission. Any disapproval shall state in writing the reasons for disapproval. If Port deems the Construction Documents incomplete, Port shall notify Tenant of such fact within twenty-one (21) days after submission and shall indicate which portions of the Construction Documents it deems to be incomplete. If Port notifies Tenant that the Construction Documents are incomplete, such notification shall constitute a disapproval of such Construction Documents. If Port disapproves Construction Documents, and Tenant revises or supplements, as the case may be, and resubmits such Construction Documents in accordance with the provisions of Section 10.5, Port shall review the revised or supplemented Construction Documents to determine whether the revisions satisfy the objections or deficiencies cited in Port's previous notice of rejection, and Port shall approve or disapprove the revisions to the Construction Documents within fifteen (15) days after resubmission. If Port fails to approve or disapprove Construction Documents (including Construction Documents which have been revised or supplemented and resubmitted) within the times specified within this Section 10.4, such failure shall not constitute a default under this Lease on the part of Port, but such Construction Documents shall be deemed approved, provided that Tenant first provides Port with at least ten (10) days prior written notice that Tenant intends to deem said Construction Documents so approved.

(b) Progress Meetings: Coordination. From time to time at the request of either Party during the preparation of Construction Documents, Port and Tenant shall hold regular progress meetings to coordinate the preparation, review and approval of the Construction Documents. Port and Tenant shall communicate and consult informally as frequently as is necessary to ensure that the formal submittal of any Construction Documents to Port can receive prompt and speedy consideration.

#### 10.5 Port Approval of Construction Documents.

Upon receipt by Tenant of a disapproval of Construction Documents from Port, Tenant (if it still desires to proceed) shall revise such disapproved portions of such Construction Documents in a manner that addresses Port's written objections. Tenant shall resubmit such revised portions to Port as soon as possible after receipt of the notice of disapproval. Port shall approve or disapprove such revised portions in the same manner as provided in Section 10.4 for approval of Construction Documents (and any proposed changes therein) initially submitted to Port. If Tenant desires to make any substantial change in the Final Construction Documents after Port has approved them, then Tenant shall submit the proposed change to Port for its reasonable approval. Port shall notify Tenant in writing of its approval or disapproval within fifteen (15) days after submission to Port. Any disapproval shall state, in writing, the reasons therefor, and shall be made within such fifteen (15)-day period.

#### 10.6 Construction Schedule.

(a) Performance. Tenant shall prosecute all Subsequent Construction with reasonable diligence, subject to Force Majeure.

(b) Reports and Information. During periods of construction, Tenant shall submit to Port written progress reports when and as reasonably requested by Port, but not more frequently than once every three (3) months, except that during the last three (3) months during any period of such construction, Port may request that such reports be submitted monthly.

#### 10.7 Construction.

(a) Commencement of Construction. Tenant shall not commence any Subsequent Construction until the following conditions have been satisfied or waived by Port:

(i) Port shall have approved the Final Construction Documents (or those aspects of the Final Construction Documents as to which Port has an approval right under Section 10.1);

(ii) Tenant shall have obtained all permits and other Regulatory Approvals necessary to commence such construction in accordance with Section 6;

(iii) Tenant shall have submitted to Port in writing its good faith estimate of the anticipated total construction costs of the Subsequent Construction. If such good faith estimate exceeds One Million Dollars (\$1,000,000), Tenant shall also submit evidence reasonably satisfactory to Port of Tenant's ability to pay such costs as and when due.

(b) Construction Standards. All Subsequent Construction 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. Dust, noise and other effects of such work shall be controlled using commercially-accepted methods customarily used to control deleterious effects associated with construction projects in populated or developed urban areas. In addition, in the case of Subsequent Construction which begins after the Improvements have opened for business to the general public, Tenant shall erect construction barricades substantially enclosing the area of such construction and maintain them until the Subsequent Construction has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

(c) Costs of Construction. Port shall have no responsibility for costs of any Subsequent Construction except as provided in the Port Sublease. Tenant shall pay (or cause to be paid) all such costs.

(d) Rights of Access. During any period of Subsequent Construction, Port and its Agents shall have the right to enter areas in which Subsequent Construction is being performed, on reasonable prior notice during customary construction hours, subject to the rights of Subtenants and to Tenant's right of quiet enjoyment under this Lease, to inspect the progress of the work. Nothing in this Lease, however, shall be interpreted to impose an obligation upon Port to conduct such inspections or any liability in connection therewith.



(e) Prevailing Wages. Tenant agrees that any person performing labor in the construction of the Initial Improvements or other Improvements to the Premises shall be paid not less than the highest prevailing rate of wages and that Tenant shall include, in any contract for construction of such 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 further agrees that, as to the construction of such improvements under this Lease, Tenant shall comply with all the provisions of subsection (b) of San Francisco Charter Section A7.204 and Sections 6.33 through 6.45 of the San Francisco Administrative Code (as the same may be amended, supplemented or replaced) that relate to payment of prevailing wages. Tenant shall require any contractor to provide, and shall deliver to City every month during any construction period, certified payroll reports with respect to all persons performing labor in the construction of any Improvements.

#### 10.8 Safety Matters.

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.

#### 10.9 As-Built Plans and Specifications.

With respect to any Subsequent Construction costing Thirty Thousand Dollars (\$30,000) as Indexed, or more, for which Port's approval was required under Section 10, Tenant shall furnish to Port one set of as-built plans and specifications with respect to such Subsequent Construction within one hundred twenty (120) days following completion. If Tenant fails to provide such as-built plans and specifications to Port within the time period specified herein, and such failure continues for an additional thirty (30) days following written request from Port, Port will thereafter have the right to cause an architect or surveyor selected by Port to prepare as-built plans and specifications showing such Subsequent Construction, and the reasonable cost of preparing such plans and specifications shall be reimbursed by Tenant to Port as Additional Rent. Nothing in this Section shall limit Tenant's obligations, if any, to provide plans and specifications in connection with Subsequent Construction under applicable regulations adopted by Port in its regulatory capacity.

### SECTION 11. UTILITY SERVICES

#### 11.1 Utility Services.

(a) Provision of Services. Port, in its proprietary capacity as owner of the Property and landlord under this Lease, shall not be required to provide any utility services to the Premises or any portion of the Premises except as otherwise set forth in the Port Sublease. Tenant and its Subtenants (except for Port whose utility responsibilities are as set forth in the Port Sublease) shall be responsible for contracting with, and obtaining, all necessary utility and

other services, as may be necessary and appropriate to the uses to which the Premises are put (it being acknowledged that City (including its Public Utilities Commission) is the sole and exclusive provider to the Premises of certain public utility services. Tenant will pay or cause to be paid as the same become due all deposits, charges, meter installation fees, connection fees and other costs for all public or private utility services at any time rendered to the Premises or any part of the Premises, and will do all other things required for the maintenance and continuance of all such services. Tenant agrees, with respect to any public utility services provided to the Premises by City, that no act or omission of City in its capacity as a provider of public utility services, shall abrogate, diminish, or otherwise affect the respective rights, obligations and liabilities of Tenant and Port under this Lease, or entitle Tenant to terminate this Lease or to claim any abatement or diminution of Rent. Further, Tenant covenants not to raise as a defense to its obligations under this Lease, or assert as a counterclaim or cross-claim in any litigation or arbitration between Tenant and Port relating to this Lease, any Losses arising from or in connection with City's provision (or failure to provide) public utility services, except to the extent that failure to raise such claim in connection with such litigation would result in a waiver of such claim. The foregoing shall not constitute a waiver by Tenant of any claim it may now or in the future have (or claim to have) against any such public utility provider relating to the provision of (or failure to provide) utilities to the Premises.

(b) Antennae and Telecommunications Dishes. No antennae or telecommunications dish or other similar facilities may be installed on the Premises without the prior written approval of Port, which approval shall not be unreasonably withheld, conditioned or delayed. Any Wireless Telecommunications Systems shall be subject to Port's approval pursuant to the Port Commission's adopted policy on the siting and requirements for Wireless Telecommunications Systems. No such antennae shall interfere with City's emergency and non-emergency communications facilities or the transmission facilities of Port. Tenant agrees, at the request of Port or City, to permit Port or City to install, at City's or Port's sole cost, telecommunications or transmission equipment reasonably required for Port's or City's operations, including without limitation, facilities for City's emergency or 800 Mhz City wide radio system communications facilities (or its successor), at a location on top of the Improvements reasonably acceptable to Tenant.

#### 11.2 Hetch-Hetchy Power.

Tenant shall purchase (i) all of its electricity for the Improvements from the City's utility provider, which presently is Hetchy-Hetchy Water and Power, or from Port, at then prevailing market rates for comparable types of load, so long as such electricity is reasonably available for Tenant's needs, and (ii) all other utility services for the Improvements from the City so long as City is in the business of providing such utility services, is able to timely make the required utility connections and hookups, and City charges then prevailing market rates for comparable services. Notwithstanding Section 27, Tenant's sole remedy for any failure of the City's utility to deliver such utility services as provided herein shall be to change providers if such failure continues for a period of more than thirty (30) days, or if Port is the contracting entity with the utility provider, Tenant may request Port to change providers and Port shall so as soon as reasonably practicable after Tenant's request.

## SECTION 12. DAMAGE OR DESTRUCTION

### 12.1 General; Notice; Waiver.

(a) General. If at any time during the Term any damage or destruction occurs to all or any portion of the Premises, including the Improvements thereon, and including, but not limited to, any Major Damage and Destruction, the rights and obligations of the Parties shall be as set forth in this Section. For purposes hereof, "damage or destruction" shall not include a Release of Hazardous Materials at or affecting the Premises to the extent that such release is not covered by insurance carried (or required to be carried) by Tenant.

(b) Notice. If there is any damage to or destruction of the Premises or of the Improvements thereon or any part thereof, which (i) could materially impair use or operation of the Improvements for their intended purposes for a period of thirty (30) days or longer, or (ii) exceeds in an individual instance the amount of Fifty Thousand Dollars (\$50,000) or aggregate amount of Two Hundred Fifty Thousand Dollars (\$250,000), Tenant shall promptly, but not more than ten (10) days after the occurrence of any such damage or destruction, give written notice thereof to Port describing with as much specificity as is reasonable the nature and extent of such damage or destruction.

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

### 12.2 Rent after Damage or Destruction.

If there is any damage to or destruction of the Premises, including the Improvements thereon, this Lease shall not terminate except as otherwise specifically provided in Section 12.4. In the event of any damage or destruction to the Improvements that does not result in a termination of this Lease, the Rent payable hereunder will continue without abatement; provided however, that during the period required for Tenant to Restore the Improvements, Rent shall be payable from the proceeds of rental interruption or business interruption insurance required to be maintained by Tenant under Section 18.1(a)(vii) to the extent that such proceeds are attributable to Rent hereunder (or payable by Tenant in the amount of the proceeds which would have been payable but for Tenant's default in its obligations to maintain such insurance). To the extent that such insurance proceeds do not cover Rent hereunder, then the amount of Rent for which insurance proceeds are not available (or which would have been available but for Tenant's default in its obligations to maintain such insurance) will be temporarily abated proportionately with the degree to which Tenant's use of the Premises is impaired by the damage or destruction commencing from the date of the damage or destruction and continuing during the period required for Tenant to Restore the Improvements. Tenant shall pay or cause to be paid to Port, immediately upon receipt thereof, all proceeds of the rental interruption or business interruption insurance required to be carried by Tenant hereunder (or which would have been payable but for Tenant's default in its obligations to maintain such insurance) arising out of or in connection with the damage or destruction to the extent such proceeds are attributable to Rent

hereunder.

### 12.3 Tenant's Obligation to Restore.

If all or any portion of the Improvements are damaged or destroyed by an event not constituting an Uninsured Casualty or Major Damage or Destruction for which Tenant elects to terminate this Lease under Section 12.4, then Tenant shall, subject to Section 12.4 hereof, within a reasonable period of time, commence and diligently, subject to Force Majeure, Restore the Improvements to the condition they were in immediately before such damage or destruction, to the extent possible in accordance with then applicable Laws (including, but not limited to, any required code upgrades), without regard to the amount or availability of insurance proceeds. All Restoration performed by Tenant shall be in accordance with the procedures set forth in Section 10 relating to Subsequent Construction and shall be at Tenant's sole expense.

### 12.4 Major Damage and Destruction or Uninsured Casualty.

(a) Tenant's Election to Restore or Terminate. If an event of Major Damage or Destruction occurs during the last five (5) years of the Term, or if an event of Uninsured Casualty occurs at any time during the Term, then Tenant shall provide Port with a written notice (the "Casualty Notice") either (i) electing to commence and complete Restoration of the Improvements to the condition they were in immediately before such Major Damage or Destruction or Uninsured Casualty to the extent possible in accordance with then applicable Law (including any required code upgrades); or (ii) electing to terminate this Lease (subject to Section 12.4(b)). For purposes hereof, "Uninsured Casualty" will mean any of the following: (1) an event of damage or destruction occurring at any time during the Term for which the costs of Restoration (including the cost of any required code upgrades) exceeds Fifty Thousand Dollars (\$50,000.00), as Indexed, plus the amount of any applicable policy deductible, and which is not insured or insurable under the policies of insurance that Tenant is required to carry under Section 18 hereof; (2) an event of damage or destruction occurring at any time during the Term which is covered under Tenant's policies of earthquake or flood insurance but where the cost of Restoration (including the cost of any required code upgrades) will exceed the net proceeds of any insurance payable (or which would have been payable but for Tenant's default in its obligation to maintain insurance required to be maintained hereunder) by at least Fifty Thousand Dollars (\$50,000.00), as Indexed, plus the amount of any applicable policy deductible. Tenant shall provide Port with the Casualty Notice no later than the earlier to occur of the date that is (x) thirty (30) days following receipt of an initial written demand from any Non-Affiliate Mortgagee or (y) ninety (90) days following the occurrence of such Major Damage or Destruction or Uninsured Casualty. Except in the case of Uninsured Casualty, as a condition to making such election, Tenant shall pay or cause to be paid to Port, immediately upon receipt thereof, the proceeds of the rental interruption or business interruption insurance required hereunder arising out of or in connection with the casualty causing such Major Damage or Destruction to the extent attributable to the rent payable to Port under this Lease for the duration of such event of Major Damage or Destruction. If Tenant elects to Restore the Improvements, all of the provisions of Section 10 that are applicable to Subsequent Construction of the Improvements shall apply to such Restoration of the Improvements to the condition they were in prior to such Major Damage or Destruction as if such Restoration were Subsequent Construction.

(b) Conditions to Termination As a condition precedent to Tenant's right to terminate the Lease upon the occurrence of either of the events set forth in Section 12.4(a) above, Tenant shall do all of the following:

(i) In its Casualty Notice electing to terminate described in Section 12.4(a), Tenant shall state the cost of Restoration, and, in the case of earthquake or flood damage, the amount by which the cost of Restoration plus the amount of any applicable policy deductible exceeds insurance proceeds payable (or which would have been payable but for Tenant's default in its obligation to maintain insurance required to be maintained hereunder); and

(ii) Tenant shall pay or cause to be paid the following amounts from casualty insurance proceeds the later of making the election to terminate or immediately upon receipt in the following order of priority:

(A) first, if Port determines it will Demolish the Improvements, then to Port for the costs of Demolition of the Improvements;

(B) second, to Port, which portion is an amount equal to all accrued and unpaid Rent owed by Tenant to Port under this Lease;

(C) third, to each Non-Affiliate Mortgagee demanding payment thereof in accordance with its Non-Affiliate Mortgage and applicable Law (in order of lien priority and not prorata), that portion of the remaining casualty insurance proceeds arising out of or in connection with the casualty causing such Major Damage or Destruction in an amount not to exceed the aggregate amounts secured by all Non-Affiliate Mortgages existing at the time of such payment, which sums shall be applied by each such Non-Affiliate Mortgagee to such indebtedness; and

(D) fourth to Port and Tenant, as their interests may appear, all remaining insurance proceeds arising out of or in connection with the casualty causing such Major Damage or Destruction.

(iii) upon termination, Tenant shall deliver possession of the Premises to Port and quitclaim to Port all right, title and interest in the Premises and any remaining Improvements.

(c) Port's Election Upon Notice of Termination. Notwithstanding the foregoing, if Tenant elects to terminate this Lease under circumstances permitted by Section 12.4(a) then Port may, by notice in writing given to Tenant within 60 days after Tenant's Casualty Notice, elect any of the following: (i) terminate the Lease and accept the surrender of the Premises in their then-existing condition, free of any existing Subleases (unless otherwise assumed by Port) (ii) in the event of an Uninsured Casualty, continue the Lease in effect, and pay the amount by which the cost of Restoration (including the cost of any required code upgrades)

will exceed Fifty Thousand Dollars (\$50,000.00), as Indexed, plus the amount of any applicable policy deductible, or in the case of earthquake or flood, the amount by which the cost of Restoration (including the cost of any required code upgrades) will exceed the net proceeds of any earthquake or flood insurance payable (or which would have been payable but for Tenant's default in its obligation to maintain such insurance) by more than Fifty Thousand Dollars (\$50,000.00), as Indexed, plus the amount of any applicable policy deductible and require Tenant to Restore the Premises in accordance with Section 12.4(b); or (iii) continue the Lease in effect and undertake the Restoration of the Premises itself, provided that such Restoration is anticipated to be completed within 365 days after such event of damage or destruction, as determined by Port in its reasonable judgment.

#### 12.5 Effect of Termination.

Provided that there shall not have occurred any Event of Default (or Unmatured Event of Default) under this Lease that has not been waived by Port, if Tenant elects to terminate the Lease under Section 12.4(a) above, and Port elects not to continue the Lease in effect as allowed under Section 12.4(c), then, on the date that Tenant shall have fully complied with all other provisions of Section 12.4(b) to the satisfaction of Port, this Lease shall terminate. Upon such termination, the Parties shall be released thereby without further obligations to the other Party as of the effective date of such termination subject to payment to Port of accrued and unpaid Rent, up to the effective date of such termination to the extent not paid out of insurance proceeds; provided, however, that the indemnification provisions hereof shall survive any such termination with respect to matters arising before the date of any such termination. In addition, termination of this Lease under this Section 12 shall not limit the right of a Mortgagee to a New Lease under Section 38 unless such Mortgagee has agreed otherwise. At Port's request following any termination, Tenant shall deliver to Port a duly executed and acknowledged quitclaim deed suitable for recordation and in form and content satisfactory to Port.

#### 12.6 Distribution Upon Lease Termination.

If Tenant is obligated to and fails to Restore the Improvements as provided herein and this Lease is terminated, all insurance proceeds held by Port, Tenant and, subject to Section 38, any Mortgagee or not yet collected, shall be paid to and retained by Port.

#### 12.7 Event of Default.

If there shall have occurred an Event of Default (or Unmatured Event of Default) hereunder that has not been waived in writing by Port, Port shall receive all insurance proceeds to the extent that such amounts may be applied to the satisfaction of Tenant's obligations under this Lease.

#### 12.8 Use of Insurance Proceeds.

(a) Restoration. Except in the event of termination of this Lease, all all-risk coverage insurance proceeds, earthquake and flood proceeds and boiler and machinery

insurance proceeds paid to Port or Tenant by reason of damage to or destruction of any Improvements, if any, must be used by Tenant for the repair or rebuilding of such Improvements except as specifically provided to the contrary in this Section 12.

(b) Payment to Trustee. Except as otherwise expressly provided to the contrary in this Section 12, and if Tenant Restores the Improvements, any insurer paying compensation under any all-risk or earthquake insurance policy required to be carried hereunder shall pay such proceeds to (i) a trustee (which shall be a bank or trust company, designated by Port within twenty (20) days after written request by Tenant, having an office in San Francisco) or (ii) the Mortgagee that is the holder of any Mortgage which is a lien against the Improvements, at the option of such Mortgagee. However, such trustee or Mortgagee shall pay to Tenant, from time to time as the work of rebuilding, Restoration and repair shall progress, in amounts designated by certification, by architects licensed to do business in the State, showing the application of such amounts as payment for such repairs, rebuilding and Restoration. The Trustee or Mortgagee, as the case may be, shall be required to make such payments upon satisfaction that the amount necessary to provide for Restoration or repair of any buildings and other Improvements destroyed or damaged, which may exceed the amount received upon such policies, has been provided by the insured for such purposes and its application for such purposes is assured. Payment to Tenant shall not be construed as relieving the Tenant from the necessity of repairing such damage promptly in accordance with the terms of this Lease. Tenant shall pay all reasonable fees of the trustee, bank or trust company for its services. Provided that no Event of Default (or Unmatured Event of Default) that has not been waived by Port shall exist on the date such damage is repaired, the Improvements shall have been Restored in accordance with the provisions of this Section 12 and all sums due under this Lease shall have then been paid in full, any excess of monies received from insurance remaining with the trustee or Mortgagee after the Restoration or repair of the Improvements as required by this Section shall be paid to Tenant.

#### 12.9 No Release of Tenant's Obligations.

No damage to or destruction of the Premises or Improvements or any part thereof for fire or any other cause shall permit Tenant to surrender this Lease or relieve Tenant from any obligations, including, but not limited to, the obligation to pay Rent, including any and all Additional Rent, except as otherwise expressly provided herein.

#### 12.10 Arbitration of Disputes Relating to Estimated Costs of Restoration.

(a) Estimators. In the event Port and Tenant cannot mutually agree upon the cost of Restoration or the cost of replacing the Improvements under Sections 12.4(a), such disputed amount shall be determined in the manner provided in this Section 12.10. Either Party may invoke the provisions of this Section 12.10 at any time that a dispute as to any such amount exists, by delivering written notice to the other Party. Within twenty (20) business days after delivery of notice invoking the provisions of this Section, each Party shall designate, by written notice to the other Party, a licensed general contractor having at least ten (10) years experience in estimating construction costs of major construction projects in the City to estimate the cost or amount in dispute. Each such estimator shall be competent, licensed, qualified by

training and experience in the City, disinterested and independent. Each estimator (or if either Party fails to appoint its estimator within such twenty (20) business day period, the estimator appointed by the other Party) shall make an independent determination of the disputed amount in accordance with the provisions hereof. The estimators may share and have access to objective information in preparing their estimates, but they will otherwise act independently. Each estimator shall complete, sign and submit its written estimate of the disputed construction or replacement cost, as applicable, within fifteen (15) business days after the appointment of both estimators, unless the Parties agree to permit a longer period of time. If the higher estimate is not more than one hundred ten percent (110%) of the lower estimate, the disputed amount shall be determined for purposes of this Lease to equal the average of the two (2) estimates.

(b) Arbitration. If the higher estimate is more than one hundred ten percent (110%) of the lower estimate, the Parties shall agree upon and appoint an independent arbitrator within thirty (30) days after the first two (2) estimates have been submitted to the Parties. The arbitrator shall have the minimum qualifications required of an estimator pursuant to subsection (a) above, and shall also have experience acting as an arbitrator of disputes involving construction costs or construction disputes. If the Parties do not appoint such arbitrator within such thirty (30) day period, then either Party may apply to the Superior Court of the State of California in and for the County of San Francisco for appointment of an arbitrator meeting the foregoing qualifications. If the court denies or otherwise refuses to act upon such application, either Party may apply to the American Arbitration Association, or any similar provider of professional commercial arbitration services, for appointment in accordance with the rules and procedures of such organization of an independent arbitrator meeting the foregoing qualifications. The arbitrator shall consider the estimates submitted by the Parties as well as any other relevant written evidence which the Parties may choose to submit. If a Party chooses to submit any such evidence, it shall deliver a complete and accurate copy to the other Party at the same time it submits the same to the arbitrator. Neither Party shall conduct ex parte communications with the arbitrator regarding the subject matter of the arbitration. Within fifteen (15) business days after his or her appointment, the arbitrator shall conduct a hearing, at which Port and Tenant may each make supplemental oral and/or written presentations, with an opportunity for testimony by the estimators and questioning by the Parties and the arbitrator. Within ten (10) business days following the hearing, the arbitrator shall select the estimate submitted by one or the other of the first two (2) estimators, as the more accurate estimate of the disputed amount, in the opinion of the arbitrator. The determination of the arbitrator shall be limited solely to the issue of deciding which of the estimates is closest to the actual disputed value or amount. The arbitrator shall have no right to propose a middle ground or to modify either of the two estimates, or to modify any provision of this Lease.

(c) Conclusive Determination. Except as provided in California Code of Civil Procedure Section 1286.2 (as the same may be amended from time to time), the determination by the estimators or the arbitrator, as applicable, shall be conclusive, final and binding on the Parties. Neither the estimators nor the arbitrator shall have any power to modify any of the provisions of this Lease. Subject to the provisions of this Section, the Parties will cooperate to provide all appropriate information to the estimators and the arbitrator. The estimators and the arbitrator will each report their respective determinations in writing, supported by the reasons for the determination.




(d) Conduct of Arbitration Proceeding. Any arbitration proceeding under this Section 12.10 shall be subject to California Code of Civil Procedure Sections 1280 to 1294.2 (but excluding Section 1283.05 with respect to discovery), or successor California laws then in effect relating to arbitration generally. Any such proceeding shall be conducted in the City of San Francisco.

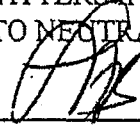
(e) Fees and Costs: Waiver. Each Party shall bear the fees, costs and expenses of the estimator it selects. The fees, costs and expenses of the arbitrator and the costs and expenses of the arbitration proceeding, if any, shall be shared equally by Port and Tenant. The Parties waive any claims against the estimator appointed by the other Party, and against the arbitrator, for negligence, malpractice, or similar claims in the performance of the estimates or arbitration contemplated by this Section.

(f) ARBITRATION OF DISPUTES. With respect to the arbitration provided for in this Section 12.10, the Parties agree as follows:

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISIONS IN THIS LEASE DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

  
\_\_\_\_\_  
Port's Initials

  
\_\_\_\_\_  
Tenant's Initials

Any judgment upon the award rendered by the arbitration may be entered in any court having jurisdiction of such arbitration in accordance with the terms of this Lease. This arbitration provision does not affect the rights of either Party to seek confirmation, correction or vacation of the arbitration award pursuant to California Code of Civil Procedure Section 1285 et seq.

## SECTION 13. CONDEMNATION

### 13.1 General; Notice; Waiver.

(a) General. If, at any time during the Term, there is any Condemnation of all or any part of the Premises, including any of the Improvements, the rights and obligations of the Parties shall be determined pursuant to this Section 13.

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

(c) Waiver. Except as otherwise provided in this Section 13, the Parties intend that the provisions of this Lease shall govern their respective rights and obligations in the event of a Condemnation. Accordingly, but without limiting any right to terminate this Lease given Tenant in this Section 13, Tenant waives any right to terminate this Lease upon the occurrence of a Partial Condemnation under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure, as such sections may from time to time be amended, replaced or restated.

### 13.2 Total Condemnation.

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

### 13.3 Substantial Condemnation, Partial Condemnation.

If there is a Condemnation of any portion but less than all of the Premises, the rights and obligations of the Parties shall be as follows:

(a) Substantial Condemnation. If there is a Substantial Condemnation of a portion of the Premises or Tenant's leasehold estate, this Lease shall terminate, at Tenant's option, as of the Condemnation Date, as further provided below. For purposes of this Section 13, a Condemnation of less than the entire Premises or of less than Tenant's leasehold estate shall be a Substantial Condemnation, and this Lease shall terminate, at Tenant's option (which shall be exercised, if at all, at any time within ninety (90) days after the Condemnation Date by delivering written notice of termination to Port) if Tenant reasonably determines that such Condemnation renders the Project untenable, unsuitable or economically infeasible for its intended use as a Class A office project; provided, however, a Condemnation described above shall not be substantial, and Tenant shall have no right to terminate this Lease under this Section, if the condition rendering the Project unsuitable, untenable, or economically infeasible for quality office use, as the case may be, can be cured by the performance of Restoration, and (i) the cost of

such Restoration does not exceed by at least Fifty Thousand Dollars (\$ 50,000.00 the portion of the Award fairly allocable to severance damages suffered by Tenant, or (ii) Port (in its sole and absolute discretion and without any obligation to do so) gives written notice to Tenant within thirty (30) days (subject to extension as provided below) after receipt of Tenant's termination notice that Port agrees, at its cost and expense, to pay any amount by which the cost of such Restoration exceeds by at least Fifty Thousand Dollars (\$50,000.00 the amount of the Tenant's severance damages. In either such case, this Lease shall not terminate, and Tenant shall perform such Restoration, subject to the provisions of Sections 10 and 13.4), within a reasonable time, subject to events of Force Majeure. In any such case, however, Minimum Rent shall be adjusted in accordance with the provisions of Section 13.3(b), and in addition, Minimum Rent shall be abated during the period necessary for the performance of such Restoration in an equitable amount to reflect the loss of use of the Premises during the period of such Restoration, as determined by the Parties, or in the absence of an agreement between the Parties, by court under Section 13.3(b). In addition, Port may extend the 30-day period for Port to deliver notice under clause (2) above, for up to ninety (90) additional days, by giving notice of such extension to Tenant within the original 30-day period following receipt of Tenant's termination notice, provided if Port extends such period, no Minimum Rent shall be payable under this Lease during the term of any such extension. Port's right to exercise the option described in clause (2) above shall be conditioned upon Port and Tenant reaching an agreement, with respect to the schedule for performance of required work, the timing of payments of Port's contribution to the costs of such work (to the extent not available from Port's share of the Award), and any other related issues which may be necessary or appropriate for resolution in connection with such work and the payment for such work. If no satisfactory agreement is reached within such period, Port shall have no right to exercise such right, and such Condemnation shall be deemed a Substantial Condemnation.

(b) Partial Condemnation. If there is a Condemnation of any portion of the Premises or Tenant's leasehold estate which does not result in a termination of this Lease under Section 13.2 or Section 13.3(a) (a "Partial Condemnation"), this Lease shall terminate only as to the portion of the Premises taken in such Partial Condemnation, effective as of the Condemnation Date. In the case of a Partial Condemnation, or in the case of a Substantial Condemnation which does not result in a termination of this Lease, the Minimum Rent for the remainder of the Premises shall be adjusted to reflect the diminution in value of the remaining portion of the Premises as of the Condemnation Date. Such Minimum Rent adjustment shall be separately computed with respect to (i) the temporary period during which any necessary Restoration will be performed; and (ii) the period following completion of any necessary Restoration. The Parties shall first negotiate in good faith in an attempt to determine by agreement the appropriate adjustment. If the Parties do not reach agreement within thirty (30) days following the Condemnation Date, the adjustment(s) shall be determined by the same court of law that establishes the Award. In the case of a Partial Condemnation, this Lease shall remain in full force and effect as to the portion of the Premises (or of Tenant's leasehold estate) remaining immediately after such Condemnation, and Tenant shall promptly commence and complete, subject to events of Force Majeure, any necessary Restoration of the remaining portion of the Premises, at no cost to Port. Any such Restoration shall be performed in accordance with the provisions of Section 10.

#### 13.4 Awards.

Except as provided in Section 13.1(a) and in Sections 13.5 and 13.6, Awards and other payments to either Port or Tenant on account of a Condemnation, less costs, fees and expenses (including, without limitation, reasonable Attorneys' Fees and Costs) incurred in the collection thereof ("Net Awards and Payments") shall be allocated between Port and Tenant as follows:

- (a) first, to pay costs of Restoration incurred by Tenant;
- (b) second, Port and Tenant shall each be allocated the value of their respective interests in the Premises (to the extent Condemned), together with interest thereon from the Condemnation Date to the date of payment at the rate paid on the Award, and Attorneys' Fees and Costs, to the extent awarded. Port's severance damages, if any, shall reflect the adjustment of Minimum Rent as set forth in Section 13.3(b). The values of Port's and Tenant's respective interests in the Premises shall be established by the same court of law that establishes the amount of the Award. If less than all of the Premises is Condemned, and this Lease is terminated, the fair market value of the remaining Premises and Improvements thereon which become the property of Port upon such termination shall be treated for purposes of this Section as received by Port on account of its share of the Award and the cash payment payable to Port shall be reduced by a like amount and instead paid to Tenant;
- (c) third, to Port from the share otherwise allocated to Tenant, in an amount equal to any accrued and unpaid Rent owed by Tenant to Port under this Lease for periods prior to the Condemnation Date;
- (d) fourth, to Tenant from the share otherwise allocated to Port, in an amount equal to any accrued and unpaid Port Rent owed by Port to Tenant under the Port Sublease; and
- (e) fifth, to Tenant from the share otherwise allocated to Port, in an amount equal to any sum which Port has agreed to pay towards the cost of Restoration under clause (2) of Section 13.3(a).

#### 13.5 Temporary Condemnation.

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

## SECTION 14. LIENS

### 14.1 Liens.

Tenant shall not create or permit the attachment of, and shall promptly following notice, discharge at no cost to Port, any lien, security interest, or encumbrance on the Premises or Tenant's leasehold estate, other than (i) this Lease, the Port Sublease, other permitted Subleases and Permitted Title Exceptions, (ii) liens for non-delinquent Impositions (excluding Impositions which may be separately assessed against the interests of Subtenants), except only for Impositions being contested as permitted by Section 5, (iii) Mortgages permitted under Section 38, (iv) Mortgages encumbering the subleasehold interests of Subtenants, provided no such Mortgage encumbers Tenant's leasehold estate unless such Mortgage is permitted under Section 38, and (v) liens of mechanics, material suppliers or vendors, or rights thereto, for sums which under the terms of the related contracts are not at the time due or which are being contested as permitted by Section 5. The provisions of this Section do not apply to liens created by Tenant on its Personal Property.

### 14.2 Mechanics' Liens.

Nothing in this Lease shall be deemed or construed in any way as constituting the request of Port, express or implied, for the performance of any labor or the furnishing of any materials for any specific improvement, alteration or repair of or to the Premises or the Improvements, or any part thereof. Tenant agrees that at all times when the same may be necessary or desirable, Tenant shall take such action as may be required by Port or under any Law in existence or hereafter enacted which will prevent the enforcement of any mechanics' or similar liens against the Premises, Tenant's leasehold interest, or Port's fee interest in the Premises for or on account of labor, services or materials furnished to Tenant, or furnished at Tenant's request. Tenant shall provide such advance written notice of any Subsequent Construction such as shall allow Port from time to time to post a notice of non-responsibility on the Premises. If Tenant does not, within sixty (60) days following the imposition of any such lien, cause the same to be released of record, it shall be a material default under this Lease, and 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 and all reasonable expenses incurred by Port in connection therewith shall be payable to Port by Tenant within thirty (30) days following written demand by Port.

## SECTION 15. SECURITY DEPOSIT

### 15.1 Waiver of Security Deposit.

For so long as Port remains a subtenant of the Premises under the Port Sublease, no security deposit will be required hereunder.

If the Port Sublease terminates prior to the termination hereof for any reason other than a default by Port, then within 30 days after the termination of the Port Sublease, Tenant

shall pay to Port, in addition to Rent, a Security Deposit (the "Security Deposit") in an initial amount equal to two month's Minimum Rent and two month's Participation Rent based on an average per month amount for the previous 12-month period. The Security Deposit shall be made in all cash, except as otherwise provided in Section 15.2. Tenant agrees that upon the occurrence of an Event of Default Port may, but shall not be required to, apply the Security Deposit in whole or in part to (a) remedy any failure by Tenant to pay Rent, including any and all Additional Rent, payable by Tenant hereunder, as and when due, (b) cure any default by Tenant in the performance of its repair and maintenance obligations or the faithful performance of any other terms, covenants and conditions of this Lease, or (c) repair any damage to the Premises caused by Tenant, its Subtenants (other than Port), Agents or Invitees. Should Port use any portion of the Security Deposit to cure any default by Tenant hereunder, Tenant shall replenish the Security Deposit to the original amount within ten (10) business days following Port's demand. Port's obligations with respect to the Security Deposit are solely that of debtor and not trustee. Port shall not be required to keep the Security Deposit separate from its general funds. Tenant shall not be entitled to any interest on the Security Deposit. The amount of the Security Deposit shall not be deemed to limit Tenant's liability for the performance of any of its obligations under this Lease. Port may apply the Security Deposit as provided herein without waiving any of Port's other rights and remedies hereunder or at law or in equity. Upon the expiration or earlier termination of this Lease, Port shall return the unused balance of the Security Deposit to Tenant (less any amounts then due and payable from Tenant to Port under this Lease) within fourteen (14) days after Tenant surrenders possession of the Premises to Port. In addition, Port shall return the Security Deposit then held by Port if at the time Tenant delivers a letter of credit or other alternative security under Section 15.2. Upon the first anniversary date of the initial Security Deposit payment, and on each anniversary thereafter, the Security Deposit shall be adjusted to reflect two months' of the Minimum Rent then payable, and two months' of Participation Rent based on the Participation Rent payable for the immediately preceding 12 month period, and Tenant shall increase the Security Deposit to reflect such adjusted amount within 30 days after Port's written notice to Tenant of such adjustment.

#### 15.2 Alternative Forms of Security.

In lieu of cash security as provided above, Tenant may deliver to Port an unconditional, irrevocable standby letter of credit in a form reasonably approved by the City Attorney and the Port's Executive Director. The letter of credit shall be issued by a bank with a Moody's rating of A or better (or comparable successor rating). The issuing bank must have a branch office in San Francisco at which demands on the letter of credit may be presented. The original term of the letter of credit shall be no less than one year. Tenant shall keep such letter of credit, at its expense, in full force and effect until the sixtieth (60th) day after the expiration of the Term or other termination of this Lease, to ensure the faithful performance by Tenant of all of the covenants, terms and conditions of this Lease. Such letter of credit shall provide thirty (30) days' prior written notice to Port of cancellation or material change thereof. In the event of any nonextension of the letter of credit, Tenant shall replace such security with a cash Security Deposit or another letter of credit permitted under this Section at least ten (10) days before expiration of such letter of credit. If Tenant fails to do so Port shall be entitled to present its written demand for payment of the entire face amount of such letter of credit and to hold the funds so obtained as the Security Deposit required under this Section. Any unused portion of the

funds so obtained by Port shall be returned to Tenant upon replacement of the letter of credit or deposit of cash security in the full amount required under this Section.

## SECTION 16. ASSIGNMENT AND SUBLETTING

### 16.1 Assignment

(a) Consent of Port. Except as otherwise expressly permitted in Subsections 16.1(b) and (c) and except for the Port Sublease, Tenant, its successors and permitted assigns shall not assign any interest in this Lease either voluntarily or by operation of law, without the prior written consent of Port, which consent shall not be withheld or delayed unreasonably by Port after completion of the Initial Improvements but may be withheld by Port in its sole discretion prior to completion of the Initial Improvements.

(b) Mortgaging of Leasehold Notwithstanding anything herein to the contrary, at any time during the Term of this Lease after Completion of the Initial Improvements, Tenant shall have the right, without Port's consent, to sell, assign, encumber or transfer its interest in this Lease to a Mortgagee or other purchaser at a foreclosure sale under the provisions of a Mortgage, subject to the limitations, rights, and conditions set forth in Section 38 hereof.

(c) Conditions. Any transfer described in Subsection (a) is further subject to the satisfaction of the following conditions precedent, each of which is hereby agreed to be reasonable as of the date hereof:

(i) any proposed transferee, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of Port, must expressly assume all of the obligations of Tenant under this Lease, the DA (if in effect), and the Sublease (if in effect) and any other agreements or documents entered into by and between Port and Tenant relating to the Project, and must agree to be subject to all of the conditions and restrictions to which Tenant is subject. It is the intent of this Lease, to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Lease, that no transfer of this Lease, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, may operate, legally or practically, to deprive or limit Port of or with respect to any rights or remedies or controls provided in or resulting from this Lease with respect to the Premises and the construction of the Improvements that Port would have had, had there been no such transfer or change;

(ii) all instruments and other legal documents involved in effecting the transfer shall have been submitted to Port for review, including the agreement of sale, transfer, or equivalent, and Port shall have approved such documents which approval shall not be unreasonably withheld or delayed;

(iii) Tenant shall have complied with the provisions of Subsection (e) of this Section 16.1;

(iv) there shall be no Event of Default or Unmatured Event of Default on the part of Tenant under this Lease or any of the other documents or obligations to be assigned to the proposed transferee;

(v) the proposed transferee (A) has demonstrated to Port's reasonable satisfaction that it is capable, financially and otherwise, of performing each of Tenant's obligations under this Lease and any other documents to be assigned, (B) is not forbidden by applicable law from transacting business or entering into contracts with the Port; and (C) is subject to the jurisdiction of the courts of the State of California;

(vi) the proposed transfer is not in connection with any transaction for the purposes of syndicating the Lease, such as a security, bond or certificates of participation financing as determined by Port in its sole discretion (but expressly excluding the trading of shares on the open-market); and

(vii) Tenant deposits sufficient funds to reimburse Port for its legal expenses to review the proposed assignment.

(d) Delivery of Executed Assignment. No assignment of any interest in this Lease made with Port's consent, or as herein otherwise permitted, will be effective unless and until there has been delivered to Port, within thirty (30) days after Tenant entered into such assignment, an executed counterpart of such assignment containing an agreement, in recordable form, executed by Tenant and the transferee, wherein and whereby such transferee assumes performance of all of the obligations on the assignor's part to be performed under this Lease, the DA (if still in effect), the Port Sublease (if still in effect) and the other assigned documents to and including the end of the Term (provided, however, that the failure of any transferee to assume this Lease, or to assume one or more of Tenant's obligations under this Lease, will not relieve such transferee from such obligations or limit Port's rights or remedies under this Lease or under applicable Law). The form of such instrument of assignment shall be subject to Port's approval, which approval shall not be unreasonably withheld or delayed.

(e) No Release of Tenant's Liability or Waiver by Virtue of Consent. Upon occurrence of an assignment of Tenant's entire interest in this Lease, approved by Port under Section 16.1(a), (c) and (d) hereof, Tenant will be released from liability solely for obligations arising under this Lease on or after the date of such assignment. The consent by Port to an assignment hereunder is not in any way to be construed to relieve any transferee of Tenant from its obligation to obtain the express consent in writing of Port to any further assignment or to any Significant Change.

(f) Notice of Significant Changes; Reports to Port. Tenant must promptly notify Port of any and all Significant Changes. At such time or times as Port may reasonably request, Tenant must furnish Port with a statement, certified as true and correct by an officer of Tenant, setting forth all of the constituent members of Tenant and the extent of their respective holdings, and in the event any other Persons have a beneficial interest in Tenant, their names and the extent of such interest.



(g) Determination of Whether Consent is Required. At any time Tenant may submit a request to Port for the approval of the terms of an assignment, transfer, sublease or encumbrance of this Lease (all of the foregoing being collectively referred to herein as a "proposed transfer") or for a decision by Port as to whether in its opinion a proposed transfer requires Port consent under the provisions of this Section 16. Within thirty (30) days of the making of such a request and the furnishing by Tenant to Port of all documents and instruments with respect thereto as shall be reasonably requested by Port, Port must notify Tenant in writing of Port's approval or disapproval of the proposed transfer or of Port's determination that the proposed transfer does not require Port's consent. If Port disapproves the proposed transfer, or determines that it requires the consent of Port, as applicable, it must specify the grounds for its disapproval, its reason that consent is required, or both, as applicable.

(h) Scope of Prohibitions on Assignment/Significant Change. The prohibitions provided in this Section 16.1 will not be deemed to prevent (i) the granting of subleases so long as such subletting is done in accordance with Section 16.3, or (ii) the granting of any security interest expressly permitted by this Lease for financing development of the Improvements, subject to compliance with Section 38 and other applicable terms of this Lease. Further, notwithstanding anything to the contrary set forth herein, Port's consent will not be required in the event of a Significant Change, subject to both of the following conditions: (i) at least thirty (30) days prior to such Significant Change, Tenant shall furnish Port with the name of the proposed assignee, together with evidence reasonably satisfactory to Port indicating that the proposed assignment constitutes a Significant Change; and (ii) the conditions set forth in Section 16.1(c)(i),(iii),(iv),(v),(vi) and (vii) have all been met to Port's reasonable satisfaction.

(i) Participation in Proceeds from Sale of Lease. Upon an assignment, sale, or other transfer of Tenant's entire interest in this Lease or upon the occurrence of a Significant Change, occurring at any time and from time to time during the Term, then Tenant shall pay to Port as Additional Rent hereunder, fifty percent (50%) of all sums paid or payable to Tenant by the transferee after subtracting expenses for verifiable, reasonable and customary brokerage commissions, value of Tenant's trade fixtures conveyed, other expenses actually paid or obligations incurred by Tenant in connection with the transfer paid or incurred by Tenant, and any unamortized cost of the Initial Improvements and Subsequent Construction based upon the actual construction costs thereof based on a straight-line amortization basis over the Term remaining at the time of sale.

(j) Assignment to Accommodate Sale of Historic Tax Credits. Notwithstanding anything to the contrary set forth herein, Port's consent will not be required in the event of an assignment to an entity solely for the purpose of taking advantage of the Historic Tax Credits, subject to all of the following conditions: (i) at least thirty (30) days prior to such assignment Tenant shall furnish Port with the name of the proposed assignee, together with evidence reasonably satisfactory to Port indicating that the proposed assignment is solely for the purpose of taking advantage of the Historic Tax Credits; (ii) the conditions set forth in Section 16.1(c)(i),(iii),(iv),(v),(vi) and (vii) have all been met to Port's reasonable satisfaction; and (iii) no release of Tenant pursuant to Section 16.1(e) shall occur.

#### 16.2 Assignment of Rents.

Tenant hereby assigns to Port all rents and other payments of any kind, due or to become due from any or present or future Subtenant; provided, however, the foregoing assignment shall be subject and subordinate to any assignment made to a Mortgagee under Section 3.8 until such time as Port has terminated this Lease, at which time the rights of Port in all rents and other payments assigned pursuant to this Section 16.2 shall become prior and superior in right. Such subordination shall be self-operative. However, in confirmation thereof, Port shall, upon the request of each Mortgagee, execute a subordination agreement in form and substance reasonably satisfactory to such Mortgagee and to Port. Notwithstanding the foregoing, if this Lease terminates by reason of an Event of Default, any Mortgagee which actually collected any rents from any Subtenants pursuant to any assignment of rents or subleases made in its favor shall promptly remit to Port the rents so collected (less the actual cost of collection) to the extent necessary to pay Port any Rent, including any and all Additional Rent, through the date of termination of this Lease. Such assignment shall be subject to the right of Tenant to collect such rents until the date of the happening of any Event of Default under the provisions of this Lease. Port shall apply any net amount collected by it from such Subtenants to the payment of Rent due under this Lease.

#### 16.3 Subletting by Tenant.

(a) The Port Sublease. Concurrently herewith, Port shall enter into the Port Sublease with Tenant for the Port Sublease Premises in the form attached to the DA as Attachment 8. The term of the Port Sublease shall commence as provided therein.

(b) Other Subletting. Subject to the Port's Expansion Option set forth in the Port Sublease, and the Maritime Marketing Program set forth in Section 16.5 hereof, Tenant has the right to sublet all or any portion of the Improvements to one or more Subtenants by written subleases from time to time, subject to Port's written consent requested in accordance with Section 16.1(g) which shall not be denied except pursuant to subsection (ii) below. Notwithstanding the foregoing, if Tenant proposes a sublease that (1) is not pursuant to a bona fide arms-length transaction as reasonably determined by Port based upon information reasonably requested and obtained by Port under Section 16.1(g); or (2) is with an Affiliate of Tenant; or (3) is with a proposed subtenant having an existing landlord/tenant relationship with Tenant, then such sublease shall be subject to the Port's prior written consent, not to be unreasonably withheld, and further provided that it shall be reasonable for Port to withhold its consent in any such event if the Port reasonably determines the proposed sublease rental rate is substantially below market rental rates.

(i) Conditions of Consent. Port may consent to the proposed Sublease, subject to any reasonable conditions upon such Sublease, which conditions may include, without limitation: (A) that the proposed uses are consistent with this Lease, including without limitation, Section 3.6, (B) the Subtenant and the Sublease are expressly subject to all the terms and provisions of this Lease, (C) the term of the Sublease does not extend beyond the term of this Lease, (D) the term of the Sublease does not extend beyond a term of ten (10) years, including any options to extend, (E) that the proposed Subtenant indemnifies the City for any

loss or damage in form reasonably satisfactory to the City, (F) that Tenant remains liable under this Lease, (G) the proposed Subtenant provides liability and other insurance reasonably requested by Port, naming Port as an additional insured, in form and amounts reasonably approved by Port, and (H) that Port has not exercised its Expansion Option for such space as set forth in Article 4 of the Port Sublease.

(ii) Reasonable Grounds to Deny Consent. Except as otherwise provided in Section 16.3, Port may deny its consent to the proposed Sublease only if it determines, in its reasonable discretion, that (A) the use to which the Premises will be put by the proposed Subtenant is inconsistent with the terms of this Lease, including, without limitation, Section 3.6 regarding consistency with the Public Trust; (B) Tenant has failed to satisfactorily comply with the Maritime Marketing Program described in Section 16.5 as determined by Port in Port's reasonable judgment; or (C) the Sublease fails to meet the Port's reasonable conditions imposed pursuant to subsection (i) above. If Port denies its consent to the proposed Sublease pursuant to this subsection (ii), and if Tenant shall so request in writing, Port shall provide to Tenant a statement of the basis on which Port denied its consent.

#### 16.4 Non-Disturbance of Subtenants. Attornment. Sublease Provisions.

(a) Conditions for Non-Disturbance Agreements. From time to time upon the request of Tenant, Port shall enter into agreements with Subtenants providing generally, with regard to a given Sublease, that in the event of any termination of this Lease, Port will not terminate or otherwise disturb the rights of the Subtenant under such Sublease, but will instead honor such Sublease as if such agreement had been entered into directly between Port and such Subtenant ("Non-Disturbance Agreements"). All Non-Disturbance Agreements shall comply with the provisions of this Section 16.4(a) and of Section 16.4(b). Port shall provide a Non-Disturbance Agreement to a Subtenant if all of the following conditions are satisfied: (i) the performance by Tenant of its obligations under such Sublease will not cause an Event of Default to occur under this Lease; (ii) the term of the Sublease, including options, does not extend beyond the scheduled Term, unless Port approves such longer term; (iii) the Sublease contains provisions whereby the Subtenant agrees to comply with applicable provisions of Section 42.1(a), (b) and (e) and Section 42.5; (iv) the Subtenant agrees that in the event this Lease expires, terminates or is canceled during the term of the Sublease, the Subtenant shall attorn to Port (provided Port agrees not to disturb the occupancy or other rights of the Subtenant and to be bound by the terms of the Sublease), and the Sublease shall be deemed a direct lease or license agreement between the Subtenant and Port, except that Port shall not be liable to the Subtenant for any security deposit or prepaid rent or license fees previously paid by such Subtenant to Tenant, except for rent or license fees for the current month, if previously paid; (v) the form and material business terms of the Sublease are reasonably approved by Port, in light of market conditions existing at the time such Sublease is entered into, (vi) if Tenant is then in default of any of its obligations under this Lease, Port may condition its agreement to provide a Non-Disturbance Agreement on the cure of such defaults as Port may specify either in a notice of default given under Section 22.1 or in a notice conditionally approving Tenant's request for such Non-Disturbance Agreement (and if an Event of Default on the part of Tenant then exists, then Port may withhold or condition the giving of a Non-Disturbance Agreement), and (vii) the Subtenant shall have delivered to Port an executed estoppel certificate, in form and substance reasonably satisfactory to Port, certifying: (A) that the Sublease, including all amendments, is

attached thereto and is unmodified, except for such attached amendments, and is in full force and effect, as so amended, or if such Sublease is not in full force and effect, so stating, (B) the dates, if any, to which any rent and other sums payable thereunder have been paid, (C) that the Subtenant is not aware of any defaults which have not been cured, except as to defaults specified in said certificate, and (D) such other matters as Port may reasonably request. Port shall not be required to enter into a Non-Disturbance Agreement with respect to any period beyond the scheduled expiration of the Term hereof. Port shall respond to any request for a Non-Disturbance Agreement within thirty (30) days after receipt of a true and complete copy of the relevant Sublease in the form to be executed, and all relevant information requested by Port. Such relevant information shall include reasonable financial information establishing the ability of the proposed Subtenant to perform its contemplated obligations under such Sublease, detailed information regarding proposed uses, and relevant information concerning the business character and reputation of the proposed Subtenant. Port agrees to cooperate, to the extent it is legally permitted to do so, in protecting the confidentiality of personal or financial information relating to any Subtenant. Nothing in this Section 16.4 shall preclude Port in its sole and absolute discretion from granting non-disturbance to other Subtenants.

(b) Form of Non-Disturbance Agreement. Each Non-Disturbance Agreement shall be substantially in the form of Exhibit F and, if not in such form, shall be in form and substance reasonably satisfactory to Port. With each request for a Non-Disturbance Agreement, Tenant shall submit a copy of the form, showing any requested interlineations or deletions, and Port shall approve or disapprove of the requested changes within twenty (20) days after receipt of such changes (such approval not to be unreasonably withheld or conditioned). Any disapproval by Port shall be in writing, and shall set forth the specific reasons for Port's disapproval. Failure by Port to approve or disapprove of specific interlineations, deletions or other modifications requested by a Subtenant within such twenty (20) day period shall be deemed to be approval of the requested changes (subject to Section 43.1).

#### 16.5 Maritime Marketing Program.

Tenant acknowledges that the Premises are subject to the Public Trust, including the Burton Act Trust. As stated in the Recitals to this Lease, Port's primary objectives are for the historic renovation of Pier 1 as a nationally-registered historic structure to create a maritime-related office building, housing the Port's main office, and for public access. Tenant further acknowledges that Port has approved the use of a portion of the Premises for general office use by Tenant and others, based on the accessory nature of such use to the Port's primary Project objectives. However, in the event that office space becomes available in the Premises ("Available Sublease Space") that is not subleased to Port, Tenant, or any other subtenants under subleases in effect as of the Rent Commencement Date (collectively, the "Initial Subtenants"), Tenant shall first market the Available Sublease Space to Public Trust-consistent users before leasing it to other potential subtenants, all in accordance with the following:

(a) Marketing Plan. At least 180 days prior to subleasing any Available Sublease Space to a Party other than Port, Tenant, or Tenant's Affiliate, Tenant shall prepare and submit to Port a marketing plan (a "Marketing Plan") for the Port's review and comment. The Marketing Plan shall identify those marketing efforts, including listings in trade journals and

other forms of advertising, which Tenant intends to employ to facilitate the subleasing of the Available Sublease Space to trust-consistent users that are consistent with the uses permitted under this Lease ("Qualified Tenants"). Qualified Tenants may include, without limitation, international and maritime law firms, custom brokers, shippers, steamship and cruise lines, travel agents, trade advisory boards, banks with an international trade component, freight forwarders, transportation companies of all types, consulates, marine services, marine and transportation engineers or consultants, marine equipment leasing, maritime-related unions and organizations, other businesses engaged in intermodal cargo transportation, and professional services firms for which at least 50% of income is generated by Public Trust-consistent users. In designing and implementing the Marketing Plan, Tenant shall make reasonable efforts to provide information concerning the Premises and Improvements to a broad range of Qualified Tenants.

(b) Coordination with Port. Tenant shall consider and incorporate in good faith any comments received from Port with respect to a Marketing Plan, so long as such comments, if adopted, will not materially reduce the economic return to Tenant from the subleasing of the Improvements. Tenant agrees to make itself available, on reasonable advance notice, to meet with Port and discuss any Marketing Plan provided by Tenant in accordance with this Section, and implement such steps as the Port may recommend to increase usage of the Improvements for Public Trust-related uses.

(c) Priority to Qualified Tenants. In the case of multiple offers to lease a particular space in the Available Sublease Space, Tenant shall give priority to the subleasing of such space to a Qualified Tenant, so long as the rent and other terms of the sublease to be entered into with the Qualified Tenant are substantially equivalent to the rent and other terms which are then available from any non Public Trust-related user, and so long as Tenant, acting reasonably, has approved the identity and financial capabilities of the Qualified Tenant.

(d) Referrals by Port. Port, acting through its leasing personnel, may refer prospective Qualified Tenants to Tenant at any time, and Tenant in good faith will provide rental and other information to such Qualified Tenants concerning Available Sublease Space.

(e) Restrictions on Leasing to Non-Qualified Tenants. Without limiting the foregoing or anything else in this Section 16, if Tenant is unable to find a Qualified Tenant for the Available Sublease Space, Tenant may enter into new or renewal subleases of office space with a non-Qualified Tenant subject to Port's prior written consent under Section 16.3 hereof.

(f) Maritime Marketing for Initial Subtenants. Notwithstanding the foregoing, the Parties acknowledge that Tenant's obligations to prepare and comply with the Maritime Marketing program for Subtenants occupying the Premises at the Commencement Date are as set forth in the DA, and Port, by entering into this Lease, shall have deemed Tenant's compliance therewith to have been satisfied.

## SECTION 17. INDEMNIFICATION OF PORT

### 17.1 Indemnification of Port.

Tenant agrees to and shall Indemnify the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any such Indemnified Party, the Premises or Port's interest therein, in connection with the occurrence or existence of any of the following: (i) any accident, injury to or death of Persons or loss of or damage to property occurring on the Premises or any part thereof; (ii) any accident, injury to or death of Persons or loss or damage to property occurring near or around the Premises which is caused directly or indirectly by Tenant or any of its Agents, Invitees, or Subtenants; (iii) any use, possession, occupation, operation, maintenance, or management of the Premises or any part thereof; (iv) any use, possession, occupation, operation, maintenance, management or condition of property near or around the Premises by Tenant or any of its Agents, Invitees, or Subtenants; (v) any latent, design, construction or structural defect relating to the Initial Improvements and any subsequent Improvements constructed by or on behalf of Tenant, and any other matters relating to the condition of the Premises caused by Tenant or any of its Agents, Invitees, or Subtenants; (vi) any failure on the part of Tenant or its Agents or Subtenants, as applicable, to perform or comply with any of the terms of this Lease or with applicable Laws, rules or regulations, or permits; (vii) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof by Tenant or any of its Agents, Invitees or Subtenants; and (viii) any civil rights actions or other legal actions or suits initiated by any inhabitant of the Improvements. All references to Tenant's "Subtenants" above shall exclude Port as subtenant under the Port Sublease together with Port's Agents and Invitees unless such acts or omissions are caused by Tenant or any of its Agents or Invitees. It is the intent of this paragraph that Port shall be responsible for its own acts and omissions on the Sublease Premises in accordance with the Port Sublease. Notwithstanding the foregoing, however, Tenant shall not be required to Indemnify Port or any other Indemnified Parties against Losses to the extent, and only to the extent, proximately caused by (i) any negligence or other actionable misconduct of Port or any Other Indemnified Party, acting (or failing to act) in its governmental capacity, in the exercise of its police powers (as opposed to its proprietary capacity as an owner of land), and specifically excluding any activities or omissions arising out of Port's review or issuance of building permits for construction of the Initial Improvements under the DA or any Subsequent Construction under this Lease, (ii) the gross negligence or willful misconduct of Port or any Other Indemnified Party regardless of the capacity in which it acted or failed to act, or (iii) Losses arising from occurrences on the Port Sublease Premises, except to the extent caused by the gross negligence or willful misconduct of Tenant, its Agents, Invitees, or Subtenants (other than Port). If any action, suit or proceeding is brought against any Indemnified Party by reason of any occurrence for which Tenant is obliged to Indemnify such Indemnified Party, such Indemnified Party will notify Tenant of such action, suit or proceeding. Tenant may, and upon the request of such Indemnified Party will, at Tenant's sole expense, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by counsel designated by Tenant and reasonably approved by such Indemnified Party in writing.

#### 17.2 Immediate Obligation to Defend.

Tenant specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any claim which is actually or potentially within the scope of the indemnity provision of Section 17.1 or any other indemnity provision under this Lease, even if such allegation is or may be groundless, fraudulent or false, and such obligation arises at the time such claim is tendered to Tenant by an Indemnified Party and continues at all times thereafter.

#### 17.3 Not Limited by Insurance.

The insurance requirements and other provisions of this Lease shall not limit Tenant's indemnification obligations under Section 17.1 or any other indemnification provision of this Lease.

#### 17.4 Survival.

Tenant's obligations under this Section 17 and any other indemnity in this Lease shall survive the expiration or sooner termination of this Lease.

#### 17.5 Other Obligations.

The agreements to Indemnify set forth in Section 17 and elsewhere in this Lease are in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities which Tenant may have to Port in this Lease, at common law or otherwise.

#### 17.6 Defense.

Tenant shall, at its option but subject to the reasonable consent and approval of Port, be entitled to control the defense, compromise, or settlement of any such matter through counsel of Tenant's own choice; provided, however, in all cases Port shall be entitled to participate in such defense, compromise, or settlement at its own expense. If Tenant shall fail, however, in Port's reasonable judgment, within a reasonable time following notice from Port alleging such failure, to take reasonable and appropriate action to defend, compromise, or settle such suit or claim, Port shall have the right promptly to use the City Attorney or hire outside counsel, at Tenant's sole expense, to carry out such defense, compromise, or settlement, which expense shall be due and payable to Port ten (10) business days after receipt by Tenant of an invoice therefor.

#### 17.7 Release of Claims Against Port.

Tenant, as a material part of the consideration of this Lease, hereby waives and releases any and all claims against the Indemnified Parties from any Losses, including damages to goods, wares, goodwill, merchandise, equipment or business opportunities and by Persons in, upon or about the Premises for any cause arising at any time, including, without limitation, all

claims arising from the joint or concurrent negligence of Port or the other Indemnified Parties, but excluding any negligence or willful misconduct of the Indemnified Parties; provided however, the above shall not limit or alter the indemnification obligations of Port as subtenant as set forth in the Port Sublease.

## SECTION 18. INSURANCE

### 18.1 Property and Liability Coverage.

(a) Required Types and Amounts of Insurance. Tenant shall, at no cost to Port (except as otherwise provided in the Port Sublease), obtain, maintain and cause to be in effect at all times from the Commencement Date to the later of (i) the last day of the Term, or (ii) the last day Tenant (A) is in possession of the Premises or (B) has the right of possession of the Premises (except as otherwise specified in this Section 18.1(a)), the following types and amounts of insurance:

(i) Builders Risk Insurance. At all times prior to Completion of the Initial Improvements, and during any period of Subsequent Construction, Tenant shall maintain, on a form reasonably approved by Port, builders' risk insurance in the amount of 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, against hazards including earthquake (subject to the provisions of Section 18.1(b)(3)(A)), water damage (including, if appropriate and if available at commercially reasonable rates; groundwater damage and water damage resulting from backed up sewers and drains) and flood insurance (subject to the provisions of Section 18.1(b)(4)(A)), including as named insureds Port, Tenant and Tenant's contractors and subcontractors with any deductible not to exceed Fifty Thousand Dollars (\$50,000)(except as to earthquake insurance and flood insurance); provided, however, that as to both earthquake insurance and flood insurance separate sublimits of the insurance required under this Section 18.1(a)(i) and the insurance required under Section 18.1(a)(vii) may be required in order to comply with the requirements of Section 18.1(b)(3)(A) and Section 18.1(b)(4)(A).

(ii) Property Insurance: Earthquake and Flood Insurance. Upon Completion of the Initial Improvements, and upon completion of Subsequent Construction of any additional Improvements, 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"), including earthquake, subject to the provisions of Section 18.1(b)(iii)(B), and flood, subject to the provisions of Section 18.1(b)(iv)(B), in an amount not less than 100% of the then-current full replacement cost of the Improvements and other property being insured pursuant thereto (including building code upgrade coverage and the cost of any foundations, pilings, excavations and footings on that portion of the Premises) with any deductible not to exceed Fifty Thousand Dollars (\$50,000)(except as to earthquake insurance and flood insurance); provided, however, that as to both earthquake insurance and flood insurance separate sublimits of the insurance required under this Section 18.1(a)(ii) and the insurance required under Section 18.1(a)(7) may be required in order to comply with the requirements of Section 18.1(b)(iii)(B)



and Section 18.1(b)(iv)(B). In addition to the foregoing, Tenant may insure its Personal Property in such amounts as Tenant deems appropriate; and Port shall have no interest in the proceeds of such Personal Property insurance, and the proceeds of such insurance shall not be subject to the provisions of Section 12.

(iii) Commercial General Liability Insurance. Tenant shall maintain "Commercial General Liability" insurance policies with coverage at least as broad as ISO form CG 00 01 10 93, insuring against claims for bodily injury (including death), property damages, personal injury and advertising liability occurring upon the Premises (including the Improvements), and operations incidental or necessary thereto located on the Premises or any part of the Premises, such insurance to afford protection in an amount not less than Ten Million Dollars (\$10,000,000) each occurrence covering bodily injury and broad form property damage including contractual liability (which includes coverage of the indemnity in Section 17.1(i)), independent contractors, explosion, collapse, underground (XCU), and products and completed operations coverage. In addition, if Tenant has (or is required under Laws to have) a liquor license and is selling or distributing alcoholic beverages on the Premises, then Tenant shall maintain liquor liability coverage with limits not less than One Million Dollars (\$1,000,000.00), and Tenant shall require any Subtenant who has (or is required under Laws to have) a liquor license and who is selling or distributing alcoholic beverages on the Premises, to maintain such coverage.

(iv) Workers' Compensation Insurance. During any period in which Tenant has employees as defined in the California Labor Code, Tenant shall maintain policies of workers' compensation insurance, including employer's liability coverage with limits not less than \$1,000,000 each accident (except that such insurance in excess of \$500,000 each accident may be covered by a so-called "umbrella" or "excess coverage" policy) covering all persons employed by Tenant in connection with the use, operation and maintenance of the Premises and the Improvements. In addition, if any employees of Tenant are eligible for U.S. Longshore and Harbor Workers' Act benefits or Jones Act benefits, Tenant shall maintain coverage for such benefits, as applicable, with limits not less than One Million Dollars (\$1,000,000.00).

(v) Boiler and Machinery 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. Such insurance shall name as additional insured the following: THE CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS.

(vi) Business Automobile Insurance. Tenant shall maintain policies of business automobile liability insurance covering all owned, non-owned or hired motor vehicles to be used in connection with Tenant's use and occupancy of the Premises, affording protection for bodily injury (including death) and property damage in the form of Combined Single Limit Bodily Injury and Property Damage policy with limits of not less than One Million Dollars (\$1,000,000) per occurrence.

(vii) 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 18.1(a)(i), (ii) and (v) covering a period of not less than two (2) years during construction of the Initial Improvements, and covering a period of not less than one (1) year following Completion, with a limit of not less than Five Million Dollars (\$5,000,000) per year.

(viii) Environmental Liability Insurance. During the course of any Hazardous Materials Remediation activities taking place prior to Completion of the Initial Improvements, Tenant shall maintain, or cause its contractor or consultant to maintain, environmental pollution or contamination liability insurance, on an occurrence form, with limits of not less than Five Million Dollars (\$5,000,000) each occurrence combined single liability for Bodily Injury and Property Damage or, with the prior written approval of Port (such approval not to be unreasonably withheld; conditioned or delayed), such coverage may be provided with a lower limit or on a claims made form.

(ix) Professional Liability. Tenant shall maintain or require to be maintained, professional liability (errors or omissions) insurance, with limits not less than Two Million Dollars (\$2,000,000.00) each claim and aggregate, with respect to all professional services, including, without limitation, architectural, engineering, geotechnical, and environmental, reasonably necessary or incidental to Tenant's activities under this Lease, with any deductible not to exceed Fifty Thousand Dollars (\$50,000.00) each claim.

(x) Other Insurance. Tenant shall obtain such other insurance as is reasonably requested by City's Risk Manager and is customary for quality office buildings in the San Francisco Financial District.

(b) General Requirements. All insurance provided for pursuant to this Section:

(i) Shall be carried under a valid and enforceable policy or policies issued by insurers of recognized responsibility that are rated Best A<sup>+</sup>:VIII or better (or a comparable successor rating) and legally authorized to sell such insurance within the State of California;

(ii) As to property insurance shall name the Port as loss payee as its interest may appear, and as to both property and liability insurance shall name as additional insureds the following: "THE CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS."

(iii) As to earthquake insurance only:

(A) during construction of the Initial Improvements, such insurance shall be in an amount at least equal to the maximum amount as is available at

commercially reasonable rates 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 the cost of any foundations, excavations and footings and without any deduction being made for depreciation), except that a greater deductible will be permitted to the extent that such coverage is not available from recognized insurance carriers or at commercially reasonable rates;

(B) from and after Completion of the Initial Improvements, such insurance shall be in an amount at least equal to the lesser of (i) the amount available at commercially reasonable rates from recognized insurance carriers, or (ii) 100% of the maximum probable loss that would be sustained by the Premises as a result of the occurrence of an earthquake measuring 8.3 on the Richter scale, as determined not less frequently than every five (5) years by a consultant chosen and paid for by Tenant who is reasonably satisfactory to Port, in each case, with a deductible of up to but not to exceed an amount that is necessary to make such earthquake insurance available at a commercially reasonable rate;

(iv) As to flood insurance only:

(A) during construction of the Initial Improvements, such insurance shall be in an amount at least equal to the maximum amount as is available at commercially reasonable rates 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 the cost of any foundations, excavations and footings and without any deduction being made for depreciation) except that a greater deductible will be permitted to the extent that such coverage is not available from recognized insurance carriers or at commercially reasonable rates;

(B) from and after Completion of the Improvements, such insurance shall be in an amount at least equal to the amount available at commercially reasonable rates from recognized insurance carriers, with a deductible of up to but not to exceed an amount that is necessary to make such flood insurance available at commercially reasonable rates.

(v) Shall be evaluated by Port and Tenant for adequacy not less frequently than every five (5) years from the anniversary date of Completion of the Initial Improvements. Following consultation with Tenant, Port may, upon not less than ninety (90) days prior written notice, require Tenant to increase the insurance limits for all or any of its general liability policies if in the reasonable judgment of the City's Risk Manager it is the general commercial practice in San Francisco or in other cities or counties around the country to carry insurance for facilities similar to the Premises in amounts substantially greater than the amounts carried by Tenant with respect to risks comparable to those associated with use of the Premises. If the City's Risk Manager determines that insurance limits required under this Section may be decreased in light of such commercial practice and the risks associated with use of the Premises, Port shall notify Tenant of such determination, and Tenant shall have the right to decrease the insurance coverage required under this Lease accordingly. In such event, Tenant shall promptly deliver to Port a certificate evidencing such new insurance amounts.

(vi) Shall provide that no cancellation, reduction in coverage, or termination of such insurance for any reason shall be effective until at least thirty (30) days after mailing or otherwise sending written notice of such cancellation, modification or termination to Port;

(vii) As to Commercial General Liability only, shall provide that it constitutes primary insurance to any other insurance available to additional insureds specified hereunder, with respect to claims insured by such policy, and that insurance applies separately to each insured against whom claim is made or suit is brought;

(viii) Shall provide for waivers of any right of subrogation that the insurer of such Party may acquire against each Party hereto with respect to any losses and damages that are of the type covered under the policies required by Sections 18.1(a)(i), (ii) and (v);

(ix) Shall be subject to the approval of Port, which approval shall be limited to whether or not such insurance meets the terms of this Lease; and

(x) If any of the insurance required hereunder is provided under a claims-made form of policy, Tenant shall maintain such coverage continuously throughout the Term, and following the expiration or termination of the Term, Tenant shall maintain, without lapse for a period of two (2) years beyond the expiration or termination of this Lease, coverage with respect to occurrences during the Term that give rise to claims made after expiration or termination of this Lease.

(xi) Shall for property insurance only, provide (if an endorsement to such effect is available at a commercially reasonable cost) that all losses payable under all such policies that are payable to Port shall be payable notwithstanding any act or negligence of Tenant.

(c) Certificates of Insurance; Right of Port to Maintain Insurance. Tenant shall furnish Port certificates with respect to the policies required under this Section, together with copies of each such policy (if Port so requests) within thirty (30) days after the Commencement Date and, with respect to renewal policies, at least ten (10) business days prior to the expiration date of each such policy. If at any time Tenant fails to maintain the insurance required pursuant to Section 18.1, or fails to deliver certificates or policies as required pursuant to this Section, then, upon five (5) business days' written notice to Tenant, Port may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to Port. Within ten (10) business days following demand, Tenant shall reimburse Port for all amounts so paid by Port, together with all costs and expenses in connection therewith and interest thereon at the Default Rate.

(d) Insurance of Others. If Tenant requires liability insurance policies to be maintained by Subtenants, contractors, subcontractors or others in connection with their use or occupancy of, or their activities on, the Premises, Tenant shall require that such policies.

include Tenant and Port as additional insureds, as their respective interests may appear.

#### 18.2 Port Entitled to Participate.

With respect to property insurance, Port shall be entitled to participate in and consent to any settlement, compromise or agreement with respect to any claim for any loss in excess of Five Million Dollars (\$5,000,000) covered by the insurance required to be carried hereunder; provided, however, that (i) Port's consent shall not be unreasonably withheld, and (ii) no consent of Port shall be required in connection with any such settlement, compromise or agreement concerning damage to all or any portion of the Improvements if Tenant shall have agreed in writing to commence and complete Restoration.

#### 18.3 Release and Waiver.

Each Party hereby waives all rights of recovery and causes of action, and releases each other Party from any liability, losses and damages occasioned to the property of each such Party, which losses and damages are of the type covered under the property policies required by Sections 18.1(a)(i), (ii) or (v) to the extent that such loss is reimbursed by an insurer.

### SECTION 19. HAZARDOUS MATERIALS

#### 19.1 Hazardous Materials Compliance.

(a) Compliance with Hazardous Materials Laws. Tenant shall comply and cause (i) all Persons under any Sublease, (ii) all Invitees or other Persons entering upon the Premises, and (iii) the Premises and the Improvements, to comply with all Hazardous Materials Laws and prudent business practices, including, without limitation, any deed restrictions, deed notices, soils management plans or certification reports required in connection with the approvals of any regulatory agencies in connection with the Project. Without limiting the generality of the foregoing, Tenant covenants and agrees that it will not Handle, nor will it permit the Handling of Hazardous Materials on, under or about the Premises, nor will it transport or permit the transport of Hazardous Materials to or from the Premises, except for (A) standard building materials and equipment that do not contain asbestos or asbestos-containing materials, lead or polychlorinated biphenyl (PCBs), (B) gasoline and other fuel products used to transport and operate vehicles and equipment, (C) any Hazardous Materials which do not require a permit or license from, or that need not be reported to, a governmental agency, which Hazardous Materials are used in the construction of the Improvements, and which are reported to, and approved by Port prior to any such Handling and, in any case, are used in strict compliance with all applicable Laws, and (D) janitorial or office supplies or materials in such limited amounts as are customarily used for general office purposes so long as such Handling is at all times in full compliance with all Environmental Laws.

(b) Notice. Except for Hazardous Materials permitted by Subsection 19.1(a) above, Tenant shall advise Port in writing promptly (but in any event within five (5) business days) upon learning or receiving notice of (i) the presence of any Hazardous Materials on, under or about the Premises, (ii) any action taken by Tenant in response to any

(A) Hazardous Materials on, under or about the Premises or (B) Hazardous Materials Claims, and (iii) Tenant's discovery of the presence of Hazardous Materials on, under or about any real property adjoining the Premises. Tenant shall inform Port orally as soon as possible of any emergency or non-emergency regarding a Release or discovery of Hazardous Materials. In addition, Tenant shall provide Port with copies of all communications with federal, state and local governments or agencies relating to Hazardous Materials Laws (other than privileged communications, so long as any non-disclosure of such privileged communication does not otherwise result in any non-compliance by Tenant with the terms and provisions of this Section 19) and all communication with any Person relating to Hazardous Materials Claims (other than privileged communications; provided, however, such non-disclosure of such privileged communication shall not limit or impair Tenant's obligation to otherwise comply with each of the terms and provisions of this Lease, including, without limitation, this Section 19):

(c) Port's Approval of Remediation. Except as required by law or to respond to an emergency, Tenant shall not take any Remediation in response to the presence, Handling, transportation or Release of any Hazardous Materials on, under or about the Premises unless Tenant shall have first submitted to Port for Port's approval, which approval shall not be unreasonably withheld or delayed, a written Hazardous Materials Remediation plan and the name of the proposed contractor which will perform the work. Port shall approve or disapprove of such Hazardous Materials Remediation plan and the proposed contractor promptly, but in any event within thirty (30) days after receipt thereof. If Port disapproves of any such Hazardous Materials Remediation plan, Port shall specify in writing the reasons for its disapproval. Any such Remediation undertaken by Tenant shall be done in a manner so as to minimize any impairment to the Premises. In the event Tenant undertakes any Remediation with respect to any Hazardous Materials on, under or about the Premises, Tenant shall conduct and complete such Remediation (x) in compliance with all applicable Hazardous Materials Laws, (y) to the reasonable satisfaction of Port, and (z) in accordance with the orders and directives of all federal, state and local governmental authorities, including, but not limited to, the RWQCB and the San Francisco Department of Public Health.

(d) Pesticide Prohibition. Tenant shall comply with the provisions of Section 39.9 of Chapter 39 of the San Francisco Administrative Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, and (iii) require Tenant to submit to the Sheriff's Department an integrated pest management ("IPM") plan that (A) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the Term of this Lease, (b) describes the steps Tenant will take to meet the City's IPM Policy described in Section 39.1 of the Pesticide Ordinance, and (c) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with Port. In addition, Tenant shall comply with the requirements of Section 39.4(a) effective January 1, 2000, and with the requirements of Section 39.4(b) of the Pesticide Ordinance. Nothing herein shall prevent Tenant, acting through the Port, from seeking a determination from the City's Commission on the Environment that Tenant is exempt from complying with certain portions of the Pesticide Ordinance as provided in Section 39.8 thereof.

## 19.2 Hazardous Materials Indemnity.

Without limiting the indemnity in Section 17.1, Tenant shall Indemnify the Indemnified Parties from and against any and all Losses which arise out of or relate in any way to any use, Handling, production, transportation, disposal, storage or Release of any Hazardous Materials in or on the Premises at any time during the Term of the Lease and before the surrender of the Premises by Tenant, whether by Tenant, any Subtenants or any other Person (other than Port and its Agents and Invitees) directly or indirectly arising out of (A) the Handling, transportation or Release of Hazardous Materials by Tenant, its Agents, Invitees or any Subtenants or any Person on or about the Premises (other than Port and its Agents and Invitees), (B) any failure by Tenant, its Agents, Invitees or Subtenants (other than Port and its Agents and Invitees) to comply with Hazardous Materials Laws, or (C) any failure by Tenant to comply with the obligations contained in Section 17.1. All such Losses within the scope of this Section shall constitute Additional Rent owing from Tenant to Port hereunder and shall be due and payable from time to time immediately upon Port's request, as incurred. Tenant understands and agrees that its liability to the Indemnified Parties shall arise upon the earlier to occur of (a) discovery of any such Hazardous Materials on, under or about the Premises, or (b) the institution of any Hazardous Materials Claim with respect to such Hazardous Materials, and not upon the realization of loss or damage.

## SECTION 20. DELAY DUE TO FORCE MAJEURE

### 20.1 Delay Due to Force Majeure.

For all purposes of this Lease, a Party whose performance of its obligations hereunder is hindered or affected by events of Force Majeure shall not be considered in breach of or in default in its obligations hereunder to the extent of any delay resulting from Force Majeure, provided, however, that the provisions of this Section 20.1 shall not apply to Tenant's obligation to pay Rent, including Additional Rent. A Party seeking an extension of time pursuant to the provisions of this Section 20.1 shall give notice to the other Party describing with reasonable particularity (to the extent known) the facts and circumstances constituting Force Majeure within (a) a reasonable time (but not more than thirty (30) days unless the other Party's rights are not prejudiced by such delinquent notice) after knowledge of the beginning of such enforced delay or (b) promptly after the other Party's demand for performance.

## SECTION 21. PORT'S RIGHT TO PERFORM TENANT'S COVENANTS

### 21.1 Port May Perform in Emergency.

Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to Port for any default on the part of Tenant under this Lease, if Tenant fails to perform any maintenance or repairs required to be performed by Tenant hereunder within the time provided for such performance, which failure gives rise to an emergency which creates an imminent danger to public health or safety, as reasonably determined by Port, Port may at its sole option, but shall not be obligated to, perform such obligation for and on behalf of Tenant, provided that, if there is time, Port first gives Tenant such notice and opportunity to take

corrective action as is reasonable under the circumstances. Nothing in this Section shall be deemed to limit Port's ability to act in its legislative or regulatory capacity, including the exercise of its police powers, nor to waive any claim on the part of Tenant that any such action on the part of Port constitutes a Condemnation or an impairment of Tenant's contract with Port. Tenant's indemnity obligations set forth under Section 17 shall not extend to any Losses arising out of the negligence or wilful misconduct of Port related to such entry hereunder.

#### 21.2 Port May Perform Following Tenant's Failure to Perform.

Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to Port for any default on the part of Tenant under this Lease, if at any time Tenant fails to pay any sum required to be paid by Tenant pursuant to this Lease to any Person other than Port (other than any Imposition, with respect to which the provisions of Section 4.2 shall apply), or if Tenant fails to perform any obligation on Tenant's part to be performed under this Lease, which failure continues without cure following written notice from Port for a period of thirty (30) days (or, if Section 18.1(c) is applicable, which failure continues for five (5) business days after written notice from Port), and is not the subject of a contest under Section 5, then, Port may, at its sole option, but shall not be obligated to, pay such sum or perform such obligation for and on behalf of Tenant; provided, however, that Port shall not pay any such sum or take any such action unless and until Port has provided Tenant with no less than fifteen (15) days' prior written notice after expiration of the above-referenced thirty (30) day notice (or five (5) days' prior written notice after expiration of the five day notice if Section 18.1(c) is applicable), indicating Port's intention to pay such sum or take such action. Notwithstanding the foregoing, however, if within such period Tenant gives notice to Port that such failure is due to delay caused by Force Majeure, or is the subject of a contest under Section 5, is the subject of litigation or threatened litigation, or that cure of such failure cannot reasonably be completed within such period, then Port will not pay such sum or perform such obligation during the continuation of such contest or such Force Majeure delay or extended cure period, as the case may be, for so long thereafter as Tenant continues diligently to prosecute such contest or cure or the resolution of such event of Force Majeure.

#### 21.3 Tenant's Obligation to Reimburse Port.

If pursuant to the provisions of Sections 18.1(c), 21.1, or 21.2, Port pays any sum or performs any obligation required to be paid or performed by Tenant hereunder, Tenant shall reimburse Port within ten (10) business days following demand, as Additional Rent, the sum so paid, or the reasonable expense incurred by Port in performing such obligation, together with interest thereon at the Default Rate, if such payment is not made within such period, computed from the date of Port's demand until payment is made. Port's rights under this Section 21 shall be in addition to its rights under any other provision of this Lease (including, but not limited to, access to the Security Deposit required under Section 15 of this Lease) or under applicable Laws.



## SECTION 22. EVENTS OF DEFAULT; TERMINATION

### 22.1 Events of Default.

Subject to the provisions of Section 22.2, the occurrence of any one or more of the following events shall constitute an "Event of Default" under the terms of this Lease:

- (a) Tenant fails to pay any Rent to Port when due, which failure continues for ten (10) days following written notice from Port (it being understood and agreed that the notice required to be given by Port under this Section 22.1(a) shall also constitute the notice required under Section 1161 of the California Code of Civil Procedures or its successor, and shall satisfy the requirements that notice be given pursuant to such section) provided, however, Port shall not be required to give such notice on more than three occasions during any calendar year, and failure to pay any Rent thereafter when due shall be an immediate Event of Default without need for further notice;
- (b) An Event of Default (as defined in the DA) on the part of Developer, as Tenant, occurs under the DA (so long as it is in effect);
- (c) Tenant files a petition for relief, or an order for relief is entered against Tenant, in any case under applicable bankruptcy or insolvency Law, or any comparable law that is now or hereafter may be in effect, whether for liquidation or reorganization, which proceedings if filed against Tenant are not dismissed or stayed within one hundred twenty (120) days;
- (d) A writ of execution is levied on the leasehold estate which is not released within one hundred twenty (120) days, or a receiver, trustee or custodian is appointed to take custody of all or any material part of the property of Tenant, which appointment is not dismissed within one hundred twenty (120) days;
- (e) Tenant makes a general assignment for the benefit of its creditors;
- (f) Tenant abandons the Premises, within the meaning of California Civil Code Section 1951.2 (or its successor), which abandonment is not cured within fifteen (15) days after notice of belief of abandonment from Port;
- (g) Tenant fails to maintain any insurance required to be maintained by Tenant under this Lease, which failure continues without cure for five (5) business days after written notice from Port, or, if such cure cannot be reasonably completed within such five (5) business day period, if Tenant does not within such five (5) business day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter; or
- (h) Tenant violates any other covenant, or fails to perform any other obligation to be performed by Tenant under this Lease (including, but not limited to, any Mitigation Measures) at the time such performance is due, and such violation or failure continues

without cure for more than thirty (30) days after written notice from Port specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such thirty (30)-day period, if Tenant does not within such thirty (30)-day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter.

(i) the Premises are abandoned or cease to be used for the uses permitted hereunder, which abandonment or cessation is not cured within fourteen (14) days after notice of belief of abandonment from Port provided, however, that no such fourteen (14) day cure period shall be applicable to any such abandonment or cessation from and after the first occurrence of any such abandonment or cessation; and further provided that the following shall not be deemed to be abandonment or cessation of use: (1) customary vacancies of subleased space at Premises for which Tenant is diligently pursuing marketing efforts; and (2) vacancies that are held to accommodate pre-committed options to lease or expansion options and where it is infeasible to lease such space to other third parties due to the short amount of time available prior to exercise of the option;

(j) Tenant suffers or permits an assignment of this Lease or any interest therein to occur in violation of this Lease, suffers or permits a Significant Change to occur in violation of this Lease or sublets all or any portion of the Premises or Improvements in violation of this Lease;

(k) Tenant engages in or allows any use not permitted hereunder or breaches any operating covenant hereunder.

#### 22.2 Special Provisions Concerning Mortgagees and Events of Default.

Notwithstanding anything in this Lease to the contrary, the exercise by a Mortgagee of any of its remedies under its Mortgage shall not, in and of itself, constitute an Event of Default under this Lease.

#### 22.3 Special Provisions Concerning Port Sublease and Events of Default.

Notwithstanding anything in this Lease to the contrary, any event of default by Port under the Port Sublease that would otherwise cause an Event of Default hereunder will not be considered an Event of Default hereunder.

### SECTION 23. REMEDIES

#### 23.1 Port's Remedies Generally.

Upon the occurrence and during the continuance of an Event of Default under this Lease (but without obligation on the part of Port following the occurrence of an Event of Default to accept a cure of such Event of Default other than as required by law or the terms of this Lease), Port shall have all rights and remedies provided in this Lease or available at law or equity; provided, however, notwithstanding anything to the contrary in this Lease, the remedies

of Port for any Event of Default by Tenant under the Prevailing Wage Provisions, or the First Source Hiring program shall be limited to the remedies provided in such programs. All of Port's rights and remedies shall be cumulative, and except as may be otherwise provided by applicable Law, the exercise of any one or more rights shall not preclude the exercise of any others.

### 23.2 Right to Keep Lease in Effect.

(a) Continuation of Lease. Upon the occurrence of an Event of Default hereunder, Port may continue this Lease in full force and effect, as permitted by California Civil Code Section 1951.4 (or any successor provisions). Specifically, Port has the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations). In the event Port elects this remedy, Port shall have the right to enforce by suit or otherwise, all covenants and conditions hereof to be performed or complied with by Tenant and exercise all of Port's rights, including the right to collect Rent, including any and all Additional Rent, when and as such sums become due, even though Tenant has breached this Lease and is no longer in possession of the Premises or actively managing or operating the Premises. If Tenant abandons the Premises in violation of this Lease, Port may (i) enter the Premises and relet the Premises, or any part thereof, to third Persons for Tenant's account without notice to Tenant, Tenant hereby waiving rights, if any, to any such notice under any applicable Law, and (ii) alter, install or modify the Improvements or any portion thereof. Tenant shall be liable immediately to Port for all costs Port incurs in enforcing this Lease, whether or not any action or proceeding is commenced, including, without limitation, reasonable Attorneys' Fees and Costs, brokers' fees or commissions, the costs of removing and storing the Personal Property of Tenant, costs incurred by Port in connection with reletting the Premises, or any portion thereof, and altering, installing, modifying and constructing tenant improvements required for a new tenant, and the costs of Restoration and of repairing, securing, servicing, maintaining and preserving the Premises or the Improvements, or any portion thereof. Reletting may be for a period equal to, shorter or longer than the remaining Term of this Lease.

(b) No Termination without Notice. No act by Port allowed by this Section 23.2, nor any appointment of a receiver upon Port's initiative to protect its interest under this Lease, nor any withholding of consent to a subletting or assignment or termination of a subletting or assignment in accordance herewith, shall terminate this Lease, unless and until Port notifies Tenant in writing that Port elects to terminate this Lease.

(c) Application of Proceeds of Reletting. If Port elects to relet the Premises as provided hereinabove in Section 23.2(a), the rent that Port receives from reletting shall be applied to the payment of:

(i) First, all costs incurred by Port in enforcing this Lease, whether or not any action or proceeding is commenced, including, without limitation, reasonable Attorneys' Fees and Costs, brokers' fees or commissions, the costs of removing and storing the Personal Property of Tenant, costs incurred by Port in connection with reletting the Premises, or any portion thereof, and altering, installing, modifying and constructing tenant improvements required for a new tenant, and the costs

of repairing, securing and maintaining the Premises or any portion thereof;

(ii) Second, the satisfaction of all obligations of Tenant hereunder (other than the payment of Rent) including, without limitation, the payment of all Impositions or other items of Additional Rent owed from Tenant to Port, in addition to or other than Rent due from Tenant;

(iii) Third, Rent, including any and all Additional Rent, due and unpaid under this Lease;

(iv) After deducting the payments referred to in this Section 23.2(c), any sum remaining from the rent Port receives from reletting shall be held by Port and applied to monthly installments of Rent as such amounts become due under this Lease. In no event shall Tenant be entitled to any excess rent received by Port. If, on a date Rent or other amount is due under this Lease, the rent received as of such date from the reletting is less than the Rent or other amount due on that date, or if any costs, including those for maintenance which Port incurred in reletting, remain after applying the rent received from the reletting as provided in Section 23.2(c)(i)-(iii), Tenant shall pay to Port, upon demand, in addition to the remaining Rent or other amounts due, all such costs.

(d) Payment of Rent. Tenant shall pay to Port the Rent due under this Lease on the dates the Rent is due, less the rent Port has received from any reletting which exceeds all costs and expenses of Port incurred in connection with Tenant's default and the reletting of all or any portion of the Premises.

### 23.3 Right to Terminate Lease.

(a) Damages. Port may terminate this Lease at any time after the occurrence (and during the continuation) of an Event of a Default by giving written notice of such termination, provided, however, in the case of an Event of Default under Sections 22.1(a), (b), or (h), Port may only exercise such remedy if such Event of Default involves a material breach that cannot be cured by the payment of money, or a grossly negligent, willful or fraudulent breach by Tenant of Tenant's covenants and obligations under this Lease or the DA, as applicable. Termination of this Lease shall thereafter occur on the date set forth in such notice. Acts of maintenance or preservation, and any appointment of a receiver upon Port's initiative to protect its interest hereunder shall not in any such instance constitute a termination of Tenant's right to possession. No act by Port other than giving notice of termination to Tenant in writing shall terminate this Lease. On termination of this Lease, Port shall have the right to recover from Tenant all sums allowed under California Civil Code Section 1951.2, including, without limitation, the following:

(i) The worth at the time of the award of the unpaid Rent which had been earned at the time of termination of this Lease;

(ii) The worth at the time of the award of the amount by which

the unpaid Rent which would have been earned after the date of termination of this Lease until the time of the award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided;

(iii) The worth at the time of the 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 have been reasonably avoided; and

(iv) Any other amount necessary to compensate Port for all detriment proximately caused by the default of Tenant, or which in the ordinary course of things would be likely to result therefrom.

(v) "The worth at the time of the award", as used in Section 23.3(a)(i) and (ii) shall be computed by allowing interest at a rate per annum equal to the Default Rate. "The worth at the time of the award", as used in Section 23.3(a)(iii), shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

(b) Interest. Rent not paid when due shall bear interest from the date due until paid at the Default Rate.

(c) Waiver of Rights to Recover Possession. In the event Port terminates Tenant's right to possession of the Premises pursuant to this Section 23.3, Tenant hereby waives any rights to recover or regain possession of the Premises under any rights of redemption to which it may be entitled by or under any present or future Law, including, without limitation, California Code of Civil Procedure Sections 1174 and 1179 or any successor provisions.

(d) No Rights to Assign or Sublet. Upon the occurrence of an Event of Default, notwithstanding Section 16, Tenant shall have no right to sublet or assign its interest in the Premises or this Lease without Port's written consent, which may be given or withheld in Port's sole and absolute discretion, subject to the rights of Mortgagees as set forth in Section 38.

#### 23.4 Continuation of Subleases and Other Agreements.

Port shall have the right, at its sole option, to assume any and all Subleases and agreements by Tenant for the maintenance or operation of the Premises. Tenant hereby further covenants that, upon request of Port following an Event of Default and termination of Tenant's interest in this Lease, Tenant shall execute, acknowledge and deliver to Port such further instruments as may be necessary or desirable to vest or confirm or ratify vesting in Port the then existing Subleases and other agreements then in force, as above specified.

## SECTION 24. PORT'S EQUITABLE RELIEF

### 24.1 Port's Equitable Relief.

In addition to the other remedies provided in this Lease, Port shall be entitled at any time after a default or threatened default by Tenant to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such default. In addition, after the occurrence of an Event of Default, Port shall be entitled to any other equitable relief which may be appropriate to the circumstances of such Event of Default.

## SECTION 25. NO WAIVER

### 25.1 No Waiver by Port or Tenant.

No failure by Port or Tenant to insist upon the strict performance of any term of this Lease or to exercise any right, power or remedy consequent upon a breach of any such term, shall be deemed to imply any waiver of any such breach or of any such term unless clearly expressed in writing by the Party against which waiver is being asserted. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect, or the respective rights of Port or Tenant with respect to any other then existing or subsequent breach.

### 25.2 No Accord or Satisfaction.

No submission by Tenant or acceptance by Port of full or partial Rent or other sums during the continuance of any failure by Tenant to perform its obligations hereunder shall waive any of Port's rights or remedies hereunder or constitute an accord or satisfaction, whether or not Port had knowledge of any such failure. No endorsement or statement on any check or remittance by or for Tenant or in any communication accompanying or relating to such payment shall operate as a compromise or accord or satisfaction unless the same is approved as such in writing by Port. Port may accept such check, remittance or payment and retain the proceeds thereof, without prejudice to its rights to recover the balance of any Rent, including any and all Additional Rent, due from Tenant and to pursue any right or remedy provided for or permitted under this Lease or in law or at equity. No payment by Tenant of any amount claimed by Port to be due as Rent hereunder (including any amount claimed to be due as Additional Rent) shall be deemed to waive any claim which Tenant may be entitled to assert with regard to the making of such payment or the amount thereof, and all such payments shall be without prejudice to any rights Tenant may have with respect thereto, whether or not such payment is identified as having been made "under protest" (or words of similar import).

## SECTION 26. DEFAULT BY PORT; TENANT'S REMEDIES

### 26.1 Default by Port; Tenant's Exclusive Remedies.

Port shall be deemed to be in default hereunder only if Port shall fail to perform or comply with any obligation on its part hereunder and (i) such failure shall continue for more than the time of any cure period provided herein, or, (ii) if no cure period is provided herein, for more

than thirty (30) days after written notice thereof from Tenant, or, (iii) if such default cannot reasonably be cured within such thirty (30)-day period, Port shall not within such period commence with due diligence and dispatch the curing of such default, or, having so commenced, shall thereafter fail or neglect to prosecute or complete with diligence and dispatch the curing of such default. Upon the occurrence of default by Port described above, which default substantially and materially interferes with the ability of Tenant to conduct the use on the Premises provided for hereunder, Tenant shall have the exclusive right (a) to offset or deduct only from the Rent becoming due hereunder, the amount of all actual damages incurred by Tenant as a direct result of Port's default, but only after obtaining a final, unappealable judgment in a court of competent jurisdiction for such damages in accordance with applicable Law and the provisions of this Lease, or (b) to seek equitable relief in accordance with applicable Laws and the provisions of this Lease where appropriate and where such relief does not impose personal liability on Port or its Agents; provided, however, (i) in no event shall Tenant be entitled to offset from all or any portion of the Rent becoming due hereunder or to otherwise recover or obtain from Port or its Agents any damages (including, without limitation, any consequential, incidental, punitive or other damages proximately arising out of a default by Port hereunder) or Losses other than Tenant's actual damages as described in the foregoing clause (a), (ii) Tenant agrees that, notwithstanding anything to the contrary herein or pursuant to any applicable Laws, Tenant's remedies hereunder shall constitute Tenant's sole and absolute right and remedy for a default by Port hereunder, and (iii) Tenant shall have no remedy of self-help.

## SECTION 27. NO RECOURSE AGAINST SPECIFIED PERSONS.

### 27.1 Tenant's Recourse Against Port

No commissioner, officer, director or employee of Port or City will be personally liable to Tenant, or any successor in interest, for any Event of Default by Port, and Tenant agrees that it will have no recourse with respect to any obligation of Port under this Lease, or for any amount which may become due Tenant or any successor or for any obligation or claim based upon this Lease, against any such individual.

### 27.2 Port's Recourse Against Tenant.

No member, officer, director, shareholder, agent or employee of Tenant will be personally liable to Port, or any successor in interest, for any Event of Default by Tenant, and Port agrees that it will have no recourse with respect to any obligation of Tenant under this Lease, or for any amount which may become due Port or any successor or for any obligation or claim based upon this Lease, against any such individual.

## SECTION 28. LIMITATIONS ON PORT'S AND TENANT'S LIABILITY

### 28.1 Waiver of Consequential Damages.

As a material part of the consideration for this Lease, neither Port nor

Tenant shall be liable for, and each Party hereby waives any claim against the other for, any consequential damages arising out of any default by the other.

28.2 Limitation on Port's Liability Upon Transfer.

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

SECTION 29. ESTOPPEL CERTIFICATES BY TENANT

29.1 Estoppel Certificate by Tenant.

Tenant shall execute, acknowledge and deliver to Port (or at Port's request, to a prospective purchaser or mortgagee of Port's interest in the Property), within fifteen (15) business days after a request, a certificate stating to the best of Tenant's knowledge (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications or, if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which any Rent and other sums payable hereunder have been paid, (c) that no notice has been received by Tenant of any default hereunder which has not been cured, except as to defaults specified in such certificate and (d) any other matter actually known to Tenant, directly related to this Lease and reasonably requested by Port. In addition, if requested, Tenant shall attach to such certificate a copy of this Lease, and any amendments thereto, and include in such certificate a statement by Tenant that, to the best of its knowledge, such attachment is a true, correct and complete copy of this Lease, as applicable, including all modifications thereto. Any such certificate may be relied upon by Port, State Lands, and any prospective purchaser or mortgagee of the Premises or any part of Port's interest therein. Tenant will also use commercially reasonable efforts (including inserting a provision similar to this Section into each Sublease) to cause Subtenants under Subleases to execute, acknowledge and deliver to Port, within ten (10) business days after request, an estoppel certificate covering the matters described in clauses (a), (b), (c) and (d) above with respect to such Sublease.

SECTION 30. ESTOPPEL CERTIFICATES BY PORT

30.1 Estoppel Certificate by Port.

Port shall execute, acknowledge and deliver to Tenant (or at Tenant's request, to any Subtenant, prospective Subtenant, prospective Mortgagee, or other prospective transferee of Tenant's interest under this Lease), within fifteen (15) business days after a request, a certificate stating to the best of Port's knowledge (a) that this Lease is unmodified and in full force and



effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications or if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which Rent and other sums payable hereunder have been paid, (c) whether or not, to the knowledge of Port, there are then existing any defaults under this Lease (and if so, specifying the same) and (d) any other matter actually known to Port, directly related to this Lease and reasonably requested by the requesting Party. In addition, if requested, Port shall attach to such certificate a copy of this Lease and any amendments thereto, and include in such certificate a statement by Port that, to the best of its knowledge, such attachment is a true, correct and complete copy of this Lease, including all modifications thereto. Any such certificate may be relied upon by Tenant or any Subtenant, prospective Subtenant, prospective Mortgagee, or other prospective transferee of Tenant's interest under this Lease.

## SECTION 31. APPROVALS BY PORT

### 31.1 Approvals by Port.

The Port's Executive Director or his or her designee, is authorized to execute on behalf of Port any closing or similar documents and any contracts, agreements, memoranda or similar documents with State, regional or local authorities or other Persons that are necessary or proper to achieve the purposes and objectives of this Lease and do not materially increase the obligations of Port hereunder, if the Executive Director determines, after consultation with, and approval as to form by, the City Attorney, that the document is necessary or proper and in Port's best interests. The Port Executive Director's signature of any such documents shall conclusively evidence such a determination by him or her. Wherever this Lease requires or permits the giving by Port of its consent or approval, or whenever an amendment, waiver, notice, or other instrument or document is to be executed by or on behalf of Port, the Executive Director, or his or her designee, shall be authorized to execute such instrument on behalf of Port, except as otherwise provided by applicable law, including the City's Charter.

### 31.2 Fees for Review.

Within thirty (30) days after Port's written request, Tenant shall pay Port, as Additional Rent, Port's costs, including, without limitation, attorneys' fees and costs (and including fees and costs of the City Attorney) incurred in connection with the review, investigation, processing, documentation and/or approval of any proposed assignment or Sublease, Mortgage, estoppel certificate, Non-disturbance Agreement or Subsequent Construction. Tenant shall pay such costs regardless of whether or not Port consents to such proposal, except only in any instance where Port has wrongfully withheld, delayed or conditioned its consent in violation of this Lease.

## SECTION 32. NO MERGER OF TITLE

### 32.1 No Merger of Title.

There shall be no merger of the leasehold estate with the fee estate in the Premises by reason of the fact that the same Person may own or hold (a) the leasehold estate or any interest

in such leasehold estate, and (b) any interest in such fee estate. No such merger shall occur unless and until all Persons having any interest in the leasehold estate and the fee estate in the Premises shall join in and record a written instrument effecting such merger.

## SECTION 33. QUIET ENJOYMENT

### 33.1 Quiet Enjoyment.

Subject to the Permitted Title Exceptions, the terms and conditions of this Lease and applicable Laws, Port agrees that Tenant, upon paying the Rent and observing and keeping all of the covenants under this Lease on its part to be kept, shall lawfully and quietly hold, occupy and enjoy the Premises during the Term of this Lease without hindrance or molestation of anyone claiming by, through or under Port. Notwithstanding the foregoing, Port shall have no liability to Tenant in the event any defect exists in the title of Port as of the Commencement Date, whether or not such defect affects Tenant's rights of quiet enjoyment (unless such defect is due to Port's willful misconduct) and, except as otherwise expressly provided for under the terms and provisions of this Lease, no such defect shall be grounds for a termination of this Lease by Tenant. Tenant's sole remedy with respect to any such existing title defect shall be to obtain compensation by pursuing its rights against any title insurance company or companies issuing title insurance policies to Tenant.

## SECTION 34. SURRENDER OF PREMISES

### 34.1 End of Lease Term.

(a) Conditions of Premises. Upon the expiration or other termination of the Term of this Lease, Tenant shall quit and surrender to Port the Premises in good order and condition, reasonable wear and tear excepted to the extent the same is consistent with maintenance of the Premises in the condition required hereunder. The Premises shall be surrendered with all Improvements, repairs, alterations, additions, substitutions and replacements thereto subject to Section 34.1(c). Tenant hereby agrees to execute all documents as Port may deem necessary to evidence or confirm any such other termination.

(b) Subleases. Upon any termination of this Lease, Port shall have the right to terminate all Subleases hereunder except for those Subleases with respect to which Port has entered into Non-Disturbance Agreements as provided in Section 16.4, or which Port has agreed to assume pursuant to Section 23.4.

(c) Personal Property. Upon expiration or termination of this Lease, Tenant and all Subtenants shall have the right to remove their respective trade fixtures and other personal property. At Port's request, Tenant shall remove, at no cost to Port, any Personal Property belonging to Tenant which then remains on the Premises (excluding any personal property owned by Subtenants or other Persons). If the removal of such Personal Property causes damage to the Premises, Tenant shall repair such damage, at no cost to Port and in such a manner as is consistent with the national historic register status of the Premises.

## SECTION 35. HOLD OVER

### 35.1 Hold Over.

Any holding over by Tenant after the expiration or termination of this Lease shall not constitute a renewal hereof or give Tenant any rights hereunder or in the Premises, except with the written consent of Port. In any such event, at Port's option, Tenant shall be (a) a tenant at sufferance, or (b) a month-to-month tenant at the Minimum Rent in effect at the expiration of the Term Indexed from the date of hold-over.

## SECTION 36. NOTICES

### 36.1 Notices.

All notices, demands, consents, and requests which may or are to be given by any Party to the other shall be in writing, except as otherwise provided herein. All notices, demands, consents and requests to be provided hereunder shall be deemed to have been properly given on the date of receipt if served personally on a day that is a business day (or on the next business day if served personally on a day that is not a business day), or, if mailed, on the date that is three days after the date when deposited with the U.S. Postal Service for delivery by United States registered or certified mail, postage prepaid, in either case, addressed as follows:

#### To Port:

##### Before Completion:

San Francisco Port Commission (Reference: Pier 1)  
3100 Ferry Building  
San Francisco, CA 94111  
Attention: Executive Director  
Facsimile: (415) 274-0412

##### with a copy to:

Port General Counsel (Reference: Pier 1)  
3100 Ferry Building  
San Francisco, CA 94111  
Facsimile: (415) 274-049

##### After Completion:

San Francisco Port Commission (Reference: Pier 1)  
Pier 1  
San Francisco, CA 94111  
Attention: Executive Director

##### with a copy to:

Port General Counsel (Reference: Pier 1)  
Pier 1  
San Francisco, CA 94111

To Tenant:

Before Completion:

AMB Property, L.P. (Reference Pier 1)  
505 Montgomery Street  
San Francisco, CA 94111  
Facsimile: (415) 394-9001  
Attn:

After Completion:

AMB Property, L.P. (Reference Pier 1)  
Pier 1  
San Francisco, CA 94111

or at such other place or places in the United States as each such Party may from time to time designate by written notice to the other in accordance with the provisions hereof. For convenience of the Parties, copies of notices may also be given by telefacsimile to the facsimile number set forth above or such other number as may be provided from time to time by notice given in the manner required hereunder; however, neither Party may give official or binding notice by telefacsimile.

### 36.2 Form and Effect of Notice.

Every notice given to a Party or other Person under this Section must state (or shall be accompanied by a cover letter that states):

(a) the Section of this Lease pursuant to which the notice is given and the action or response required, if any;

(b) if applicable, the period of time within which the recipient of the notice must respond thereto; and

(c) if applicable, that the failure to object to the notice within a stated time period will be deemed to be the equivalent of the recipient's approval of or consent to the subject matter of the notice.

In no event shall a recipient's approval of or consent to the subject matter of a notice be deemed to have been given by its failure to object thereto if such notice (or the accompanying cover letter) does not comply with the requirements of this Section 36.2.

## SECTION 37. INSPECTION OF PREMISES BY PORT

### 37.1 Entry.

Subject to the rights of Subtenants, including the Port under the Port Sublease,

Tenant shall permit Port and its Agents to enter the Premises during regular business hours upon reasonable prior notice (and at any time in the event of an emergency which poses an imminent danger to public health or safety) for the purpose of (i) inspecting the same for compliance with any of the provisions of this Lease, (ii) performing any work therein that Port may have a right to perform under Section 21, or (iii) inspecting, sampling, testing and monitoring the Premises or the Improvements or any portion thereof, including buildings, grounds and subsurface areas, as Port reasonably deems necessary or appropriate for evaluation of Hazardous Materials or other environmental conditions. Nothing herein shall imply any duty upon the part of Port to perform any work which under any provision of this Lease Tenant may be required to perform, nor to place upon Port any obligation, or liability, for the care, supervision or repair of the Premises. If Port elects to perform work on the Premises pursuant to Section 21, Port shall not be liable for inconvenience, loss of business or other damage to Tenant by reason of the performance of such work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, provided Port uses reasonable diligence to minimize the interference any such work may cause with the activities of Tenant, its Subtenants, and their respective Invitees.

37.2 Exhibit for Lease.

Subject to the rights of Subtenants, Tenant shall permit Port and its Agents to enter the Premises during regular business hours upon reasonable prior notice (i) to exhibit the same in a reasonable manner in connection with any sale, transfer or other conveyance of Port's interest in the Premises, and (ii) during the last twenty-four (24) months of the Term, for the purpose of leasing the Premises.

37.3 Notice, Right to Accompany.

Port agrees to give Tenant reasonable prior notice of Port's entering on the Premises except in an emergency. Such notice shall be not less than twenty-four (24) hours oral notice. Tenant shall have the right to have a representative of Tenant accompany Port or its Agents on any entry into the Premises.

37.4 Rights of Subtenants.

Tenant agrees to use commercially reasonable efforts (including efforts to obtain the agreement of each Subtenant (other than Port) to include a provision similar to this Section 37 in its Sublease) to require each Subtenant to permit Port to enter its premises for the purposes specified in this Section 37.

SECTION 38. MORTGAGES

38.1 No Mortgage Except as Set Forth Herein.

(a) Restrictions on Financing. Except as expressly permitted in this Section 38, Tenant shall not:

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

(ii) place or suffer to be placed upon Tenant's leasehold estate in the Premises or interest in the Improvements hereunder any lien or other encumbrances other than as permitted by Section 14.1.

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

(c) Violation of Covenant. Any mortgage, deed of trust, encumbrance or lien not permitted by this Section 38 shall be deemed to be a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

#### 38.2. Leasehold Liens

(a) Tenant's Right to Mortgage Leasehold. At any time and from time to time during the Term after Completion, Tenant shall have the right to assign, mortgage, or encumber Tenant's leasehold estate created by this Lease by way of leasehold mortgages, deeds of trust or other security instruments of any kind to the extent permitted hereby; provided, however, notwithstanding any foreclosure thereof, Tenant shall remain liable for the payment of Rent to the extent provided in this Lease, and for the performance of all other obligations contained in this Lease.

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

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

#### 38.3. Notice of Liens

Tenant shall notify Port promptly of any lien or encumbrance other than the Permitted Title Exceptions of which Tenant has knowledge and which has been recorded against or attached to the Improvements or Tenant's leasehold estate hereunder whether by act of Tenant or otherwise.

#### 38.4. Purpose of Mortgage

(a) Purpose. A Mortgage shall be made only for the purposes of financing the Initial Improvements and any subsequent repairs, alterations, or improvements to the Initial Improvements. With respect to any issuance of corporate debt or other securitized financings, Tenant shall not be permitted to create any structure that would directly or indirectly be, or be perceived to be in Port's reasonable judgment, an obligation or security of Port.

(b) Statement. Port agrees within thirty (30) days after request by Tenant to give to any holder or proposed holder of a leasehold mortgage, deed of trust, or other security instrument a statement in recordable form as to whether such mortgage, deed of trust, or other security instrument is permitted hereunder to secure all of the advances and indebtedness stated by the terms of the applicable financing documents. Except as set forth in such statement, such a statement shall estop Port from asserting that such mortgage, deed of trust, or other security instrument (if done in the way described in the statement) is not permitted hereunder, but shall create no liability on Port. In making a request for such statement, Tenant shall furnish Port true, accurate and complete copies of such of the financing documents as are required reasonably by Port to permit Port to make the determination whether such security instrument is permitted hereby. In no event, however, shall any failure by Tenant or other Party to comply with the terms of any Mortgage, including without limitation the use of any proceeds of any debt, the repayment of which secured by a Mortgage, be deemed to invalidate the lien of a Mortgage.

#### 38.5. Interest Covered by Mortgage

A Mortgage may attach to any of the following interests in the Premises: (i) Tenant's leasehold interest in the Premises created hereby and Tenant's interest in the Improvements or some portion thereof granted hereunder, (ii) Tenant's interest in any permitted Subleases thereon (other than the Port Sublease unless Port has first entered into a non-disturbance agreement or equivalent protective agreement with the applicable mortgagee on reasonable and customary terms), (iii) any Personal Property of Tenant, (iv) products and proceeds of the foregoing, and (v) any other property rights and interests of Tenant arising under this Lease. As provided in Section 38.1(b) no Mortgage may encumber Port's interest in or under this Lease or Port's fee simple interest in the Property or Port's personal and other property in, on or around the Property.

#### 38.6. Institutional Lender: Other Permitted Mortgagees

A Mortgage may be given only to (i) a Bona Fide Institutional Lender, or (ii) any other lender which shall have been approved by Port in its sole and absolute discretion. In any instances in which Port's consent is so required, Port shall be deemed to have approved such other lender if the written notice from Tenant of the identity of such other lender specifies that no notification of disapproval within thirty (30) days after the receipt of such written notice constitutes approval, and Port sends no notification of disapproval within such period.

### 38.7. Rights Subject to Lease

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

(b) Construction and Restoration Obligations. Notwithstanding any provision of this Lease to the contrary, including, but not limited to, those representing covenants running with the land, no Mortgagee, including any such Mortgagee who obtains title to the leasehold or any part thereof as a result of foreclosure proceedings or action in lieu thereof but excluding (i) any other Person who thereafter obtains title to the leasehold or any interest therein from or through such Mortgagee, or (ii) any other purchaser at foreclosure sale (other than the Mortgagee itself), shall be obligated by the provisions of this Lease to Restore any damage or destruction to the Improvements, subject to Section 38.10(c); provided, however, (i) that nothing in this Section or any other Section or provisions of this Lease shall be deemed or construed to permit or authorize any such holder to devote the Premises or any part thereof to any uses, or to construct any improvements thereon, other than those uses or Improvements provided or authorized in the DA, as hereafter amended or extended from time to time, and (ii) in the event that Mortgagee obtains title to the leasehold and chooses not to complete or Restore the Improvements, it shall so notify Port in writing of its election within forty-five (45) days following its acquisition of the tenancy interest in this Lease and shall sell its tenancy interest with reasonable diligence to a purchaser that shall be obligated to Restore the Improvements, but in any event Mortgagee shall use good faith efforts to cause such sale to occur within six (6) months following the Mortgagee's written notice to Port of its election not to Restore. If Mortgagee fails to sell its tenancy interest using good faith efforts within such six (6) month period, it shall not constitute a default hereunder, but the Mortgagee shall be obligated by the provisions of this Lease to Restore any damage or destruction to the Improvements, subject to Section 38.10(c). If Mortgagee agrees to Restore the Improvements, or fails to sell its tenancy interest within six (6) months and is required to Restore then all such work shall be performed in accordance with all the requirements set forth in this Lease, and Mortgagee must submit evidence reasonably satisfactory to Port that it has the qualifications and financial responsibility necessary to perform such obligations.

### 38.8. Required Provisions of any Mortgage

Tenant agrees to have any Mortgage provide: (a) that the Mortgagee shall by registered or certified mail give written notice to Port of the occurrence of any event of default under the Mortgage; (b) that Port shall be given notice at the time any Mortgagee initiates any foreclosure action; and (c) that the disposition and application of insurance and condemnation awards shall be in accordance with the provisions of this Lease.

### 38.9. Notices to Mortgagee



(a) Copies of Notices. Port shall give a copy of each notice Port gives to Tenant from time to time of the occurrence of a default or an Event of Default, or of Port's consent to an assignment of any interest in this Lease or to a Significant Change, to any Mortgagee that has given to Port written notice substantially in the form provided in Subsection (b). Copies of such notices shall be given to Mortgagees at the same time as notices are given to Tenant by Port, addressed to such Mortgagee at the address last furnished to Port. Port shall acknowledge in writing its receipt of the name and address of a Mortgagee so delivered to Port. Port's failure to give such notice to a Mortgagee shall not be deemed to constitute a default by Port under this Lease, but no such notice by Port shall be deemed to have been given to Tenant unless and until a copy thereof shall have been so given to Mortgagee. Any such notices to Mortgagee shall be given in the same manner as provided in Section 36.

(b) Notice From Mortgagee to Port. The Mortgagee under any Mortgage shall be entitled to receive notices from time to time given to Tenant by Port under this Lease in accordance with Subsection (a) above provided such Mortgagee shall have delivered a notice to Port in substantially the following form:

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

#### 38.10. Mortgagee's Right to Cure

If Tenant, or Tenant's successors or assigns, shall mortgage this Lease in compliance with the provisions of this Section, then, so long as any such Mortgage shall remain unsatisfied of record, the following provisions shall apply:

(a) Cure Periods. In the case of any notice of default given by Port to Tenant and Mortgagee in accordance with Section 38.10, the Mortgagee shall have the same concurrent cure periods as are given Tenant under this Lease for remedying a default or causing it to be remedied, plus, in each case, an additional period of thirty (30) days after the later to occur of (i) the expiration of such cure period, or (ii) the date that Port has served such notice of default upon Mortgagee, and Port shall accept such performance by or at the instance of the Mortgagee as if the same had been made by Tenant; provided, however, if such default cannot reasonably be cured or remedied within such additional thirty (30) day period, such cure period shall be extended (and no Event of Default shall be deemed to have occurred under this Lease by reason of such default) so long as the Mortgagee commences the cure or remedy within such period, and prosecutes the completion thereof with diligence and dispatch, subject to Force Majeure.

(b) Foreclosure. Anything contained in this Lease to the contrary

notwithstanding, upon the occurrence of an Event of Default, other than an Event of Default due to a default in the payment of money or other default reasonably susceptible of being cured prior to Mortgagee obtaining possession, Port shall take no action to effect a termination of this Lease if, within thirty (30) days after notice of such Event of Default is given to each Mortgagee, a Mortgagee shall have (x) obtained possession of the Premises (including possession by a receiver), or (y) notified Port of its intention to institute foreclosure proceedings or otherwise acquire Tenant's interest under the Lease, and thereafter promptly commences and prosecutes such proceedings with diligence and dispatch (subject to Force Majeure). A Mortgagee, upon acquiring Tenant's interest under this Lease, shall be required promptly to cure all monetary defaults and all other defaults then reasonably susceptible of being cured by such Mortgagee. The foregoing provisions of this Subsection (b) are subject to the following: (i) no Mortgagee shall be obligated to continue possession or to continue foreclosure proceedings after the defaults or Events of Default hereunder referred to shall have been cured; (ii) nothing herein contained shall preclude Port, subject to the provisions of this Section, from exercising any rights or remedies under this Lease (other than a termination of this Lease to the extent otherwise permitted hereunder) with respect to any other Event of Default by Tenant during the pendency of such foreclosure proceedings; and (iii) such Mortgagee shall agree with Port in writing to comply during the period Port forbears from terminating this Lease with such of the terms, conditions and covenants of this Lease as are reasonably susceptible of being complied with by such Mortgagee, including but not limited to the payment of all sums due and owing hereunder and the use restrictions set forth in Section 3.1 but excluding the operating covenants in Section 7.1. Notwithstanding anything to the contrary, including an agreement by Mortgagee given under clause (iii) of the preceding sentence, Mortgagee shall have the right at any time to notify Port that it has relinquished possession of the Premises or that it will not institute foreclosure proceedings or, if such foreclosure proceedings have commenced, that it has discontinued them, and, in such event, the Mortgagee shall have no further liability under such agreement from and after the date it delivers such notice to Port, and, thereupon, Port shall be entitled to seek the termination of this Lease and/or any other available remedy as provided in this Lease. Upon any such termination, the provisions of this Section 38.11(d) shall apply. If Mortgagee is prohibited by any process or injunction issued by any court having jurisdiction of any bankruptcy or insolvency proceedings involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition, provided that Mortgagee shall (i) have fully cured any Event of Default due to a default in the payment of money, (ii) continue to pay currently such monetary obligations as and when the same become due, and (iii) perform all other obligations of Tenant under this Lease to the extent that they are susceptible of being performed by Mortgagee.

(c) Construction.

(i) Subject to Section 38.8(b), if a default of Tenant occurs following any damage or destruction but prior to Restoration of the Improvements, Mortgagee, either before or after foreclosure or action in lieu thereof, shall not be obligated to Restore the Improvements beyond the extent necessary to preserve or protect the Improvements or construction already made, unless such Mortgagee expressly assumes Tenant's obligations to Port by written agreement reasonably satisfactory to Port, to Restore, in the manner provided in

this Lease, the Improvements on the Premises or the part thereof to which the lien or title of such Mortgagee relates, and submitted evidence satisfactory to Port that it has the qualifications and financial responsibility necessary to perform such obligation.

(ii) Upon assuming Tenant's obligations to Restore in accordance with Subsection (c)(i) above, Mortgagee or any transferee of Mortgagee shall not be required to adhere to the existing construction schedule, but instead all dates set forth in this Lease for such Restoration or otherwise agreed to shall be extended for the period of delay from the date of Tenant stopped work on the Restoration to the date of such assumption plus an additional ninety (90) days.

(d) New Lease. In the event of the termination of this Lease before the expiration of the Term, except (i) by Condemnation, or (ii) subject to Section 12.5; as the result of damage or destruction as provided in Section 12, Port shall serve upon the Mortgagee written notice that this Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Port. The Mortgagee shall thereupon have the option to obtain a new Lease in accordance with and upon the following terms and conditions:

(i) Upon the written request of the Mortgagee, within thirty (30) days after service of such notice that this Lease has been terminated, Port shall enter into a new lease of the Premises with the most senior Mortgagee giving notice within such period or its designee, provided that the Mortgagee assumes Tenant's obligations as Sublandlord under the Port Sublease and any other Subleases then in effect; and

(ii) Such new Lease shall be entered into at the reasonable cost of the Mortgagee thereunder, shall be effective as of the date of termination of this Lease, and shall be for the remainder of the Term of this Lease and at the Rent and upon all the agreements, terms, covenants and conditions hereof, including any applicable rights of renewal and in substantially the same form as this Lease. The Parties intend that such new lease shall have the same priority as this Lease, including priority over any mortgage or other lien, charge or encumbrance on the title to the Premises. Such new Lease shall require the Mortgagee to perform any unfulfilled monetary obligation of Tenant under this Lease and any unfulfilled non-monetary obligation which is reasonably susceptible of being performed by such Mortgagee other than obligations of Tenant with respect to construction of the Initial Improvements, which obligations shall be performed by Mortgagee in accordance with Section 38.11(c). Upon the execution of such new Lease, the Mortgagee shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for such termination, and shall pay all expenses, including reasonable Attorneys' Fees and Costs incurred by Port in connection with such defaults and termination, the recovery of possession of the Premises, and the preparation, execution and delivery of such new Lease.

(e) Nominee. Any rights of a Mortgagee under this Section 38.11, as amended hereby, may be exercised by or through its nominee or designee (other than Tenant) which is an Affiliate of Mortgagee; provided, however, no Mortgagee shall acquire title to the Lease through a nominee or designee which is not a Person otherwise permitted to become

Tenant hereunder; provided, further that a Mortgagee may acquire title to the Lease through a wholly owned (directly or indirectly) subsidiary of Mortgagee.

(f) Subleases. Effective upon the commencement of the term of any new Lease executed pursuant to Subsection 38.11(d), any sublease then in effect shall be assigned and transferred without recourse by Port to Mortgagee and all monies on deposit with Port which Tenant would have been entitled to use but for the termination or expiration of this Lease may be used by Mortgagee for the purposes of and in accordance with the provisions of such new Lease. Between the date of termination of this Lease and commencement of the term of the new Lease, Port shall not (1) enter into any new subleases, management agreements or agreements for the maintenance of the Premises or the supplies therefor which would be binding upon Mortgagee if Mortgagee enters into a new Lease, (2) cancel or materially modify any of the existing subleases, management agreements or agreements for the maintenance of the Premises or the supplies therefor, or (3) accept any cancellation, termination or surrender thereof without the written consent of Mortgagee, which consent shall not be unreasonably withheld or delayed. Effective upon the commencement of the term of the new Lease, Port shall also transfer to Mortgagee, its designee or nominee (other than Tenant), without recourse, all Personal Property.

(g) Limited to Permitted Mortgagees. Anything herein contained to the contrary notwithstanding, the provisions of this Section shall inure only to the benefit of the holders of the Mortgages which are permitted hereunder.

(h) Consent of Mortgagee. No modification, termination or cancellation of this Lease other than adjustments to Minimum Rent under Section 2.3(c) hereof that may be adverse to a Mortgagee shall be effective as against a Mortgagee unless a copy of the proposed change shall have been delivered to such Mortgagee and such Mortgagee shall have either (i) approved the change in writing or (ii) failed reasonably to disapprove the change in writing within ten (10) days after delivery of a copy thereof.

(i) Limitation on Liability of Mortgagee. Anything contained in this Lease to the contrary notwithstanding, no Mortgagee, or its designee or nominee, shall become liable under the provisions of this Lease, unless and until such time as it becomes, and then only for so long as it remains, the owner of the leasehold estate created hereby.

(j) Limitation on Obligation to Cure. Anything herein contained to the contrary notwithstanding, a Mortgagee, and its designee or nominee (other than Tenant), shall have no obligation to cure (i) any Event of Default by Tenant under this Lease occurring pursuant to Section 22.1 (c), (d), (e), (f), (h) or (i) (but with respect to Section 22.1(h), only if such covenant or obligation is not susceptible to being cured without possession of the Premises or is otherwise not reasonably susceptible of being cured), or (ii) any other Event of Default by Tenant under this Lease which is not reasonably susceptible of being cured; provided, however, such provisions of this Lease shall apply to and remain effective on a prospective basis notwithstanding Mortgagee's inability to cure such previous Events of Default. All of the defaults listed in clause (i) hereof shall be deemed defaults not "reasonably susceptible of being complied with" or "not reasonably susceptible of being cured" for purposes of Sections 38.10(b) and (c).

### 38.11. Assignment by Mortgagee

Foreclosure of any Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Mortgage, or any conveyance of the leasehold estate hereunder from Tenant to any Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Port or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance Port shall recognize the Mortgagee or other transferee in connection therewith as the Tenant hereunder. Such Mortgagee's or transferee's right thereafter to assign or transfer this Lease or such new Lease shall be subject to the restrictions of Section 16. In the event Mortgagee subsequently assigns or transfers its interest under this Lease after acquiring the same by foreclosure or deed in lieu of foreclosure or subsequently assigns or transfers its interest under any new lease obtained pursuant to Section 38.11(d), and in connection with any such assignment or transfer, Mortgagee takes back a mortgage or deed of trust encumbering such leasehold interest to secure a portion of the purchase price given to Mortgagee for such assignment or transfer, then such mortgage or deed of trust shall be considered a Mortgage, and Mortgagee shall be entitled to receive the benefit and enforce the provisions of this Section 38 and any other provisions of this Lease intended for the benefit of the holder of a Mortgage.

### 38.12 Transfer of Mortgage.

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

### 38.13 Appointment of Receiver.

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

## SECTION 39. NO JOINT VENTURE

### 39.1 No Joint Venture

Nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between Port and Tenant or between Port and any other Person, or cause Port to be responsible in any way for the debts or obligations of Tenant. The subject of this Lease is a lease with neither Party acting as the agent of the other Party in any respect except as may be expressly provided for in this Lease.

## SECTION 40. FIRST SOURCE HIRING PROGRAM

### 40.1 First Source Hiring Ordinance.

Tenant shall comply with the First Source Hiring Agreement attached hereto as Exhibit G with respect to the operation and leasing of the Premises, and shall include such applicable provisions in its Subleases in accordance with the First Source Hiring Agreement.

## SECTION 41. REPRESENTATIONS AND WARRANTIES

### 41.1 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 Delaware limited partnership duly organized and validly existing under the laws of the State of Delaware. 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 Delaware and 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. Neither Tenant's articles of organization or operating agreement, nor any 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. Except as may otherwise have been disclosed to Port in writing, 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, statute, ordinance, or regulation applicable to Tenant

or its business, or (D) 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, and (iii) to Tenant's knowledge, no involuntary petition naming Tenant as debtor has been filed under any chapter of the U.S. Bankruptcy Code.

The representations and warranties herein shall survive any termination of this Lease to the extent specified in this Lease.

## SECTION 42. SPECIAL PROVISIONS

### 42.1 Non-Discrimination.

(a) Covenant Not to Discriminate. In the performance of this Lease, Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Tenant, in any of Tenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant.

(b) Subleases and Other Subcontracts. Tenant shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such Subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Tenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all Subtenants and other subcontractors to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) Non-Discrimination in Benefits. Tenant does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco or with respect to its operations under this Lease elsewhere within the United States, 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, as well as any benefits other than the benefits specified above, 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(b) of the San Francisco Administrative Code.

(d) Condition to Lease. As a condition to this Lease, Tenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by Parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Lease as though fully set forth herein. Tenant shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Tenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 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.

42.2 [Intentionally deleted]

42.3 MacBride Principles - Northern Ireland.

The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Tenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

42.4 Tropical Hardwood/Virgin Redwood Ban.

The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood product. Except as permitted by the application of Sections 12I.3.b and 12I.4.b of the San Francisco Administrative Code, Tenant shall not use any tropical hardwoods, tropical hardwood wood products, virgin redwood or virgin redwood wood product in the construction of the Initial Improvements or any other Improvements on the Premises.

42.5 Tobacco Product Advertising Prohibition.

Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products shall be allowed on the Premises. The foregoing prohibition shall include 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 or on any sign. The foregoing prohibition shall not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of



cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

#### 42.6 Burma (Myanmar) Business Prohibition.

Tenant is not the government of Burma (Myanmar), a person or business entity organized under the laws of Burma (Myanmar) or a "prohibited person or entity" as defined in Section 12J.2(g) of the San Francisco Administrative Code. The City reserves the right to terminate this Lease for default if Tenant violates the terms of this clause. Chapter 12J of the San Francisco Administrative Code is hereby incorporated by reference as though fully set forth herein, and the failure of Tenant to comply with any applicable requirements thereof shall be deemed a material breach of this Lease. In the event Tenant fails to comply in good faith with any of the applicable provisions of Chapter 12J of the San Francisco Administrative Code, Tenant shall be liable for liquidated damages for each violation in an amount equal to Tenant's net profit under this Lease, or 10% of the total amount of the Lease, or \$1,000, whichever is greatest. Tenant acknowledges and agrees the liquidated damages assessed shall be payable to Port upon demand and may be set off against any moneys due to Tenant from Port under this Lease.

#### 42.7 Proximity of Mid-Embarcadero Projects.

Tenant acknowledges that during the Term, the Waterfront Transportation Project involving (by way of example only and not of limitation) the realignment of the Embarcadero Roadway, Mid-Embarcadero freeway replacement, construction of a MUNI-metro turnaround project, MUNI-metro extension, F-line historic streetcar line, and a waterfront promenade, is scheduled to be constructed on property in the immediate vicinity of the Premises. In addition, the Port is undertaking the Ferry Terminal project, the renovation of the Ferry Building and improvements to Pier 1 ½. Hornblower Yachts, Inc. or another tenant may also undertake improvements to Piers ½ and 3 pursuant to leases with the Port. Tenant is aware that the construction of such projects and the activities associated with such construction will generate certain adverse impacts that may result in some inconvenience to or disturbance of Tenant. Such 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 the Indemnified Parties arising out of such inconvenience or disturbance, including without limitation any abatement or reduction of Rent.

#### 42.8 Waiver of Relocation Assistance Rights.

If Tenant holds over in possession of the Premises following the expiration of this Lease under Section 35.1, Tenant shall not be entitled, during the period of any such holdover, to rights, benefits or privileges under the California Relocation Assistance Law, California Government Code Section 7260 et seq., or the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. Section 4601 et seq., or under any similar law, statute or ordinance now or hereafter in effect, except as provided in Section 13 relating to Condemnation, and Tenant hereby waives any entitlement to any such rights, benefits and privileges with respect to any such holdover period.

## SECTION 43. GENERAL

### 43.1 Time of Performance.

(a) Expiration. All performance dates (including cure dates) expire at 5:00 p.m., San Francisco, California time, on the performance or cure date.

(b) Weekend or Holiday. A performance date which falls on a Saturday, Sunday or City holiday is deemed extended to the next working day.

(c) Days for Performance. All periods for performance or notices specified herein in terms of days shall be calendar days, and not business days, unless otherwise provided herein.

(d) Time of the Essence. Time is of the essence with respect to each provision of this Lease, including, but not limited, the provisions for the exercise of any option on the part of Tenant hereunder and the provisions for the payment of Rent and any other sums due hereunder, subject to the provisions of Section 20 relating to Force Majeure.

### 43.2 Interpretation of Agreement.

(a) Exhibits. Whenever an "Exhibit" is referenced, it means an attachment to this Lease unless otherwise specifically identified. All such Exhibits are incorporated herein by reference.

(b) Captions. Whenever a section, article or paragraph is referenced, it refers to this Lease unless otherwise specifically identified. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only. Such captions shall define or limit the scope or intent of any provision of this Lease.

(c) Words of Inclusion. The use of the term "including," "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(d) No Presumption Against Drafter. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, this Lease shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Lease (including, but not limited to, California Civil Code Section 1654).

(e) Fees and Costs. The Party on which any obligation is imposed in this Lease shall be solely responsible for paying all costs and expenses incurred in the performance thereof, unless the provision imposing such obligation specifically provides to the contrary.

(f) Lease References. Wherever reference is made to any provision, term or matter "in this Lease," "herein" or "hereof" or words of similar import, the reference shall be deemed to refer to any and all provisions of this Lease reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered, section or paragraph of this Lease or any specific subdivision thereof.

#### 43.3 Successors and Assigns.

This Lease is binding upon and will inure to the benefit of the successors and assigns of Port, Tenant and any Mortgagee. Where the term "Tenant," "Port" or "Mortgagee" is used in this Lease, it means and includes their respective successors and assigns, including, as to any Mortgagee, any transferee and any successor or assign of such transferee. Whenever this Lease specifies or implies Port as a Party or the holder of the right or obligation to give approvals or consents, if Port or a comparable public body which has succeeded to Port's rights and obligations no longer exists, then the City will be deemed to be the successor and assign of Port for purposes of this Lease.

#### 43.4 No Third Party Beneficiaries.

This Lease is for the exclusive benefit of the Parties hereto and not for the benefit of any other Person and shall not be deemed to have conferred any rights, express or implied, upon any other Person, except as provided in Section 38 with regard to Mortgagees.

#### 43.5 Real Estate Commissions.

Port is not liable for any real estate commissions, brokerage fees or finder's fees which may arise from this Lease. Tenant and Port each represents that it engaged no broker, agent or finder in connection with this transaction. In the event any broker, agent or finder makes a claim, the Party through whom such claim is made agrees to indemnify the other Party from any Losses arising out of such claim.

#### 43.6 Counterparts.

This Lease may be executed in counterparts, each of which is deemed to be an original, and all such counterparts constitute one and the same instrument.

#### 43.7 Entire Agreement.

This Lease (including the Exhibits), the DA, for so long as such agreement is in effect, and the Port Sublease, constitute the entire agreement between the Parties with respect to the subject matter set forth therein and supersede all negotiations or previous agreements

between the Parties with respect to all or any part of the terms and conditions mentioned herein or incidental hereto. No parol evidence of any prior or other agreement shall be permitted to contradict or vary the terms of this Lease.

#### 43.8 Amendment.

Neither this Lease nor any of the terms hereof may be terminated, amended or modified except by a written instrument executed by the Parties. No termination, amendment or modification which requires the prior approval of a Mortgagee shall become effective without the prior approval of such Mortgagee, pursuant to Section 38.14.

#### 43.9 Governing Law; Selection of Forum.

This Lease shall be governed by, and interpreted in accordance with, the laws of the State of California. As part of the consideration for Port's entering into this Lease, Tenant agrees that all actions or proceedings arising directly or indirectly under this Lease may, at the sole option of Port, be litigated in courts having situs within the State of California, and Tenant consents to the jurisdiction of any such local, state or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon Tenant wherever Tenant may then be located, or by certified or registered mail directed to Tenant at the address set forth herein for the delivery of notices.

#### 43.10 Recordation.

This Lease will not be recorded by either Party. The Parties agree to execute and record in the Official Records a Memorandum of Lease in the form attached hereto as Exhibit H. Promptly upon Port's request following the expiration of the Term or any other termination of this Lease, Tenant shall deliver to Port a duly executed and acknowledged quitclaim deed suitable for recordation in the Official Records and in form and content satisfactory to Port and the City Attorney, for the purpose of evidencing in the public records the termination of Tenant's interest under this Lease. Port may record such quitclaim deed at any time on or after the termination of this Lease, without the need for any approval or further act of Tenant.

#### 43.11 Extensions by Port.

Upon the request of Tenant, Port may, by written instrument, extend the time for Tenant's performance of any term, covenant or condition of this Lease or permit the curing of any default upon such terms and conditions as it determines appropriate, including but not limited to, the time within which Tenant must agree to such terms and/or conditions, provided, however, that any such extension or permissive curing of any particular default will not operate to 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 Lease or any other default in, or breach of, this Lease or otherwise effect the time of the essence provisions with respect to the extended date or other dates for performance hereunder.

#### 43.12 Further Assurances.

The Parties hereto agree to execute and acknowledge such other and further documents as may be necessary or reasonably required to express the intent of the Parties or otherwise effectuate the terms of this Lease.

#### 43.13 Attorneys' Fees.

Except as provided in Section 12.10 with regard to an arbitration proceeding, if either Party hereto fails to perform any of its respective obligations under this Lease or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Lease, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other Party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, reasonable Attorneys' Fees and Costs. Any such Attorneys' Fees and Costs incurred by either Party in enforcing a judgment in its favor under this Lease shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be severable from the other provisions of this Lease and to survive and not be merged into any such judgment. For purposes of this Lease, the reasonable fees of attorneys of City's Office of City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

#### 43.14 Effective Date.

This Lease shall become effective on the date (the "Effective Date") the Parties duly execute and deliver this Lease upon Close of Escrow under the DA following approval by the City's Port Commission, Board of Supervisors and Mayor in their respective sole and absolute discretion. The Effective Date will be inserted by Port on the cover page and on page 1 hereof, provided, however, that Port's failure to insert the Effective Date shall not invalidate this Lease. Where used in this Lease or in any of its exhibits, references to "the date of this Lease," the "reference date of this Lease," "Lease Date" or "Effective Date" will mean the Effective Date determined as set forth above and shown on the first page hereof.

#### 43.15 Severability.

If any provision of this Lease, or its application to any Person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Lease or the application of such provision to any other Person or circumstance, and the remaining portions of this Lease shall continue in full force and effect, unless enforcement of this Lease as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Lease.

#### SECTION 44. DEFINITION OF CERTAIN TERMS

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

Additional Rent means any and all sums (other than Minimum Rent and Participation Rent) that may become due or be payable by Tenant under this Lease.

Affiliate means any Person directly or indirectly Controlling, Controlled by or under Common Control with the other Person in question.

Agents means, when used with reference to either Party to this Lease, the members, officers, directors, commissioners, employees, agents and contractors of such Party, and their respective heirs, legal representatives, successors and assigns.

Attorneys' Fees and Costs means reasonable attorneys' fees, costs, expenses and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and other reasonable costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, including such fees and costs associated with execution upon any judgment or order, and costs on appeal.

Available Sublease Space as defined in Section 16.5.

Award means all compensation, sums or value paid, awarded or received for a Condemnation, whether pursuant to judgment, agreement, settlement or otherwise.

BCDC means the Bay Conservation and Development Commission, a State agency established under the McAtter Petris Act.

Bona Fide Institutional Lender means any one or more of the following, whether acting in its own interest and capacity or in a fiduciary capacity for one or more Persons none of which need be Bona Fide Institutional Lenders: (i) a savings bank, a savings and loan association, a commercial bank or trust company or branch thereof, an insurance company, a governmental agency, a real estate investment trust, a religious, educational or eleemosynary institution, an employees' welfare, benefit, pension or retirement fund or system, an investment banking, merchant banking or brokerage firm, or any other Person or group of Persons which, at the time of a Mortgage is recorded in favor of such Person or Persons, has (or is Specially Controlled by a Person having) assets of at least \$500 million in the aggregate (or the equivalent in foreign currency), and in the case of any Person or group of Persons none of whom is a savings bank, a savings and loan association, a commercial bank or trust company, an insurance company, a governmental agency, or a real estate investment trust, is regularly engaged in the financial services business, or (ii) any special account, managed fund, department, agency or Special Affiliate of any of the foregoing, or (iii) any person acting in a fiduciary capacity for any of the foregoing. For purposes hereof, (1) acting in a "fiduciary capacity" shall be deemed to

include acting as a trustee, agent, or in a similar capacity under a mortgage, loan agreement, indenture or other loan document, (2) a lender, even if not a Bona Fide Institutional Lender, shall be deemed to be a Bona Fide Institutional Lender if promptly after such loan is consummated the note(s) or other evidence of indebtedness or the collateral securing the same are assigned to one or more persons then qualifying as a Bona Fide Institutional Lender, and (3) "Special Affiliate" means any Person directly or indirectly Specially Controlling, Specially Controlled by, or under common Special Control, through one or more other persons, with the person in question.

Bulkhead means the Pier 1 bulkhead, bulkhead wall, marginal wharf and seawall, all as located within the Premises

Burton Act means the provisions of Chapter 1333 of the Statutes of 1968 of the California Legislature, as amended, providing for the transfer to City from State, subject to specified terms, conditions and reservations, of the control and management of the certain tide and submerged lands comprising the Harbor of San Francisco.

Burton Act Agreement means that certain Agreement Relating to Transfer of Port of San Francisco from the State of California to the City and County of San Francisco, dated January 24, 1969, entered into between City and State under the authority granted under the Burton Act.

Burton Act Trust means that statutory trust imposed by the Burton Act.

Certificate of Completion as defined in Section 7.01 of the DA, and as described below in the definition of "Completion".

Certified Construction Costs as defined in Section 6.23(b) of the DA.

City means the City and County of San Francisco, a municipal corporation. City shall refer to the City operating by and through its Port Commission, where appropriate. All references to City shall include the Port.

Commencement Date as defined in Section 1.2.

Completion or Complete or Completed means completion of construction of all or any applicable portion of the Improvements in accordance with the terms of the DA. The fact of Completion shall be conclusively evidenced by the issuance of a Certificate of Completion pursuant to the DA (provided that Deferred Items shall be completed in accordance with the provisions of this Lease).

Condemnation means the taking or damaging, including severance damage, of all or any part of any property, or the right of possession thereof, by eminent domain, inverse condemnation, or for any public or quasi-public use under the law. Condemnation may occur pursuant to the recording of a final order of condemnation, or by a voluntary sale of all or any part of any property to any Person having the power of eminent domain (or to a designee of any such Person), provided that the property or such part thereof is then under the threat of

condemnation or such sale occurs by way of settlement of a condemnation action.

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

Construction Documents as defined in Section 10.4.

Control means the ownership (direct or indirect) by one Person of more than fifty percent (50%) of the profits or capital of another Person or the power to control the affairs and key decisions of such Party, and Controlled and Controlling have correlative meanings. Common Control means that two Persons are both Controlled by the same other Person.

DA as defined in Recital H.

Default Rate as defined in Section 2.8.

Demolition means to raze the Improvements (or relevant portion of the Improvements), remove any rubble or debris resulting therefrom, and cause the Property to be returned to a safe condition (and "Demolish" and "Demolished" shall have correlative meanings).

Disabled Access Laws means all Laws related to access for persons with disabilities including, without limitation, the Americans with Disabilities Act, 42 U.S.C.S. Section 12101 et seq. and disabled access laws under the Port's building code.

Effective Date as defined in Section 43.14.

Excess Rental Income as defined in Section 2.5(b)(ii).

Event of Default as defined in Section 22.1.

Executive Director means the Executive Director of the Port or his or her designee.

Final Construction Documents means plans and specifications sufficient for the processing of an application for a building permit in accordance with applicable Laws.

Force Majeure means events which result in delays in a Party's performance of its obligations hereunder due to causes beyond such Party's control, including, but not restricted to, acts of God or of the public enemy, acts of the government, acts of the other Party, fires, floods, earthquakes, tidal waves, strikes, freight embargoes, delays of subcontractors and unusually severe weather and, in the case of Tenant, any delay resulting from a defect in Port's title to the Premises. Force Majeure does not include failure to obtain financing or have adequate funds. The delay caused by Force Majeure includes not only the period of time during which



performance of an act is hindered, but also such additional time thereafter as may reasonably be required to make repairs, to Restore if appropriate, and to complete performance of the hindered act.

Gross Building Area means the total floor areas of the buildings on the Premises, excluding unenclosed areas, measured from the exterior of the walls.

Handle when used with reference to Hazardous Materials means to use, generate, manufacture, process, produce, package, treat, transport, store, emit, discharge or dispose of any Hazardous Material ("Handling" will have a correlative meaning).

Hazardous Material means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Section 9601 et seq.) or under Section 25281 or Section 25316 of the California Health & Safety Code; any "hazardous waste" as defined in Section 25117 or listed under Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are 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 are naturally occurring substances on, in or about the Premises and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

Hazardous Material Claims means any and all enforcement, Investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed under any Environmental Laws, together with any and all Losses made or threatened by any third party against City, including the Port, , their Agents, or the Premises or any Improvements, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Material Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or any Improvements, the loss or restriction of the use or any amenity of the Premises or any Improvements, and attorneys' fees and consultants' fees and experts' fees and costs.

Hazardous Material Laws means any present or future federal, state or local Laws relating to Hazardous Material (including, without limitation, its Handling, transportation or Release) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises (including the Improvements), including, without limitation, soil, air, air quality, water, water quality and groundwater conditions. Hazardous Materials Laws include, but are not limited to, the City's Pesticide Ordinance (Chapter 39 of the San Francisco Administrative Code), to the extent applicable to tenants of City property on the effective date of the DA, and Article 20 of the San Francisco Public Works Code ("Analyzing Soils for Hazardous

Waste").

Historic Tax Credits as defined in Section 2.3(b).

Historic Tax Credits Investment Proceeds as defined in Section 2.3(b).

Impositions as defined in Section 4.1(b).

Improvements means all buildings, structures, fixtures and other improvements erected, built, placed, installed or constructed upon or within the Property on or after the Commencement Date, including, but not limited to, the Initial Improvements, together with the Bulkhead and Substructure.

Indemnified Parties means City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, the Port; all of the Agents of the City, including its Port, and all of their respective heirs, legal representatives, successors and assigns, and each of them.

Indemnify means indemnify, protect and hold harmless.

Index means the Consumer Price Index for All Urban Consumers (base years 1982-1984 = 100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is modified during the Term hereof, the modified Index shall be used in place of the original Index. If compilation or publication of the Index is discontinued during the Term, Port shall select another similar published index, generally reflective of increases in the cost of living, subject to Tenant's approval, which shall not be unreasonably withheld or delayed, in order to obtain substantially the same result as would be obtained if the Index had not been discontinued.

Indexed means the product of the number to be Indexed multiplied by the percentage increase, if any, in the Index from the first day of the month in which the Commencement Date occurred to the first day of the most recent month for which the Index is available at any given time.

Initial Improvements means all Improvements to be built on the Premises or portion(s) thereof under the DA, including, without limitation, all renovation and rehabilitation work on the existing pier, pier shed, Bulkhead and Substructure.

Interim Escalation as defined in Section 2.5(a)(iv).

Investigate or Investigation when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion of the site or the Improvements or which have been, are being, or threaten to be Released into the environment. Investigation shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any

## Improvements.

Invitees when used with respect to Tenant means the customers, patrons, invitees, guests, members, licensees, assignees and subtenants (other than Port) of Tenant and the customers, patrons, invitees, guests, members, licensees, assignees and sub-tenants of subtenants (other than Port).

Law or Laws means any one or more present and future laws, ordinances, rules, regulations, permits, authorizations, orders and requirements, to the extent applicable to the Parties or to the Premises or any portion thereof, whether or not in the present contemplation of the Parties, including, without limitation, all consents or approvals (including Regulatory Approvals) required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities; boards of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of, or which may affect or be applicable to, the Premises or any part thereof, including, without limitation, any subsurface area, the use thereof and of the buildings and Improvements thereon.

Lease means this Lease, as it may be amended from time to time.

leasehold estate means Tenant's leasehold estate created by this Lease.

Loss or Losses when used with reference to any Indemnity means any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, (including, without limitation, reasonable Attorneys' Fees and Costs and consultants' fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise.

Major Damage or Destruction means damage to or destruction of all or any portion of the Initial Improvements (together with any Subsequent Improvements) on the Premises to the extent that the hard costs of Restoration will exceed seventy five percent (75%) of the hard costs to replace such Improvements on the Premises in their entirety. The calculation of such percentage shall be based upon replacement costs and requirements of applicable Laws in effect as of the date of the event causing such Major Damage or Destruction.

Memorandum of Lease means the Memorandum of this Lease, between Port and Tenant, recorded in the Official Records.

Minimum Rent as defined in Section 2.2.

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

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

Net Awards and Payments as defined in Section 13.4.

Non-Affiliate Mortgage means a Mortgage that is held by a Non-Affiliate Mortgagee.

Non-Affiliate Mortgagee means the holder of a Mortgage, which holder (A) is not an Affiliate of Tenant, or (B) is a Bona Fide Institutional Lender.

Non-Disturbance Agreements as defined in Section 16.4(a).

Official Records means, with respect to the recordation of Mortgages and other documents and instruments, the Official Records of the City and County of San Francisco.

Partial Condemnation as defined in Section 13.3.

Participation Rent as defined in Section 2.2

Participation Rent Statement as defined in Section 2.5(c).

Party means Port or Tenant, as a Party to this Lease; Parties means both Port and Tenant, as Parties to this Lease.

Permitted Title Exceptions as defined in Section 1.1(b).

Permitted Uses as defined in Section 3.1.

Person means any individual, partnership, corporation (including, but not limited to, any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or any other entity or association, the United States, or a federal, state or political subdivision thereof.

Personal Property means all fixtures, furniture, furnishings, equipment, machinery, supplies, software and other tangible personal property that is incident to the ownership, development or operation of the Improvements and/or the Premises, whether now or hereafter located in, upon or about the Premises, belonging to Tenant and/or in which Tenant has or may hereafter acquire an ownership interest, together with all present and future attachments, accessions, replacements, substitutions and additions thereto or therefor.

Port means the City and County of San Francisco, acting by and through the San

Francisco Port Commission.

Port Rent as defined in Section 2.2.

Port Sublease means the sublease between Tenant, as sublandlord, and Port, as subtenant, for the Port Sublease Premises, substantially in the form attached to the DA as Attachment 8.

Port Sublease Premises as defined in Section 1.5

Premises as defined in Section 1.1.

Project means the renovation, rehabilitation and redevelopment of the Pier 1 pier, Bulkhead, Substructure, pier shed, construction of additional public access, tenant improvements, and other related Improvements.

Projected Total Rental Income

Property as defined in Section 1.1.

Public Access Areas means (1) the areas designated as "Public Access Areas" and "Historic Railroad Corridor" as shown generally on Exhibit E, and (2) other portions of the Property, if any, which are designated as public access areas in an instrument executed by Tenant and Port and recorded in the Official Records, which recites that it has been recorded to satisfy one or more conditions imposed in connection with the grant of a Regulatory Approval. Unless otherwise specified in a recorded instrument executed by Port, the designation of any portion of the Property as a Public Access Area shall expire and cease to have any effect upon the expiration or earlier termination of this Lease. In addition, unless otherwise specified in a recorded instrument executed by Port and Tenant, the designation of a portion of the Property as a Public Access Area shall expire if the Regulatory Approval, in connection with which such designation was recorded, expires or otherwise terminates.

Public Trust means the tidelands public trust for commerce, navigation and fisheries, including, without limitation, the Burton Act Trust.

Regulatory Approval means any authorization, approval or permit required by any governmental agency having jurisdiction over the Premises, including, but not limited to, the City, BCDC, RWQCB, and the Army Corps of Engineers.

Release when used with respect to Hazardous Material means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any Improvements constructed under this Lease or the DA by or on behalf of Tenant, or in, on, under or about the Premises or any portion thereof.

Remediate or Remediation when used with reference to Hazardous Materials

means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor or otherwise control Hazardous Materials located in, on, under or about the Premises or which have been, are being, or threaten to be Released into the environment. Remediation includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323.

Rent as defined in Section 2.2.

Rent Commencement Date as defined in Section 2.3(a).

Rentable Area means the usable area of an office space or retail space, with its pro rata share of building common areas.

Restoration means the restoration, replacement, or rebuilding of the Improvements (or the relevant portion thereof) in accordance with all Laws then applicable; provided that Tenant shall not be required to Restore the Improvements to the identical size or configuration as existed before the event giving rise to the Restoration so long as the Improvements, as Restored, constitute a first-class Project. In connection with any Restoration, the Project and the other Improvements may be redesigned, made larger or smaller, reconfigured, or otherwise modified, provided that the Project as so redesigned complies with applicable requirements of the Tidelands Trust and is a first-class Project affording similar public benefit as the original Project, subject to the provisions of Section 10 relating to Subsequent Construction. All Restoration shall be conducted in accordance with the provisions of Section 10. ("Restore" and "Restored" shall have correlative meanings.)

RWQCB means the San Francisco Bay Regional Water Quality Control Board of Cal/EPA, a state agency.

Schedule of Performance as defined in the DA.

Schematic Drawings means conceptual drawings in sufficient detail to describe a development proposal.

Security Deposit as defined in Section 15.1.

Significant Change means any dissolution, merger, consolidation or other reorganization, or any issuance or transfer of beneficial interests in Tenant, directly or indirectly, in one or a series of related transactions, that results in a change in the identity of Persons Controlling Tenant, provided that a Significant Change will not include the Transfer of beneficial interests in any Person as a result of the trading of shares on the open-market where such Person is a publicly-traded company. The sale of fifty percent (50%) or more of Tenant's assets, capital or profits, or the assets, capital or profit of any Person Controlling Tenant, except to an Affiliate shall also be a Significant Change.

Special Control means the power to direct the affairs or management of another

Person, whether by contract, operation of Law or otherwise (and Specially Controlling and Specially Controlled shall have correlative meanings).

State as defined in Section 1.1(c).

Sublease means any lease, sublease, license, concession or other agreement (including, without limitation, the Port Sublease) by which Tenant leases, subleases, demises, licenses or otherwise grants to any Person in conformity with the provisions of this Lease, the right to occupy or use any portion of the Premises (whether in common with or to the exclusion of other Persons).

Subsequent Construction means all 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 Improvements pursuant to the DA.

Substantial Condemnation as defined in Section 13.3(a).

Substructure means the pier substructure, including without limitation, the decking, slab, and pilings.

Subtenant means any Person leasing, occupying or having the right to occupy any portion of the Premises under and by virtue of a Sublease.

Tenant means AMB Property, L.P., a Delaware limited partnership, and its permitted successors and assigns.

Tenant's Fair Rental Value as defined in Section 2.5(b)(v)

Term as defined in Section 1.2.

Total Condemnation as defined in Section 13.2.

Total Rental Income as defined in Section 2.5(b)(i).

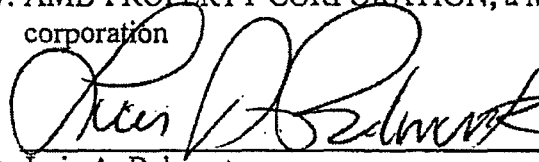
Work as defined in Section 10.8.

IN WITNESS WHEREOF, the Parties have executed this Lease as of the day and year first above written.

TENANT


AMB PROPERTY, L.P.,  
a Delaware limited partnership

By: AMB PROPERTY CORPORATION, a Maryland  
corporation

  
By: Luis A. Belmonte  
Its: Managing Director

PORT

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

By:   
Douglas F. Wong  
Executive Director

APPROVED AS TO FORM:

LOUISE H. RENNE, City Attorney

By:   
Neil H. Sekhri  
Assistant Port General Counsel

Port Commission Resolution No. 99-17  
Board of Supervisors Resolution No. 329-99

Lease Prepared by: Kirk Bennett  
Manager, Waterfront Development Projects



EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

**EXHIBIT A**  
**PIER 1 LEGAL DESCRIPTION**

Being Pier 1, a former portion of Pier ½, and an adjacent portion of the Embarcadero of the San Francisco Port Commission, City and County of San Francisco, State of California and certain adjacent portions of San Francisco Bay, more particularly described as follows:

**PARCEL 1 – PIER 1 AND BULKHEAD BUILDING**

Commencing at the point of intersection of the monument line of Spear Street with the monument line of Mission Street, as said point is shown on Monument Map sheet 317 of the City and County of San Francisco, Department of Public Works, on file in the office of the Bureau of Street Use and Mapping of said Department of said City and County;

Thence along the northeasterly prolongation of said monument line of Mission Street, N 46° 18' 03" E, 699.07 feet;

Thence N 35° 02' 40" W, 1,242.19 feet, to a point on the westerly prolongation of a line along the southerly edge of the bulkhead building of said Pier 1, said point being the True Point Of Beginning;

Thence continuing N 35° 02' 40" W, 211.18 feet to a point on the westerly prolongation of a line along the southerly face of the southerly wall of the bulkhead building of Pier 1½;

Thence along said westerly prolongation, N 54° 50' 22" E, 50.80 feet, to a point on the easterly edge of the concrete deck of said Pier 1;

Thence along the outer edge of said deck through the following courses:

S 34° 16' 53" E, 11.17 feet to an angle point on said edge, hereinafter described as Point "A";

Thence N 87° 18' 01" E, 37.24 feet;

Thence N 54° 57' 20" E, 65.93 feet;

Thence N 35° 02' 40" W, 15.00 feet;

Thence N 54° 57' 20" E, 589.42 feet to a tangent curve, concave to the south, having a radius of 14.00 feet;

Thence northeasterly, easterly, and southeasterly along said curve, through a central angle of 90° 00' 00", an arc length of 21.99 feet;

Thence S 35° 02' 40" E, 108.32 feet to a tangent curve, concave to the west, having a radius of 14.00 feet;

Thence Southeasterly, southerly, and southwesterly along said curve, through a central angle of  $90^{\circ} 00' 00''$ , an arc length of 21.99 feet, to a point hereinafter described as Point "B";

Thence tangent to last said curve,  $S 54^{\circ} 57' 20'' W$ , 143.22 feet to a tangent curve, concave to the southeast, having a radius of 313.25 feet;

Thence Southwesterly along said curve, through a central angle of  $11^{\circ} 02' 34''$ , an arc length of 60.38 feet;

Thence tangent to last said curve,  $S 43^{\circ} 54' 46'' W$ , 130.70 feet;

Thence  $S 54^{\circ} 57' 20'' W$ , 360.50 feet to a point on the northeasterly wall of the bulkhead building of Pier 1;

Thence along said wall,  $S 35^{\circ} 02' 40'' E$ , 28.05 feet to the easterly corner thereof,

Thence along the southeasterly wall of last said bulkhead building,  $S 54^{\circ} 58' 11'' W$ , 0.97 feet to a point hereinafter described as Point "C";

Thence continuing along said southeasterly wall and its southwesterly prolongation,  $S 54^{\circ} 58' 11'' W$ , 44.49 feet to the True Point Of Beginning;

Containing 118,278 square feet (2.715 acres), more or less.

#### PARCEL 2

Being a portion of San Francisco Bay adjacent to said Pier 1, more particularly described as follows:

Beginning at herein above described Point "A";

Thence  $N 87^{\circ} 18' 01'' E$ , 37.24 feet;

Thence  $N 54^{\circ} 57' 20'' E$ , 65.93 feet;

Thence  $N 35^{\circ} 02' 40'' W$ , 15.00 feet;

Thence  $S 54^{\circ} 57' 20'' W$ , 72.36 feet;

Thence  $S 87^{\circ} 18' 01'' W$ , 29.46 feet;

Thence  $S 34^{\circ} 16' 53'' E$ , 10.84 feet to the Point of Beginning;

Containing 1,345 Sq. Ft. (0.031 ACRES), more or less.

#### PARCEL 3

Being a portion of San Francisco Bay adjacent to said Pier 1, more particularly described as follows:

Beginning at herein above described Point "B";

Thence N 54° 57' 20" E, 17.17 feet to a tangent curve, concave to the west, having a radius of 15.00 feet;

Thence northeasterly, northerly, and northwesterly 23.56 feet along said curve, through a central angle of 90° 00' 00";

Thence tangent to curve N 35° 02' 40" W, 106.31 feet to the beginning of a tangent curve, concave to the south, having a radius of 15.00 feet;

Thence northwesterly, westerly, and southwesterly 23.56 feet along said curve, through a central angle of 90° 00' 00";

Thence tangent to the preceding curve S 54° 57' 20" W, 17.17 feet, to the beginning of a tangent curve, concave to the south, having a radius of 14.00 feet;

Thence northeasterly, easterly, and southeasterly 21.99 feet along said curve, through a central angle of 90° 00' 00";

Thence tangent to the preceding curve, S 35° 02' 40" E, 108.32 feet to the beginning of a tangent curve, concave to the west, having a radius of 14.00 feet;

Thence Southeasterly, southerly, and southwesterly 21.99 feet along said curve, through a central angle of 90° 00' 00", to the Point of Beginning;

Containing 2,464 Sq. Ft. (0.057 ACRES), more or less.

#### PARCEL 4

Being a portion of San Francisco Bay adjacent to said Pier 1, more particularly described as follows:

Beginning at herein above described Point "C";

Thence S 35° 31' 09" E, 10.51 feet;

Thence N 54° 28' 28" E, 4.22 feet;

Thence S 34° 31' 02" E, 25.64 feet;

Thence N 54° 57' 20" E, 22.63 feet;

Thence N 35° 02' 40" W, 30.47 feet;

Thence N 54° 57' 20" E, 123.39 feet;

Thence N 35° 02' 40" W, 33.69 feet;

Thence S 54° 57' 20" W, 149.12 feet;

Thence S 35° 02' 40" E, 28.05 feet;

Thence S 54° 58' 11" W, 0.97 feet, to the Point of Beginning;

Containing 5,736 Sq. Ft. (0.132 ACRES), more or less.

### PARCEL 5

Being a former portion of Pier ½ and an adjacent portion of The Embarcadero of the San Francisco Port Commission, City and County of San Francisco, State of California, more particularly described as follows:

Beginning at herein above described Point "C";

Thence S 35° 31' 09" E, 10.51 feet;

Thence N 54° 28' 28" E, 4.22 feet;

Thence S 34° 31' 02" E, 25.64 feet;

Thence S 54° 57' 20" W, 44.61 feet;

Thence N 35° 02' 40" W, 36.13 feet;

Thence N 54° 58' 11" E, 40.54 feet, to the Point of Beginning;

Containing 1,573 Sq. Ft. (0.036 ACRES), more or less.

EXHIBIT B

SITE PLAN

LINES -- PARCEL 1		
LINE	BEARING	DISTANCE
L1	N35°02'40"W	211.18'
L2	N54°50'22"E	50.80'
L3	S34°16'53"W	11.17'
L4	N87°18'01"E	37.24'
L5	N54°57'20"E	65.93'
L6	N35°02'40"W	15.00'
L7	N54°57'20"E	589.42'
L8	S35°02'40"E	108.32'
L9	S54°57'20"W	143.22'
L10	S43°54'16"W	130.70'
L11	S54°57'20"W	360.50'
L12	S35°02'40"E	28.05'
L13	S54°58'11"W	0.97'
L14	S54°58'11"W	44.49'

CURVES -- PARCEL 1			
CURVE	RADIUS	CENTRAL ANGLE	ARC LENGTH
C1	14.00'	90°00'00"	21.99'
C2	14.00'	90°00'00"	21.99'
C3	313.25'	11°02'34"	60.38'

LINES -- PARCEL 2		
LINE	BEARING	DISTANCE
L4	N87°18'01"E	37.24'
L5	N54°57'20"E	65.93'
L6	N35°02'40"W	15.00'
L15	S54°57'20"W	72.36'
L16	S87°18'01"W	28.46'
L17	S34°16'53"E	10.84'

CURVES -- PARCEL 3			
CURVE	RADIUS	CENTRAL ANGLE	ARC LENGTH
C4	15.00'	90°00'00"	23.56'
C5	15.00'	90°00'00"	23.56'
C1	14.00'	90°00'00"	21.99'
C2	14.00'	90°00'00"	21.99'

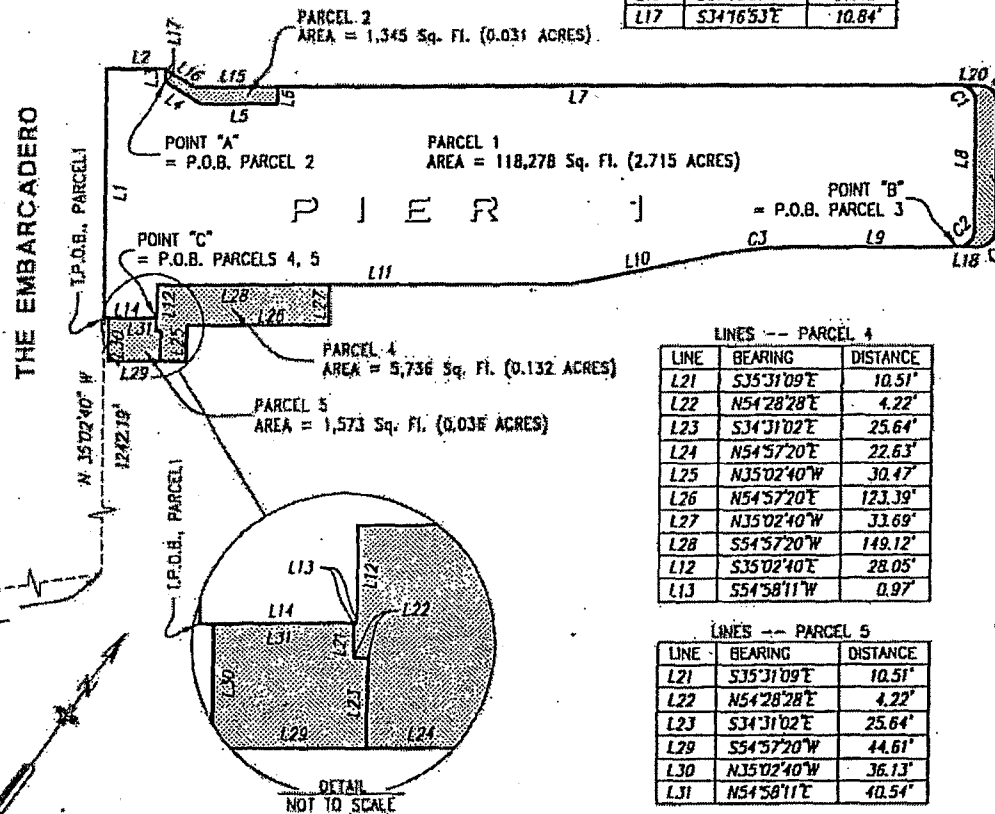
LINES -- PARCEL 3		
LINE	BEARING	DISTANCE
L18	N54°57'20"E	17.17'
L19	N35°02'40"W	106.31'
L20	S54°57'20"W	17.17'
L8	S35°02'40"E	108.32'

LINES -- PARCEL 4		
LINE	BEARING	DISTANCE
L21	S35°31'09"E	10.51'
L22	N54°28'28"E	4.22'
L23	S34°31'02"E	25.64'
L24	N54°57'20"E	22.63'
L25	N35°02'40"W	30.47'
L26	N54°57'20"E	123.39'
L27	N35°02'40"W	33.69'
L28	S54°57'20"W	149.12'
L12	S35°02'40"E	28.05'
L13	S54°58'11"W	0.97'

LINES -- PARCEL 5		
LINE	BEARING	DISTANCE
L21	S35°31'09"E	10.51'
L22	N54°28'28"E	4.22'
L23	S34°31'02"E	25.64'
L29	S54°57'20"W	44.61'
L30	N35°02'40"W	36.13'
L31	N54°58'11"E	40.54'

PARCEL 3  
AREA = 2,464 Sq. Ft. (0.057 ACRES)

NOTES:  
1. DISTANCES SHOWN ARE GROUND DISTANCES.  
2. BASIS OF BEARINGS IS THE BEARING OF THE MONUMENT LINE OF MISSION STREET, SHOWN AS N 46° 18' 03" E, ON THE MAP TITLED SURVEY "E" OF THE HARBOR COORDINATE SURVEY, SHEET NO. 6460 - 409 TO 414 - 2, ON FILE IN THE OFFICE OF THE CHIEF HARBOR ENGINEER OF THE PORT OF SAN FRANCISCO, CALIFORNIA.



APPROVED BY  
SAN FRANCISCO PORT COMMISSION  
DATE \_\_\_\_\_

CHIEF HARBOR ENGINEER

PORT OF SAN FRANCISCO  
SAN FRANCISCO PORT COMMISSION  
DEPARTMENT OF ENGINEERING

PIER 1  
SITE MAP

DESIGNED BY: J. SOBOL	CHECKED BY: _____
DRAWN BY: AMN	DATE: 02 AUG 99
DATA FILE: _____	SCALE: 1" = 160'
DRAWING NO. PUB_ACC.DWG	SHEET NO. 1 OF 1 SHEETS

EXHIBIT C

PERMITTED TITLE EXCEPTIONS



**EXHIBIT C**  
**PERMITTED TITLE EXCEPTIONS**

1. GENERAL AND SPECIAL TAXES FOR THE FISCAL YEAR 1999-2000, NOW A LIEN, NOT YET DUE OR PAYABLE.)
2. GENERAL AND SPECIAL TAXES FOR THE FISCAL YEAR 1998-99 NOT ASSESSED BY REASON OF PREMISES BEING VESTED IN THE CITY OF SAN FRANCISCO. (ASSESSOR'S LOT 1 AND LOT 1H, BLOCK 9900.)
3. THE LIEN OF SPECIAL TAX ASSESSED PURSUANT TO CHAPTER 2.5 COMMENCING WITH SECTION 53311 OF THE CALIFORNIA GOVERNMENT CODE FOR COMMUNITY FACILITIES DISTRICT NO. 90-1, AS DISCLOSED BY NOTICE OF SPECIAL TAX LIEN RECORDED JULY 5, 1990 AS DOCUMENT NO. E573343 IN BOOK/REEL F160 AT PAGE/IMAGE 1044 OF OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA.
4. THE LIEN OF SUPPLEMENTAL TAXES ASSESSED PURSUANT TO CHAPTER 3.5 COMMENCING WITH SECTION 75 OF THE CALIFORNIA REVENUE AND TAXATION CODE.
5. THE CONDITIONS, RESTRICTIONS, LIMITATIONS, POWERS, DUTIES, TRUSTS, REVERSIONARY RIGHT AND OTHER RIGHT CREATED OR RESERVED IN THE LEGISLATIVE GRANT OF "LANDS TRANSFERRED IN TRUST TO THE CITY AND COUNTY OF SAN FRANCISCO, PURSUANT TO CHAPTER 1333, STATUTES OF 1968, AND IN SUBSEQUENT AMENDING STATUTES AFFECTING TIDE AND SUBMERGED LANDS.
6. THE TERMS, PROVISION AND CONDITIONS CONTAINED IN A DOCUMENT EXECUTED BY THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION AND AMB PROPERTY CORPORATION, PURSUANT TO PERMIT NO. 2-99, RECORDED RECORDED JUNE 18, 1999, DOCUMENT NO. 99-G607708-00- REEL H409, IMAGE 748 OF OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO..
7. "AGREEMENT RELATING TO THE TRANSFER OF THE PORT OF SAN FRANCISCO FROM THE STATE OF CALIFORNIA TO THE CITY AND COUNTY OF SAN FRANCISCO" EXECUTED BY AND BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND THE DIRECTOR OF FINANCE OF THE STATE OF CALIFORNIA AND THE SAN FRANCISCO PORT AUTHORITY RECORDED JANUARY 30, 1969, IN BOOK B308 OF OFFICIAL RECORDS, PAGE 686, INCLUSIVE, INSTRUMENT NO. R40413.
8. "MAP OF LANDS TRANSFERRED IN TRUST TO THE CITY AND COUNTY OF SAN FRANCISCO" SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA FILED IN BOOK "W" OF MAPS AT PAGES 66 THROUGH 72 IN THE CITY AND COUNTY OF SAN FRANCISCO RECORDER'S OFFICE, A COPY OF WHICH WAS RECORDED MAY 14, 1976, IN OFFICIAL RECORDS OF CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, INSTRUMENT NO. Y88209.
9. THE PORT SUBLEASE, PURSUANT TO SECTION 3.05(B)(II) OF THE DEVELOPMENT AGREEMENT, AND ANY OTHER SUBLEASES ENTERED INTO BY DEVELOPER.

10. THE FOLLOWING MATTERS DISCLOSED BY AN ALTA/ACSM SURVEY MADE BY KCA ENGINEERS, INC., ON JUNE 24, 1999, AND REVISED JULY 9, 1999, DESIGNATED JOB NO. 4784.
  - A. ENCROACHMENT OF PILINGS OVER THE NORTH, SOUTH AND EAST LINES.
  - B. ENCROACHMENT OF A BUILDING AND STAIRS FROM THE PROPERTY TO THE NORTH ONTO THE SUBJECT PROPERTY.
11. THE TERMS AND PROVISIONS OF AN UNRECORDED DEVELOPMENT AGREEMENT DATED MARCH 9, 1999, BETWEEN THE PORT OF SAN FRANCISCO AND AMB PROPERTY, L.P. < A DELAWARE LIMITED PARTNERSHIP, SAID AGREEMENT HAVING BEEN DISCLOSED TO FIRST AMERICAN TITLE INSURANCE COMPANY.

EXHIBIT D

BUDGET

**EXHIBIT D  
LEASE FOR PIER 1  
BUDGET**

**CONSTRUCTION BUDGET:**

**HARD COSTS**

Pier Substructure		\$6,411,000
Core & Shell Construction		12,753,000
Tenant Improvements		5,386,000
General Conditions		1,970,000
		<u>26,520,000</u>
Bonds, Insurance, & City Taxes		928,000
Contractor's Overhead & Profit		961,000
		<u>28,409,000</u>
Construction & Design Contingency *	None	0
Cost escalation for 1 Year	2.5%	710,225
		<u>29,119,225</u>
Less: Reimbursement of over standard tenant improvements	Standard @ \$32.50 excluding A&E and general conditions	(521,000)
	<b>Total Hard Costs</b>	<u>28,598,225</u>

**SOFT COSTS**

Design & Construction Management Fees		4,163,000
Testing, Permits & Other Owner Costs		358,000
City Exactions		1,137,000
FF&E for Common Areas		250,000
Leasing Commissions	Other Maritime Space @ \$10.00	577,910
Interest During Construction **		1,959,000
Legal & Accounting Fees **		400,000
Non-Refundable Deposit		100,000
Construction Period Ground Rent		0
	<b>Total Soft Costs</b>	<u>8,944,910</u>
Construction Costs Subtotal		<u>37,543,135</u>
Less: Port's share Historic Tax Credit Sale Proceeds	@ 95% x 20% x 85% x 50% ***	(3,031,608)
<b>TOTAL CONSTRUCTION COSTS</b>		<u><b>\$34,511,526</b></u>

**TENANT RENTAL INCOME (Triple Net) TO AMB:**

	Usable Sq. Ft.	Rentable Sq. Ft. @ 15% Load	Rent Per Sq. Ft.	Rent Year 1	Rent Year 6****
Port space	45,630	52,475	\$35.00	\$1,836,608	\$2,176,380
Other office subtenants space	50,253	57,791	\$36.50	2,109,370	2,499,603
Space occupied by Tenant (AMB)	34,280	39,422	\$40.00	1,576,880	1,868,603
	<b>Subtotal: Office Space</b>	<b>130,163</b>		<b>5,522,857</b>	<b>6,544,586</b>
Pier One Deli	1,631	1,876	\$30.00	56,270	66,679
<b>PROJECTED TOTAL RENTAL INCOME</b>	<b>131,794</b>	<b>151,563</b>		<b>\$5,579,127</b>	
<b>TOTAL RENTAL INCOME</b>				<b>\$5,579,127</b>	<b>\$6,611,265</b>
<b>EXCESS RENTAL INCOME</b>					<b>\$1,032,138</b>

**LEASE RENTAL ANALYSIS:**

		Rent Year 1	Rent Year 6****
Total Construction Costs		\$34,511,526	
<b>PROJECTED TOTAL RENTAL INCOME</b>		<b>5,579,127</b>	
Less: Required Return to Tenant (AMB)	Total Construction Costs @ 11%	<u>(3,796,268)</u>	
<b>MINIMUM RENT DUE PORT</b>	Constant throughout Lease term	<b>1,782,859</b>	<b>1,782,859</b>
<b>PARTICIPATION RENT DUE PORT</b>	50% of Excess Rental Income		<b>516,069</b>
<b>RENT DUE PORT</b>	Shows Minimum and Participation Rent, but not Additional Rent	<b>1,782,859</b>	<b>2,298,928</b>
Less: Port Base Rent (Due under Port Sublease)		(1,836,608)	(2,176,380)
Less: Amortization of Port Tenant Improvements over Standard pursuant to Port Sublease	\$10.50 (estimated) psf 180-month amortization @ 9%	(67,000)	(67,000)
<b>NET Rent Due Port/(Due AMB)</b>		<b>(\$120,749)</b>	<b>\$55,548</b>

\* Maximum Construction & Design Contingency equals fifteen percent (15%) of Hard Costs Subtotal.

\*\* Construction interest calculated on funds expended @ interest rate not to exceed 9% per annum, Excludes all points, fees, interest and other expenses regarding any permanent / take-out financing.

\*\*\* Assumes that 20% Historic Tax Credits sold at 85% discount to third party and that 95% of costs eligible.

\*\*\*\* Year 6 represents an example for purposes of demonstrating Participation Rent calculation.

EXHIBIT E

PIER 1 LEASE  
SCOPE OF DEVELOPMENT

## **EXHIBIT E**

### **SCOPE OF DEVELOPMENT**

**&**

### **SCHEMATIC DRAWING OF SITE PLAN AND GROUND FLOOR PLAN**

The proposed project involves the redevelopment and historic rehabilitation of Pier 1 to provide approximately 130,163 usable square feet of office space, approximately 39,340 square feet of public access, and approximately 1,631 square feet of restaurant space. As of the Effective Date of the Lease, approximately 45,630 usable square feet of office space will be occupied by the Port of San Francisco, including meeting facilities, approximately 34,280 usable square feet of the office space will be used by AMB Property Corporation or an Affiliate and approximately 50,253 usable square feet shall be subject to priority maritime office use in accordance with the Maritime Marketing Plan set forth in the Lease. Tenant improvements and finishes shall be consistent with a quality office development located in the San Francisco Financial District. The existing Pier 1 Deli will be remodeled. The public access areas will be restricted for public access uses consistent with BCDC requirements and will include a new deck to be constructed over the existing concrete piles at the south side of the pier. The deck will accommodate outdoor seating for the existing Pier 1 Deli and provide space for Port events. The apron along the south side of the pier will be raised level with the interior finish floor of the shed. The east apron will be widened at least to match the width of the south apron. The north apron will be reconfigured where it meets the bulkhead. The interior and exterior of the bulkhead and shed will be rehabilitated according to the Secretary of the Interior's Standards for Rehabilitation. The proposed project will also include seismic and structural upgrades and improvements to mechanical systems.

The general design of the Project will be consistent with the Schematic Drawings, dated January 19, 1999, agreed-upon by the Waterfront Design Advisory Committee on January 27, 1999, and attached as Attachment 11. Detailed design of the public access elements of the project, including railing, surface treatments, lighting, trash receptacles, furniture, signage, public art (if any), planting, color and canopies will be as approved and adopted by the Port in accordance with the DA.

[illegible]

5-100-4

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## SHIRLEY B. LINDGREN

EXHIBIT F  
FORM OF  
NON-DISTURBANCE AGREEMENT



## EXHIBIT F

### FORM OF NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") dated for reference purposes as of \_\_\_\_\_, \_\_\_\_\_ is made by the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through its Port Commission ("Port") and \_\_\_\_\_ ("Subtenant").

THIS AGREEMENT is made with reference to the following facts and circumstances:

- A. Port has leased to AMB Property, L.P., a Delaware limited partnership ("Tenant"), that certain real property and improvements located at Pier 1 in San Francisco, California, pursuant to that certain Lease between Port and Tenant, dated August 2, 1999. Terms which are initial capitalized in this Agreement which are defined in the Lease shall have the meaning therein specified, except as the context otherwise requires.
- B. Pursuant to the Lease, Tenant has developed and is operating a maritime-related office building on the Pier 1 premises (the ("Premises")).
- C. Pursuant to the terms and provisions of the Lease, Tenant has entered into a Sublease, dated as of August 2, 1999, with Subtenant and, in accordance with the provisions of Section 16.4 of the Lease, has requested Port to enter into this Non-Disturbance and Attornment Agreement with respect to the Sublease.
- D. Accordingly, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Port and Subtenant hereby agree as follows:
1. Attornment. If Port succeeds to the interest of Tenant as sublandlord under the Sublease by reason of any termination of the Lease by Port due to Tenant's default thereunder (following any notice and cure provisions provided therein, including Mortgagee protection provisions), or by any other manner or for any other reason, it is agreed that Subtenant shall be bound to Port and Port shall be bound to Subtenant, under all of the terms, covenants and conditions of the Sublease for the remaining balance of the term thereof, with the same force and effect as if Port were the original sublandlord under the Sublease and Subtenant shall attorn to Port. such attornment to be effective and self-operative without execution of any further instruments on the part of any of the parties to this Agreement, immediately upon Port succeeding to the interest of Tenant as sublandlord under the Sublease.
  2. Non-Disturbance. So long as Subtenant is not in default under the Sublease, which default shall not have been cured or is not in process of being cured within the applicable grace period provided for in the Sublease, Port shall:

(a) recognize the Sublease to be in full force and effect;

(b) not disturb or terminate Subtenant's subleasehold estate under the Sublease by reason of any default by Tenant under the Lease; and

(c) permit Subtenant to remain in quiet and peaceable possession of the leased premises throughout the balance of the term of the Sublease (including, without limitation, any renewal terms thereunder) in accordance with the provisions of the Sublease; provided, however:

(i) Port shall not be liable for or obligated to cure any monetary default under the Sublease occurring prior to the time that Port succeeds to Tenant's interest as sublandlord under the Sublease, nor be subject to any offsets, defences or claims that Subtenant may be able to assert against Tenant as its sublandlord;

(ii) subject to Section 3 below, Port shall not be liable for or obligated to cure any non-monetary default under the Sublease occurring prior to the time Port succeeds to Tenant's interest as sublandlord under the Sublease; and

(iii) Port shall not be bound by any modification or amendment of the Sublease made without Port's written consent, except as otherwise permitted in the Lease.

3. Notice and Opportunity to Cure Under Sublease. Port shall be entitled to notice and opportunity cure any default by Tenant as sublandlord under the Sublease as follows:

(a) Notices of Default. Subtenant shall give Port a copy of any and all notices of default or of the occurrence of an event of default from time to time given to Tenant, as sublandlord under the Sublease, by Subtenant at the same time as and whenever any such notice shall thereafter be given by Subtenant to Tenant. Such notice shall be addressed to Port in the manner for delivery of notices provided in the Lease.

(b) Port's Cure Rights. In the case of any notice of default given by Subtenant to Tenant as sublandlord under the Sublease and the Port in accordance with subsection (a) above, Port shall have the same rights to cure Subtenant's default as are given to a Mortgagee under the Lease, and Subtenant shall accept such performance by or at the instance of Port as if the same had been made by Tenant; provided, however, if such default cannot be cured or remedied within such cure period, such cure period shall be extended so long as Port commences the cure or remedy within such period and prosecutes to completion thereof with diligence and dispatch.

5. General.

5.1 Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns.

5.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

5.3 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

5.4 Special Provisions. From and after the attornment of Subtenant to Port pursuant to Section 1 above, the provisions of Sections 42.1, 42.3, 42.4, 42.5 and 42.6 of the Lease shall be deemed to be incorporated by reference and made a part hereof as if set forth in full in this Agreement, except that "Subtenant" shall be substituted for "Tenant" as set forth in said Sections of the Lease.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

Subtenant:

\_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_

ACCEPTED AND AGREED:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation, operating  
by and through the San Francisco  
Port Commission

By \_\_\_\_\_,  
\_\_\_\_\_, Executive Director

APPROVED AS TO FORM:

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

EXHIBIT G

FIRST SOURCE HIRING AGREEMENT

**FIRST SOURCE HIRING AGREEMENT**  
**Between AMB Property Corporation and Port of San Francisco**

**RECITALS**

A. This First Source Hiring Agreement ("Agreement"), is made and entered as of this 2<sup>nd</sup> day of August, 1999, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City"), operating by and through the SAN FRANCISCO PORT COMMISSION ("Port"), and AMB PROPERTY, L.P., a Delaware limited partnership ("Tenant"). This Agreement shall be administered by and through the City's First Source Hiring Administration ("FSHA").

B. The Port and Tenant have entered into a Development Agreement, dated as of March 9, 1999, and a Lease, dated as of August 2, 1999 ("Lease"), under which Tenant has agreed to lease from Port for a term of 50 years and to construct an office building and restaurant/deli at Pier 1, a Port-owned facility exceeding 50,000 square feet

C. This Agreement is made pursuant to the First Source Hiring Program ("Program") set forth in Chapter 83 of the San Francisco Administrative Code. Tenant is subject to the Program as a "Contractor" entering into a Property Contract with Port, as a "Developer" obtaining a Permit, and as an "Employer," as those terms are defined below and as they are defined under Section 83.4 of the San Francisco Administrative Code.

**AGREEMENT**

1. **Definitions.** For purposes of this Agreement, initially capitalized terms shall be defined as follows:

**Commercial Activity:** shall mean office and restaurant uses.

**Contractor:** shall mean an entity that has entered into a Property Contract with Port.

**Developer:** shall mean an entity that has the right under the San Francisco Planning Code and/or the San Francisco Building Code to make an application for approval of a Commercial Activity.

**Development Project:** shall mean Commercial Activity at Pier 1 which requires a Permit.

**Economically Disadvantaged Individual:** shall mean an individual who is either (a) eligible for services under the Job Training Partnership Act, 29 U.S.C. section 1503, as determined by the San Francisco Private Industry Council; or (b) designated as "economically disadvantaged" by FSHA as an individual who is at risk of relying upon, or returning to, public assistance.

**Employer:** shall mean Tenant, Contractor, Developer, agents of the Developer, any Subcontractor of Tenant, any Subtenant or other occupant of Tenant, or any person(s), firm, partnership, corporation, or combination thereof, engaged in the Commercial Activity in the Development Project.

**Entry Level Position:** shall mean a non-managerial position that requires either (1) no education above a high school diploma or certified equivalency; or (2) less than two years training or specific preparation. It shall include temporary and permanent jobs and construction jobs related to the Development Project.

**First Opportunity:** shall mean consideration by an Employer of the System referrals for filling Entry Level Positions prior to recruitment and hiring of non-System job applicants.

**FSHA:** First Source Hiring Administration, the body designated to administer and monitor the San Francisco Workforce Development System as set forth in section 83.6 of the San Francisco Administrative Code. **The FSHA Jobs Hotline number is (415) 749-7500 (CalJOBS).**

**Good Faith Efforts:** shall mean engaged in reasonable employment opportunity outreach including the development of recruitment, interview, hiring and Retention plans in collaboration with the System.

**Interviewing Requirement:** shall mean notification to the System of available Entry Level Positions, receipt of System referrals and fair consideration of System referrals for a specified period of time prior to recruitment and hiring of non-System job applicants.

**Job Classification:** shall mean categorization of employment opportunities or positions by craft, occupational title, skills and experience required, if any.

**Permit:** as of the date hereof, shall mean any building permit application for more than 50,000 square feet of Commercial Activity at Pier 1 which involves new construction, an addition, or alteration and which results in the expansion of entry level positions for the Commercial Activity. For Phase II of the Program (which will go into effect as of April 2001), "Permit" shall also include the definition thereof set forth in Section 83.4(m) of the San Francisco Administrative Code.

**Program:** shall mean the First Source Hiring Program set forth in Chapter 83 of the San Francisco Administrative Code.

**Property Contract:** shall mean the Lease between Port and Tenant for the exclusive use of Pier 1 to be used for the operation of one or more business establishments that create available Entry Level Positions.

**Publicize:** shall mean to advertise or post or to participate in job fairs or other forums in which employment information is available.

**Qualified:** shall mean an Economically Disadvantaged Individual who meets the minimum bona fide occupational qualifications designated and submitted to the System by an Employer.

**Retention:** shall apply to the Entry Level Positions, not to any particular individual.

**System:** shall mean the San Francisco Workforce Development System established by the City and managed by FSHA for maintaining (1) a pool of Qualified individuals, and (2) the mechanism by which such individuals are certified and referred to prospective Employers covered by the Program.

**Subcontractor:** shall mean any person(s), firm, partnership, corporation, or combination thereof, that has a direct contract with Tenant to perform construction work on, or Commercial Activity in, the Development Project at Pier 1.

**Subtenant:** shall mean any person(s), firm, partnership, corporation, or combination thereof (except City or Port), that has a direct contract with Tenant to sublease, occupy, franchise or license any portion of Pier 1 for a period exceeding 29 days.

**Tenant:** shall mean AMB Property, L.P., a Delaware limited partnership.

2. **Good Faith Efforts by Tenant.** Tenant, in its capacity as a Contractor entering into a Property Contract with Port, agrees to make Good Faith Efforts to fill Entry Level Positions at its company headquarters located at Pier 1, in San Francisco, California, through referrals from the System or a System-approved employment services provider.

3. **Good Faith Efforts by Subcontractors.** Tenant, in its capacity as a Developer applying for a Permit, agrees that in all contracts that it enters into with any Subcontractors, it shall require said Subcontractors to make Good Faith Efforts to fill their Entry Level Positions for construction jobs through referrals from the System or a System-approved employment services provider, and shall incorporate the requirements set forth in this Agreement in all relevant contracts it enters into with Subcontractors from and after the date of this Agreement. If the Tenant fulfills its obligations under this Agreement, Tenant shall not be held responsible for the failure of a Subcontractor to comply with the requirements of this Agreement or the Program, and City shall then have the remedies available to it under Section 13 against such Subcontractors, but Tenant shall have no further enforcement obligations against such Subcontractors.

4. **Good Faith Efforts by Subtenants.** Tenant, in its capacity as a Contractor entering into a Property Contract with Port, further agrees that in all contracts that it enters into with any Subtenants, Tenant shall require said Subtenants to make Good Faith Efforts to fill their Entry Level Positions through referrals from the System or a System-approved employment services provider, and shall incorporate the requirements set forth in this Agreement in all relevant contracts it enters into with Subcontractors from and after the date of this Agreement. If the Tenant fulfills its obligations under this Agreement, Tenant shall not be held responsible for the failure of a Subcontractor to comply with the requirements of this Agreement or the Program, and City shall then have the remedies available to it under Section 13 against such Subcontractors, but Tenant shall have no further enforcement obligations against such Subcontractors.

5. **First Opportunity.** Except to the extent that Tenant intends to fill an Entry Level Position from a pool of internal candidates, Tenant agrees to offer, and to require its Subcontractors and

Subtenants to offer, to the System the First Opportunity to provide Qualified Economically Disadvantaged Individuals for employment consideration in Entry Level Positions, subject to any enforceable collective bargaining agreements. Employers shall consider all applications of Qualified Economically Disadvantaged Individuals referred by the System for employment. So long as Employers utilize nondiscriminatory screening criteria, Employers shall have the sole discretion to interview, hire or reject individuals referred to them by the System.

6. **Interviewing Requirement.** The duration of the Interviewing Requirement shall be for the five (5) days immediately after Tenant notifies the System of the job availability (provided, however, that this requirement shall not apply to the extent that Tenant intends to fill an Entry Level Position from a pool of internal candidates). During this period, Employers may Publicize the availability of Entry Level Positions only through the System. The System referral telephone number is (415) 749-7500.

7. **Information to be Provided by Tenant and Subtenants.** Within thirty (30) days after Tenant takes physical occupancy of the premises under the Lease, Tenant shall complete and submit to the System the "Employer's Projection of Entry Level Positions" Form. Whenever an Entry Level Position becomes available during the term of the Lease, Tenant shall notify the System as soon as reasonably practicable and provide the information requested by FSHA. Tenant further agrees to include language in its Subleases entered into on or after the date of this Agreement, requiring its Subtenants to complete and submit to the System the "Employer's Projection of Entry Level Positions" Form within thirty (30) days after any Subtenant takes physical occupancy of Port premises under a sublease, and to notify the System as soon as reasonably practicable and provide the information requested by FSHA whenever an Entry Level Position becomes available in a Subtenant's company at the Pier 1 Premises during the term of the sublease.

8. **Information to be Provided by Subcontractors.** Tenant agrees to include language in its Subcontracts entered into on or after the date of this Agreement, requiring its Subcontractors, prior to commencing construction work at the Development Project, to complete and submit to the System the "Employer's Projection of Entry Level Positions" Form, and to notify the System promptly, and provide the information requested by FSHA, whenever an Entry Level Position construction job becomes available during the period of construction.

9. **Record-Keeping.** Tenant shall maintain accurate records, and shall include language in its Subcontracts and Subleases requiring its Subcontractors and Subtenants to maintain accurate records, demonstrating compliance with the Program, including tracking information on FSHA-approved forms, if requested. Tenant's records shall include, without limitation, records for each available Entry Level Position of the number of applicants referred, number of applicants interviewed, number of job offers made, number of applicants hired, and number of applicants rejected. If a significant number of positions are to be filled during a given period, or other circumstances warrant, FSHA may require daily, weekly or monthly reports containing all or some of the above information.

10. **Obligations of FSHA.** Tenant acknowledges that pursuant to the Program, the FSHA shall:



- a. Develop standardized forms for reporting, notification and tracking of employment needs and Entry Level Positions, and provide the same to Employers.
- b. Receive job notifications and job orders, and immediately initiate recruitment and pre-screening activities.
- c. Recruit Qualified Economically Disadvantaged Individuals to create a pool of applicants for jobs that match Employers' job specifications, and, to the extent appropriate, train applicants for jobs that will become available through the Program.
- d. Screen and refer applicants according to qualifications and specific selection criteria submitted by Employers.
- e. Provide funding for City-sponsored pre-employment and employment training, and for support services programs.
- f. Follow-up with Employers on results of applicant interviews and initiate corrective action as necessary to maintain an effective employment/training delivery system.
- g. Monitor compliance under this Agreement by examining the reporting, notification and tracking forms completed and submitted by Employers.

11. **Essential Functions.** Nothing in this Agreement precludes an Employer from using temporary employees to the extent that Tenant would be using such temporary employees in the ordinary course of business and Tenant is not using such temporary employees as a means to avoid the requirements of this Agreement. In addition, Tenant may hire employees on a temporary basis without complying with the provisions of this Agreement if Tenant reasonably determines that such hire is urgently needed to perform essential functions of its operation. In such event, the obligation to make Good Faith Efforts to fill such vacancies permanently with System referrals remains in effect unless Tenant provides evidence to City's reasonable satisfaction that re-filling such vacancy with System referrals would be infeasible or impracticable. For these purposes, "essential functions" means those functions absolutely necessary to remain open for business.

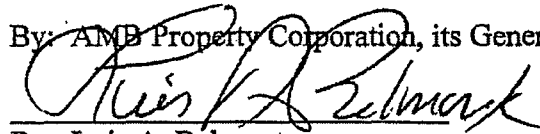
12. **Collective Bargaining Agreements.** Nothing in this Agreement shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, or existing employment contracts. FSHA will take primary responsibility for integrating the requirements of the Program with any collective bargaining agreement.

13. **Remedies.** If Tenant or any of its Subcontractors or Subtenants fail to comply with this Agreement, Port or the City are entitled to the remedies set forth in Sections 83.10 and 83.12 of the San Francisco Administrative Code

**TENANT**

**AMB Property, L.P., a Delaware limited partnership**

By: AMB Property Corporation, its General Partner



By: Luis A. Belmonte  
Its: Managing Director

**PORT**

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

By   
\_\_\_\_\_  
Douglas F. Wong  
Executive Director

APPROVED AS TO FORM:  
**LOUISE H. RENNE**  
CITY ATTORNEY

BY   
\_\_\_\_\_  
DEPUTY CITY ATTORNEY

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EXHIBIT H

FORM OF  
MEMORANDUM OF LEASE

RECORDING REQUESTED BY, AND  
WHEN RECORDED, MAIL TO:

AMB PROPERTY, L.P.  
c/o Sheppard, Mullin, Richter & Hampton LLP  
Four Embarcadero Center, 17<sup>th</sup> Floor  
San Francisco, California 94111  
Attention: Robert A. Thompson, Esq.

FOR RECORDER'S USE ONLY

### MEMORANDUM OF LEASE

This Memorandum of Lease ("Memorandum"), dated for reference purposes as of this \_\_\_\_ day of August 1999, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), operating by and through the SAN FRANCISCO PORT COMMISSION ("Landlord") and AMB PROPERTY L.P., a Delaware limited partnership ("Tenant").

#### Recitals

A. Concurrently herewith, Landlord and Tenant have entered into that certain Lease (the "Lease"), pursuant to which Landlord leased to Tenant and Tenant leased from Landlord the real property (the "Premises") more particularly described in the attached Exhibit A and Exhibit B which is incorporated by this reference.

B. Landlord and Tenant desire to execute this Memorandum to provide constructive notice of Tenant's rights under the Lease to all third parties.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Term. Landlord leases the Premises to Tenant for a term commencing on August \_\_\_\_, 1999, which is the date upon which Port delivers possession of the Premises to Tenant in accordance with that certain agreement entitled "Pier 1 Development Agreement" (the "Commencement Date"). Concurrently with the Lease, Landlord and Tenant have entered into the Pier 1 Development Agreement. The Term of the Lease shall expire on the date that is fifty (50) years after the Commencement Date, unless earlier terminated in accordance with the terms of the Lease.

2. Lease Terms. This lease of the Premises to Tenant is pursuant to the Lease, which is incorporated in this Memorandum by reference. Except as otherwise defined in this Memorandum, capitalized terms shall have the meanings given them in the Lease.

3. Successors and Assigns. This Memorandum and the Lease shall bind and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject, however, to the provisions of the Lease on assignment.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum as of the day and year first above written.

TENANT:

AMB Property, L.P.,  
a Delaware limited partnership

By: AMB Property Corporation, a Maryland  
Corporation  
Its: General Partner

\_\_\_\_\_  
By: Luis A. Belmonte  
Its: Managing Director

LANDLORD:

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

By: \_\_\_\_\_  
Douglas F. Wong  
Executive Director

APPROVED AS TO FORM:

LOUISE H. RENNE, City Attorney

By: \_\_\_\_\_  
Neil H. Sekhri  
Assistant Port General Counsel

