

File No. 170831

Committee Item No. 5

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date September 14, 2017

Board of Supervisors Meeting

Date _____

Cmte Board

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

OTHER (Use back side if additional space is needed)

- Port Commission Resolution
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Completed by: Linda Wong Date September 8, 2017

Completed by: Linda Wong Date _____

1 [Lease Agreement - IDEO, LP - Pier 26 - Initial Total Monthly Base Rent of
2 \$90,118.35]

3 **Resolution approving Lease No. L-16159 between IDEO, LP, and the Port for**
4 **approximately 26,901 square feet of office space located at Pier 26 Annex Building, for**
5 **a term of eight years to commence following Board approval, with an initial total**
6 **monthly base rent of \$90,118.35 subject to an annual 3% increase.**

7
8 WHEREAS, Chapter 1333 (the "Burton Act") and San Francisco Charter, Sections
9 4.114 and B3.581 empower the San Francisco Port Commission ("Port Commission") with the
10 power and duty to use, conduct, operate, maintain, manage, regulate and control the lands
11 within Port Commission jurisdiction; and

12 WHEREAS, IDEO, LP, a Delaware Limited Partnership ("IDEO, LP"), a design and
13 innovation consultancy firm, wishes to consolidate and renew two Port office leases with
14 IDEO-affiliated companies at Pier 26 Annex into Port Lease No. L-16159 (the "Lease"), for
15 approximately 26,901 square feet for a 96-month lease ("Term"); and

16 WHEREAS, The Port Commission approved the Lease on May 9, 2017, under Port
17 Commission Resolution No. 17-18; and

18 WHEREAS, The Lease has an initial monthly rent of \$90,118.35 per month or \$3.35
19 per square foot which conforms to the monthly rental rate schedule adopted by the Port
20 Commission on July 12, 2016, as Port Resolution No. 16-27; monthly rent is subject to an
21 annual 3% increase; and

22 WHEREAS, A copy of the Lease is on file with Clerk of the Board of Supervisors in File
23 No. 170831; and

24 WHEREAS, The permitted use will be a continuation of the existing use and is not a
25 project subject to review under the California Environmental Quality Act; and

1 WHEREAS, Charter, Section 9.118 requires Board of Supervisors approval of a real
2 property lease with a term of ten or more years, or having anticipated revenue to the City of
3 \$1,000,000 or more when the Lease is executed; and

4 WHEREAS, Anticipated revenue from this Lease is \$9,997,477; and

5 WHEREAS, At the end of the Term, IDEO, LP shall have a one-time right to make a
6 written offer to extend or renew the Lease and such extension or renewal will be subject to
7 Port Commission and/or Board of Supervisors approval if it has a term of ten years or more,
8 or has anticipated revenues of \$1,000,000 or more; now, therefore, be it

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

10 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
11 Director of the Port or her designee (the "Executive Director") to execute the Lease as
12 approved by the City Attorney and in substantially the form on file with the Clerk of the Board
13 of the Supervisors in File No. 170831; and, be it

14 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
15 Director to enter into any additions, amendments or other modifications to the Lease
16 (including, without limitation, preparation and attachment of, or changes to, any or all of the
17 exhibits and ancillary agreements) that the Executive Director, in consultation with the City
18 Attorney, determines when taken as a whole, are in the best interest of the Port, do not
19 materially increase the obligations or liabilities of the Port or City or materially decrease the
20 public benefits accruing to the Port, and are necessary or advisable to complete the
21 transactions contemplated and effectuate the purpose and intent of this Resolution, such
22 determination to be conclusively evidenced by the execution and delivery by the Executive
23 Director of any such documents; and, be it

1 FURTHER RESOLVED, That within thirty (30) days of the Lease being fully executed
2 by all parties, the Port shall provide copies of the Lease to the Clerk of the Board for inclusion
3 into the official file.
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<p>Item 5 File 17-0831</p>	<p>Department: Port</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed resolution approves a new lease between IDEO, LP, and the Port for approximately 26,901 square feet of office space in the Pier 26 Annex Building for a term of eight years from approximately September 2017 through August 2025. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • The Port originally entered into an office space lease with IDEO at the Pier 26 Annex in 1995 without a competitive solicitation process because, at the time of the original lease, the Port had a large amount of vacant shed space and IDEO proposed to convert the vacant shed space at Pier 26 Annex into commercial office space, with IDEO funding the capital investment. In 2010 the Board of Supervisors approved the extension of the lease through 2020. The proposed new eight-year lease would combine the original 19,434 square feet of lease space with 7,467 square feet of space from a second lease agreement with IDEO, totaling 26,901 square feet. • The Port is recommending a new lease with IDEO at current market rates without undergoing a competitive solicitation because (a) IDEO originally leased space at the Pier 26 Annex in 1995 and funded the development of office space in the vacant shed space, thus increasing the value of the Port property; (b) IDEO is a tenant in good standing, which according to the Port’s Tenant in Good Standing Policy allows for consideration of lease amendments, additional term, and change in leasehold size; (c) competitive bidding for office space rarely occurs in the private market; and (d) IDEO will pay fair market rent as determined by a comprehensive market study approved by the Port Commission. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • The Port Commission approves the Port’s Rental Rate Schedule each fiscal year, which sets the minimum fair market rent for lease of Port properties. Under the proposed lease between IDEO and the Port for the Pier 26 Annex, the first year rent is \$3.35 per square foot per month (\$40.20 per square foot per year), which exceeds the FY 2017-18 Rental Rate Schedule minimum rate of \$3.25 per square foot per month for the Pier 26 Annex. • Total first year rent paid by IDEO to the Port is \$1,081,420; total rent to the Port over eight years is \$9,997,487. <p style="text-align: center;">Recommendation</p> <ul style="list-style-type: none"> • Approve the proposed resolution. 	

MANDATE STATEMENT

City Charter Section 9.118(c) requires that any lease for a period of ten or more years, including options to renew, or with anticipated revenues of \$1,000,000 or more be subject to approval of the Board of Supervisors.

According to City Administrative Code Section 23.33, leases of City property with rent of at least \$2,500 per month should be awarded through a competitive solicitation unless such competitive solicitation is impractical and impossible. The terms "impractical and impossible" are not defined in the Administrative Code.

Administrative Code Section 23.33 also specifies that any leases of City-owned property awarded without a competitive solicitation shall have rent equal to fair market value or more.

The proposed new lease would be awarded to the existing lessee through direct negotiations rather than through a competitive process. Rent would be set at fair market value based on the Port's Rental Rate Schedule.

BACKGROUND

IDEO, LLC (IDEO), a design and innovation consulting firm, began leasing 12,360 square feet of office space at the Pier 26 Annex, located at Bryant and Embarcadero, in 1995, with an original lease term of five years. The Port awarded the original IDEO lease without a competitive solicitation process because, at the time of the original lease, the Port had a large amount of vacant shed space and IDEO proposed to convert the vacant shed space at Pier 26 Annex into commercial office space, with IDEO funding the capital investment in the Port's property, thereby increasing both the value of the space and potential future rent rate. The lease was subsequently renewed in 2001, 2002, and 2004, but never required Board of Supervisors approval because the lease terms were less than ten years and resulted in revenues of less than \$1,000,000.

In October 2010, the Board of Supervisors approved a five year lease extension through November 2015, with an option for an additional five year extension through November 2020, and the addition of 7,074 square feet of office space, bringing the total leased area to 19,434 square feet (File No. 10-0692; Res. 493-10). In July 2012, the Port and IDEO entered into a four year lease, which did not require Board of Supervisors approval, for 7,467 square feet of office space in the Pier 26 Annex to occupy the entire premises of 26,901 square feet. Between the two leases, IDEO currently pays \$69,775 per month, for an average rental rate of \$2.59 per square foot.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve a new lease between the Port and IDEO for 26,901 square feet of office space in the Pier 26 Annex for a term of eight years from approximately

September 2017 through August 2025. The terms of the proposed lease are summarized in Table 1 below.

Table 1: Proposed Lease Terms

Lease Terms	
Premises	26,901 square feet of office space
Term	Eight years from approximately September 2017 through August 2025
First Year Rent	\$3.35 square foot per month (\$90,118 per month)
Rent Increase	7.5 percent in year two and 3.0 percent in years three through eight
Utilities and Operating Costs	Paid by tenant
Maintenance	Pier substructure and utility infrastructure on Pier 26 maintained by Port Pier 26 Annex office building maintained by tenant
Option to Renew	Tenant has right to make an offer to extend or renew the lease, subject to negotiation between the Port and the tenant of the terms of the lease extension

FISCAL IMPACT

As shown in Table 2 below, under the proposed lease IDEO would pay to the Port monthly rent in the first year of \$90,118. The total first year rent paid by the tenant to the Port would be \$1,081,420. Over the term of the eight year lease, the tenant would pay the Port rent of \$9,997,487.

Table 2: Rents Payable to the Port over Eight Year Lease

Year	Monthly Rate (per square foot)	Total Monthly Rent	Total Annual Rent	Percentage Change from Previous Year
1	3.35	90,118	1,081,420	n/a
2	3.60	96,844	1,162,123	+7.5%
3	3.71	99,803	1,197,633	+3.0%
4	3.82	102,761	1,233,142	+3.0%
5	3.94	105,990	1,271,879	+3.0%
6	4.06	109,218	1,310,617	+3.0%
7	4.18	112,446	1,349,354	+3.0%
8	4.31	115,943	1,391,320	+3.0%
Total			\$9,997,487	

* Totals may not add due to rounding.

Fair Market Rent

The Port Commission approves the Port's Rental Rate Schedule each fiscal year, which sets the minimum fair market rent for lease of Port properties. In order to determine fair market rent for Port properties, the Port reviewed market reports published by seven San Francisco commercial real estate firms, as well as its own leasing activity, supply and demand, and vacancy rates. The proposed rate schedule was peer reviewed by third party consultant Keyser Marston Associates.

Under the proposed lease between IDEO and the Port for the Pier 26 Annex, the first year rent is \$3.35 per square foot per month (\$40.20 per square foot per year), which exceeds the FY 2017-18 Rental Rate Schedule minimum rate of \$3.25 per square foot per month for the Pier 26 Annex.

No Competitive Solicitation

According to Ms. Elsa Lamb, Port Commercial Property Manager, when an existing office lease term is coming to an end, the Port typically attempts to negotiate an extension of the existing lease or a new sequential lease with the current tenant if the tenant is in good standing. According to Ms. Lamb, the Port is recommending a new lease with IDEO at current market rates without undergoing a competitive solicitation because (a) IDEO originally leased space at the Pier 26 Annex in 1995 and funded the development of office space in the vacant shed space, thus increasing the value of the Port property; (b) IDEO is a tenant in good standing, which according to the Port's Tenant in Good Standing Policy allows for consideration of lease amendments, additional term, and change in leasehold size; (c) competitive bidding for office space rarely occurs in the private market; and (d) IDEO will pay fair market rent as determined by a comprehensive market study approved by the Port Commission.

In the resolution setting the Port's FY 2017-18 Rental Rate Schedule, the Port Commission "finds that competitively bidding the real property agreements covered by the delegated authorities and the rental rate schedules approved by this Resolution is impractical." The Synopsis of Port Leasing Policies, an attachment to the rental rate schedule provided to the Port Commission, notes: "The Port has a high volume of leases (about 550) for relatively small leased areas at nominal rental rates. To competitively bid such a large volume of leases would be impractical because the benefit of doing so does not outweigh the cost of resources that would be required just for this effort. Moreover, Port is generally able to accommodate most entities that wish to enter into leases for general special events, offices, and pier and open land storage space. As such, it is the policy of the Port not to competitively bid leases or licenses for special events, office, warehouse space, or unimproved land."

RECOMMENDATION

Approve the proposed resolution.

MEMORANDUM

May 4, 2017

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

FROM: Elaine Forbes
Executive Director

SUBJECT: Request approval of an Eight (8) Year Lease (No. L-16159) between the Port of San Francisco and IDEO, LP for approximately 26,901 square feet of office space located at the Pier 26 Annex Building, subject to Board of Supervisors' approval

DIRECTOR'S RECOMMENDATION: Approve Attached Resolution

At its meeting on April 11, 2017, the Port Commission heard a presentation regarding approval of a five (5) year lease with IDEO for space at Pier 26 Annex. The Commission had a number of comments regarding the rental rate structure and the assignment of rates to the various parcels within the Premises. This staff report has been amended to reflect the current proposal for an eight (8) year lease with IDEO for approximately 26,901 square feet of space located at Pier 26 Annex. Material updates to the April 11, 2017 memorandum are presented herein as strikethrough and underlined text.

The comments the Port Commission made encouraged Port staff and the management of IDEO to re-evaluate the rate structure and "patchwork" nature of the current lease. For example, currently Parcels A and B comprise an existing lease, which still has a remaining term of four (4) years with a low average rate of \$2.47 per square foot. It was agreed that it is to the benefit of both parties to create a logically succinct lease that meets the needs of both the Port and IDEO. The Port and IDEO have now renegotiated the lease to create a more streamline and functional rate structure. This new lease proposal attempts to eliminate those "patchwork" elements of the last proposal presented to the Port Commission on April 11, 2017, which included a number of parcels within the Premises and separate rates assigned to those parcels. This lease will aggregate all existing parcels into one single parcel with one overall rate for the entire Premises.

THIS PRINT COVERS CALENDAR ITEM NO. 12A

Under the current leases the tenant is paying an average rate of \$2.59 per square foot for the entire space. This equates to \$69,774.50 per month in rent, which is \$837,294.00 in annual rent.

Under this proposal, the monthly rate for the entire Premises under the new Lease will be \$3.35 per square foot for the first year and escalate to \$3.60 per square foot in the second year. This equates to a first year monthly rent of \$90,118.35 (\$1,081,420.20 annually). This is a 29.16% increase for the first year of the Lease from the existing rental rate. In year two the monthly rent is again increased to \$96,843.60 (\$1,162,123.20 annually). This represents a 7.46% increase from year one and a collective increase of 36.62% for years one and two of the Lease. The rental rate will be increased by 3% per year thereafter. The current Port approved Parameter Rates for the Premises are between \$3.15 and \$3.75 per square foot. The proposed rate of \$3.35 for year one is in the mid-range of Parameter rates and the \$3.60 for year two is at the high end of the Parameter range.

For the significant increase in the rental rate the Port and IDEO will also agree to a slightly longer lease term of eight (8) years, from the previously proposed five (5) year term. Unlike the requirements under the Retail Leasing Policy that require a retail tenant to make capital improvements to justify an increased term of the lease, the office market is quite different. Private sector office landlords commonly provide tenant improvement allowances to tenants of between \$30 to \$60, sometimes as high as \$95 per square foot. Aside from carpet and paint credits, the Port does not allow for landlord tenant improvement allowances or concessions within its standard leasing policies.

It should be noted that the Premises are compromised by virtue of the seawall running directly under the western border of the Premises. The Port has added very strong language in the new lease allowing the Port unfettered access to the seawall to perform inspections and possibly undertake repairs should they be required.

EXECUTIVE SUMMARY

Port staff requests approval of Lease No. L-16159 ("Lease") between the Port of San Francisco ("Port") and IDEO, LP, a Delaware Limited Partnership ("IDEO"), to renew its office lease at Pier 26 Annex for a term of ~~five (5)~~ eight (8) years.

BACKGROUND

IDEO, a design and innovation consultancy, has leased office space from the Port since the 1990's. IDEO wishes to renew its office lease at Pier 26 Annex for a term of ~~five (5)~~ eight (8) years.

Pier 26 Annex, built between 1928-1930, is located south of the Ferry Building and adjacent to and just north of Pier 28. The Pier 26 Annex building contains approximately 26,901 square feet of pile-supported, enclosed pier space, which IDEO occupies entirely.

The Lease requires approval by the City's Board of Supervisor ("Board") under Charter Section 9.118 because rent revenues over the Term will exceed one million dollars (\$1,000,000). All terms and conditions of the Lease, including parameter rental rates, conform to the Port Commission's previously approved terms and conditions. The Port Commission adopted the current parameter rental rate schedule on July 12, 2016 (Resolution # 16-27).

STRATEGIC PLAN

This lease achieves the goals and objective of the Port's Strategic Plan as follows:

Economic Vitality - by planning and executing a holistic and balanced strategy to the real estate portfolio and asset management to maximize asset value and income stream to the Port.

Stability - by increasing Port revenues to \$125 million and continuing to expand ongoing revenue sources, and by retaining a diversified tenant base that will perform through economic cycles.

PROPOSED LEASE TERMS

Port Real Estate staff and representatives of IDEO, LP have negotiated the proposed Lease No. L-16159 providing for the following terms and conditions:

<i>Tenant:</i>	IDEO, LP , a Delaware limited partnership
<i>Premises :</i>	Approximately 26,901 rentable square feet of office at Pier 26 Annex, located on The Embarcadero. consisting of the following: Parcel A: Approx. 12,360 rentable square feet of first floor office space; Parcel B: Approx. 7,074 rentable square feet of first floor office space; Parcel C: Approx. 6,713 rentable square feet of first floor office space; and Parcel D: Approx. 754 rentable square feet of mezzanine office space. and Tenant will also have an non-exclusive right to the north and south stringers adjacent to the Facility and the ramp/staircase on the westerly side of the Facility subject to the same terms and conditions as if they are part of the Premises.
<i>Length of Term:</i>	Five (5) <u>Eight (8)</u> years

<i>Lease and Rent Commencement Date:</i>	The first day of the first calendar month following Tenant and Port execution and after Port Commission and Board of Supervisors' approval.			
<i>Lease Expiration Date:</i>	The last day of the sixtieth (60th) <u>ninety sixth (96th)</u> month after the Commencement Date.			
<i>Right of First Offer:</i>	At the end of the Term, Tenant shall have a one-time right to make a written offer to extend or renew the Lease. Such extension or renewal is subject to Port Commission and/or Board approval if rent revenues over the term of the new lease, exceed one million dollars (\$1,000,000).			
<i>Monthly Base Rent:</i>	Months	Sq. Ft.	Monthly Base Rate	Total Monthly Base Rent
Parcel A	1-12	12,360	\$3.095/sf	\$38,254.20
Parcel B		7,074	1.373/sf	9,712.60
Parcel C		6,713	3.15/sf	21,146.00
Parcel D		754	3.15/sf	2,375.00
<u>Entire Premises</u>		<u>26,901</u>	<u>\$3.35</u>	<u>\$71,487.80</u>
Parcel A	13-24	12,360	\$3.188/sf	\$39,403.68
Parcel B		7,074	1.414/sf	10,002.64
Parcel C		6,713	3.245/sf	21,783.68
Parcel D		754	3.245/sf	2,446.73
<u>Entire Premises</u>		<u>26,901</u>	<u>\$3.60</u>	<u>\$73,636.73</u>
Parcel A	25-36	12,360	\$3.284/sf	\$40,590.24
Parcel B		7,074	1.457/sf	10,306.82
Parcel C		6,713	3.343/sf	22,441.56
Parcel D		754	3.343/sf	2,520.62
<u>Entire Premises</u>		<u>26,901</u>	<u>\$3.71</u>	<u>\$75,859.24</u>
Parcel A	37-48	12,360	\$3.383/sf	\$41,813.88
Parcel B		7,074	1.500/sf	10,611.00
Parcel C		6,713	3.443/sf	23,112.86
Parcel D		754	3.443/sf	2,596.02
<u>Entire Premises</u>		<u>26,901</u>	<u>\$3.71</u>	<u>\$41,813.88</u>

				\$78,133.76
<u>Entire Premises</u>		<u>26,901</u>	<u>\$3.82</u>	<u>\$102,761.00</u>
Parcel A	49-60	12,360	\$3.485/sf	\$43,074.60
Parcel B		-7,074	-1.545/sf	-10,929.33
Parcel C		-6,713	-3.546/sf	-23,805.64
Parcel D		-754	-3.546/sf	-2,673.68
				\$80,483.25
<u>Entire Premises</u>		<u>26,901</u>	<u>\$3.94</u>	<u>\$105,989.94</u>
<u>Entire Premises</u>	61-72	<u>26,901</u>	<u>\$4.06</u>	<u>\$109,218.06</u>
<u>Entire Premises</u>	73-84	<u>26,901</u>	<u>\$4.18</u>	<u>\$112,446.18</u>
<u>Entire Premises</u>	85-96	<u>26,901</u>	<u>\$4.31</u>	<u>\$115,943.31</u>
<i>Security Deposit:</i>	One Hundred Sixty Thousand Nine Hundred Sixty Six and 50/100 Dollars (\$160,966.50) <u>Two Hundred Thirty One Thousand Eight Hundred Eighty Six Dollars and 62/100 (\$231,886.62)</u>			
<i>Permitted Use:</i>	The Premises shall be used solely for general office use and as a model making workshop.			
<i>Utilities:</i>	Tenant, at its sole cost and expense, shall make arrangements and pay for all Utilities and services to be furnished on, in or to the Premises.			
<i>Maintenance and Repair:</i>	Port is required to maintain the substructure (including the structural portions of the pier underlying the Premises), roof and exterior walls of the Premises, with the exception of all doors, windows and the ramp/staircase on the westerly side of the Facility, which shall be maintained by Tenant. Tenant shall be solely responsible for all other repair and maintenance as further described in the Lease. The overall rating for the substructure for the wood deck area supporting the office building is Green (unrestricted use) except for a 20' x 20' area around a failed pile which is rated Yellow with Green Hatching, restricting load in this area to 40 PSF.			
<i>Seawall:</i>	The Seawall runs underneath the Pier 26 Annex building. In the Lease, the Port reserves the rights to enter and use the Premises as needed for the purpose of inspecting, repairing, and rebuilding the Seawall and/or to terminate the Lease as needed due to the Seawall repair project. These new			

	provisions will be added to all leases that could be impacted by the Seawall Resiliency Project.
<i>Occupancy Limitations:</i>	The Pier 26 Annex building has a maximum occupancy of two hundred eight (208) without additional permitting by the Port's Fire Marshall.
<i>Insurance:</i>	Tenant shall provide insurance coverage acceptable to Port and City Risk Manager.
<i>City Requirements:</i>	The Lease includes provisions requiring Tenant to comply with all applicable City laws (including, but not limited to, Non-Discrimination, First Source Hiring, Health Benefits Coverage, Limitation on Contributions, Prevailing Wages and other applicable laws).
<i>Standard Lease Provisions:</i>	The Lease contains all current lease provisions on the standard form approved by the City Attorney's office including provisions regarding: compliance with laws, Port's Right to Terminate, Indemnity and Exculpation and Hazardous Materials.

Tenant in Good Standing: Tenant is a Tenant in Good Standing pursuant to Port Commission policy.

Environmental Review: The use is a continuation of existing and related uses and is therefore not a project subject to review under the California Environmental Quality Act.

RECOMMENDATION

Port staff recommends that the Port Commission approve proposed Lease No. 16159 between the Port and IDEO, LP and authorize the Executive Director to forward the Lease to the Board of Supervisors for approval and upon the effectiveness of such approval, authorize the Executive Director or designee to execute the Lease.

Prepared by: Elsa Lamb
Commercial Property Manager

Prepared for: Mark Lozovoy
Acting Deputy Director of Real Estate

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

RESOLUTION NO. 17-18

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

WHEREAS, Pier 26 Annex is located south of the Ferry Building and adjacent to and north of Pier 28 in the City and County of San Francisco and has provided IDEO, LP, a tenant in good standing, with leased office space since the mid-1990's; and

WHEREAS, Port Staff has negotiated a new eight (8) year office lease for approximately 26,901 rentable square feet with IDEO, LP, the terms of which are described in the Memorandum to the Port Commission dated May 4, 2017; and

WHEREAS, The use is a continuation of existing and related uses and is therefore not a project subject to review under the California Environmental Quality Act; and

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

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

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of May 9, 2017.

Amy Quesada Digitally signed by Amy Quesada
DN: cn=Amy Quesada, ou=Port of San Francisco, ou=Port
Executive, email=amy.quesada@portcom.org, c=US
Date: 2017.05.11 16:25:47 -0700

Secretary

MEMORANDUM

July 7, 2016

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

FROM: Elaine Forbes
Interim Executive Director

SUBJECT: Request Approval of the Fiscal Year 2016-17 Monthly Rental Rate Schedule, Monthly Parking Stall Rates, Special Events and Filming Rates

DIRECTOR'S RECOMMENDATION: Approve Resolution

This item was presented as an informational item at the June 14, 2016 Port Commission meeting and is now before the Port Commission for approval. There are no changes to the report that was presented at the last meeting.

Executive Summary

Port staff is seeking Port Commission approval of the Fiscal Year 2016-17 Monthly Rental Rate Schedule, Monthly Parking Stall Rates, Special Events and Filming Rates.

Pursuant to statute, the Port is required to charge market rates for its properties, deposit such revenues into the Harbor Fund and use such funds to operate and maintain the Port. To set rates, Port staff surveys a variety of real estate data to ascertain equivalent market rates for its properties. Such rates are compiled into the proposed Rental Rate Schedule (see Exhibits A and C hereto) for Port Commission and public review and discussion. If the Port Commission approves the schedule on July 12, 2016, the Rental Rate Schedule for Fiscal Year 2016-17 will take effect on August 1, 2016.

The overall San Francisco and regional commercial real estate markets are enjoying low vacancy rates and high rental rates in all sectors. Similarly, Port property enjoys a low vacancy rate and a very low turnover rate. A total of 62 property locations are listed on the Rental Rate Schedule (Exhibit A). Port staff proposes to raise rates at 53 locations (85%). Port staff proposes holding rates unchanged at the remaining 9 locations due to their challenged physical conditions such as at Pier 54 or 501 Cesar Chavez. Port staff does not propose to reduce rates at any properties. Likewise, Port staff proposes raising rates for resale parking, certain special events and filming.

Strategic Objective

It is the Port Commission's practice to approve the Monthly Rental Rate Schedule, Monthly Parking Stall Rates, Special Event and Filming Rates to provide certainty to tenants and ensure fair market value for Port properties. This action complies with the goals of the Port's Strategic Plan as follows:

Engagement:

By continuing to proactively engage the Port Commission in setting vision, strategy, policy and fiscal goals for the Port.

Livability:

By retaining affordable business space for non-profit entities, and single proprietorships.

Economic Vitality:

By planning and executing a holistic and balance strategy to the real estate portfolio and asset management to maximize assets value and income to the Port.

Stability:

By increasing Port annual revenues to \$125 million and continuing to expand ongoing revenue sources.

Background

The Port Commission periodically reviews and sets rental rates for its commercial leasing properties. These rates are known as the Port's Monthly Rental Rate Schedule, Monthly Parking Stall Rate Schedule and Special Event and Filming Rate Schedule (together, the "Rental Rate Schedule").

Separately, starting in 1993, the Port Commission delegated authority to the Executive Director to approve and execute (i) leases, (ii) licenses and (iii) Memoranda of Understanding ("MOU") provided that the terms of these agreements conform to certain minimum parameter terms of the Port's leasing policies. These parameter terms include a schedule of minimum rental rates for leases enumerated in the Rental Rate Schedule that are delegated to the Executive Director for execution without Port Commission approval.

Typically, the Port Commission reviews rates on an annual basis and enacts a new Rental Rate Schedule that changes rates as needed to reflect market changes. Port staff provides the following research of current market conditions (see "Rate Setting Methodology" below) for the Port Commission's deliberations. Port staff first presents the proposed new Rental Rate Schedule as an informational item to allow the Port Commission and the public the opportunity to review the proposal, make inquiries and request amendments if needed. Thereafter, Port staff present a final Rental Rate Schedule with an effective date for Port Commission approval. The Port's current Rental Rate Schedule for Fiscal Year 2015-16 was adopted by the Port Commission on June 23, 2015 and became effective as of July 1, 2015. It will remain in effect until the Port Commission adopts a new Rental Rate Schedule with a new effective date.

The Rental Rate Schedule is one of several Port Commission directives and policies to address real property agreements in accordance with the Port's mission to manage and steward the Port's diverse real estate assets. Embedded in the Port's management of its portfolio is the obligation to charge market rates for its property. Generally, the leases, licenses and MOU that Port staff executes under this delegation include agreements for use of existing structures, facilities and land involving negligible or no expansion or change of use. A synopsis of Port Leasing Policies that allow for leasing within Executive Director delegated authority is contained in Exhibit H attached hereto.

San Francisco Market Summary

As is well-documented, the San Francisco commercial real estate market has continued to rise in tandem with a continued reduction in San Francisco's unemployment rate which is currently 3.3%, down from 3.6% in January 2015¹. San Francisco began 2016 essentially at full employment. According to Property Management Company, Cushman & Wakefield, the overall Citywide asking rent closed Q1 2016 at a record high of \$70.33 per square foot per year for Class A office space (\$5.86 psf per month).

All major real estate companies cite technology companies as the impetus behind San Francisco's positive net absorption rates. Colliers International notes that "this marks the 20th consecutive quarter [almost six (6) years] of positive net absorption, a streak that places the city among the healthiest office markets in the world."

In surveying available market research, Port staff found varying reports of office vacancy rates as of First Quarter 2016 (1Q 2106). Experts place the vacancy rates in a range from to 5.7% to 7.2%. Colliers International notes that "the vacancy rate has been below the 10% percent 'tipping point' for over two years" and that the Civic Center area experienced the largest recent increase in vacancy due to four properties completing, construction and delivering over 1.2 million square feet of space to the market in Q3 2015. All real estate companies surveyed predict the strong office market to continue with very low new vacancies, compounded by the potential of San Francisco to hit its Proposition M² office cap in the coming year. The Port's current office vacancy rate is 3.5% compared to a citywide average of approximately 6.6%.

As a result of improving vacancy rates, office rents in San Francisco continued steady inside and outside of the Central Business District (aka Financial District). Much like vacancy reports, Port staff found varying reports on the amount of change in market rate rents for all three classes of office space (Class A, Class B, and Class C). Several firms noted a minor decrease in Class A office rents, coupled with an extremely strong increase in Class B rents, which new leasing in the Civic Center area has largely driven.

While much of the attention has been on San Francisco's office space, those real estate firms that follow the industrial sector note a continued tightening in this market as well. In particular, Kidder Mathews (a commercial real estate services firm) notes the San Francisco industrial market continued to tighten in the 1Q 2016, with 30,574 square feet of

¹ Federal Reserve Bank, May 2016 Report

² Prop M passed November 1986, sets an annual limit on citywide office development and governs the approval of all development projects that contain more than 25,000 gross square feet of office space. Such projects require an "office space allocation" from the San Francisco Planning Commission.

positive net absorption reduction, lowering the vacancy rate to 3.7% (3.8% prior year) further diminishing the limited stock of available space. Asking rental rates rose to an average of \$15.63 annually (\$1.30 psf per month) per square foot, the highest since the recession in 2007.

Mathews states that there is only "11.9 million square feet of available space (of an inventory of 314.2 MSF) in the region and the average age of that space is 35 years old. In other words, there is virtually no available modern space left." Mathews also notes a decline in vacancy of industrial space and a corresponding increase in asking rates fueled both by technology companies and a lack of new construction.

Most of the Port's industrial space is either warehouse shed space or land. The Port's industrial/warehouse vacancy is 4% as discussed further below. Cushman Wakefield and Kidder Mathews notes that the average Bay Area asking rate for warehouse space rose to approximately \$0.79 per square foot per month or 5% from the prior year.

Unfortunately, most industrial/warehouse property analyzed by commercial real estate firms and attributable to San Francisco is actually housed on the San Francisco peninsula and outside the city limits making it difficult to find good comparables for Port property. Further exacerbating this trend, most such space is significantly newer (although not new), larger and more conveniently located than equivalent Port space. Cushman Wakefield noted that warehouse vacancy in San Francisco County is 3.9% and asking rates average \$1.13 per square foot. Conversely, the Port commands \$1.25 to \$1.50 per square foot or approximately 10% to 20% higher with a vacant rate of 4%.

Port's Rental Portfolio

The Port's portfolio area consists of 7½ miles of waterfront property adjacent to the San Francisco Bay, from Hyde Street Pier in the northeast to India Basin in the southwest. It includes more than 834 acres consisting of 629 acres of landside property and 205 acres of waterside property. Commercial operations on Port property include restaurants, retail shopping, ferry service, commercial fishing, Bay excursion, leasing, professional sports, bulk cargo, cruise ship calls and ship repair.

The Real Estate Division manages approximately 588 commercial leases covering 453 acres, which represent 320 commercial and industrial tenants including long-term ground leases at Fisherman's Wharf, 50 Francisco, Pier 39, Piers 15-17, Piers 1½-3-5, Pier 1, the Ferry Building and AT&T Park.

Port property available for commercial leasing consist of approximately 13.9 million square feet, as described below. As such leases expire, are amended or renewed, they become subject to the current Rental Rate Schedule. Such properties consist of:

Table 1: Port Space Types

Space Type	Amount in Square Feet	Notes
Office Space	315,105	Class B and Class C space located in 18 buildings Includes office storage No Class A space
Industrial Shed	1,834,864	Located on 16 piers and 6 seawall lots
Fishing Industry	25,000	Landside space for fish wholesaling, processing and gear storage at Piers 45 and 33
Open Land	unpaved 980,100 paved 9,954,391 improved 871,200 submerged 360,000 total 12,165,691	Generally refers to pier aprons, valley areas, and land
Total	14,340,660 not submerged 13,980,660	

The Port manages a sizeable and diverse portfolio of assets. Assets managed by the Port's Real Estate Division generated approximately \$71,981,243 million in annualized revenue in Fiscal Year 2015-16. Rates for such properties are negotiated in a variety of manners. Parameter rental rents impact shed, office, and parking stall customers, or approximately 18% of total Real Estate Revenues, as shown in the following table.

Table 2: Annual Rent By Category

Parameter Shed or Land	\$ 8,404,466	12%
Parameter Office	\$ 3,910,312	5%
Parameter Parking (Stalls)	\$ 479,853	1%
Sub-Total Parameter Revenues	\$ 12,794,631	18%
Parking Lots	\$ 12,832,717	18%
Ground Lease/ Development	\$ 12,559,346	17%
Non-Parameter* Shed or Land	\$ 11,722,459	16%
Restaurant & Retail	\$ 11,630,746	16%
Parking Meters	\$ 8,614,807	12%
Non-Parameter* Office	\$ 1,534,386	2%
Film/Event/Other	\$ 292,151	0%
Sub-Total Non-Parameter Revenues	\$ 59,186,611	82%
Total Real Estate Revenues	\$ 71,981,243	100%

Annualized Revenue is an estimate of the annual revenue by detailed category; dividing actual receipts by detailed category is not possible.

* Non-parameter shed, office, and land are leases outside the business parameters found in the Port Commission Rental Rate Parameter Policy and require Port Commission and may require Board of Supervisors' approvals.

Port Vacancy

The demand for space along the Port's waterfront is high. As noted above, the Port's current office vacancy rate is 3.5% (same period last year 3.9%). The Port's vacancy rate is lower than the citywide office vacancy rate of approximately 6.6%. The Port's industrial/warehouse vacancy is 4% (same period last year 9.4%). It should be noted that Piers 23 and 31 are scheduled for extensive repairs and therefore not included in the Port vacancy calculation. These piers are anticipated to be ready for leasing in 2017.

Port Leasing Volume

In the period from April 1, 2015 to March 31, 2016, Port Real Estate staff executed 101 real property agreements pursuant to the Fiscal Year 2015-16 Rental Rate Schedule totaling \$472,686 per month or \$5.7 million annualized representing 2.2 million square feet.

Rate Setting Methodology

Port staff reviews numerous pieces of data to create a composite rate suited for each of the Port's unique assets. Generally the data used to inform the composite rate falls into one of the following categories:

1. *Commercial Data*: Port staff reviews available commercial data including comparable market rates of similarly situated properties to that of Port properties (see Exhibit D, Bibliography). With respect to office space, Port staff consulted market reports published by seven San Francisco real estate firms. With respect to industrial space, Port staff consulted market reports that Cushman and Wakefield and Kidder Mathews publish. With respect to fish processing/gear storage space, Port staff consulted five separate fishing harbors. With respect to parking, Port staff surveyed various parking lots/garages in adjacent areas (see Exhibits F1 & F2, Parking). A summary of the findings is presented throughout this report.
2. *Port Leasing Activity*: Port staff reviewed Port leasing activity for the prior 12 months (included as Exhibit I) and used this data to measure current market conditions (i.e., supply and demand) of the Port's unique spaces. Large vacancies would signal that rental rates are too high and low to no vacancy would signal that they are too low. Port staff also surveyed several of its master tenants to determine what rates they have been setting for properties under their management such as the Ferry Building, Pier 1 and Piers 1½-3-5.
3. *Third party consultant review*: The Port again has contracted with Keyser Marston Associates (KMA), a third party consultant, to review the proposed Rental Rate Schedule for Fiscal Year 2016-17. KMA gave input to the proposed Schedule and submitted a report summarizing its work (see Exhibit G). In general, KMA concurred with Port staff's minimum office rent and minimum industrial/warehouse rent recommendations. However, it noted several factors that put "downward pressure on the Port's rents" such as the Port assets' "more advanced age and less optimal physical condition" and the Port's ("limited ability to fund up-front tenant improvement

costs.”) Additionally, KMA and Port staff had a thorough discussion of parking rates to determine whether the Port staff’s parking rate recommendations were too aggressive. Ultimately, as noted in its report, KMA agreed with the Port’s parking rate recommendations.

Port Office Space

The Port directly manages approximately 330,000 s.f. of Class B and Class C office space. While there is Class A office space within the Port’s portfolio, it is managed by master tenants such as Equity Office Partners (Ferry Building), Prologis (Pier 1) and San Francisco Waterfront Properties (Piers 1½-3-5). The Port does not manage any Class A office space directly so none are subject to the Rental Rate Schedule.

Location is the key driver of office space value thus office leases are often defined by neighborhood when listed, rather than by building features. An office tower in San Francisco’s Financial District will be prized for its superior access, prestigious corporate address, and proximity to neighborhood amenities like fine dining and business services. Similarly, the Port’s key office space has water views and is close to Market Street and its amenities.

The majority of Port-managed office spaces primarily fall into the Class C category of office space with the exception of 7 properties that are considered Class B. The Port’s directly managed office holdings are as follows:

Table 3: Building by Class Type

<u>Building Class</u>	<u>Name of Building</u>	<u>Location</u>
Class A	None	
Class B	Roundhouse Plaza	2 Lombard Street
	Pier 9 Bulkhead Bldg.	@ Broadway
	Pier 9 Pier Offices	@ at Broadway
	Pier 26 Annex	@ Harrison Street
	Pier 33 ½ North	@ Montgomery Street
	Pier 33 Bulkhead Bldg.	@ Montgomery Street
	Pier 35 Bulkhead Bldg.	@ Bay Street
Class C	Agriculture Building	@ Mission Street
	401 Terry Francois	Terry Francois Blvd.
	Piers 23 Bulkhead Bldgs.	@ Sansome Street
	Pier 29 Annex Bldg.	@ Battery Street
	Pier 29 ½	@ Battery Street
	490 Jefferson St.	Jefferson St @Leavenworth
	Piers 26 Bulkhead Bldg.	@ Harrison Street
	Pier 28 Bulkhead Bldg.	@ Bryant Street
	Pier 38 Bulkhead Bldg.	@ Townsend Street
	Piers 50 Bulkhead Bldg.	Terry Francois Blvd.
	Pier 54 Office	Terry Francois Blvd.
	Pier 70, Building 11	Foot of 20 th Street
	671 Illinois Street	Illinois Street @ Mariposa
	501 Cesar Chavez	Foot of Cesar Chavez St
	601 Cesar Chavez	Cesar Chavez @ Illinois St

	696 Amador	Amador and Cargo Way
	Pier 96 Admin. Bldg.	Foot of Cargo Way
	Pier 96 Gate House Bldg.	Foot of Cargo Way

Gross or Full Service leases include maintenance, janitorial, and utilities costs in the monthly rent amount. NET lease are net of services so that the tenant pays the maintenance, janitorial, and utilities costs and the monthly rent. The market difference between a full service lease and a net lease is approximately \$1.25 to \$1.50 per square foot per month.

Class A • In general, the definition of Class A space refers to the best of the best. Class A office space is located in newer buildings with state-of-the-art infrastructure. On occasion it may be located in older buildings that have been extensively renovated such as Pier 1 and the Ferry Building. Class A buildings are located in prime locations, generally the San Francisco Central Business District (aka Financial District) with good access and are professionally managed.

Class B • The Port manages approximately 150,000 s.f. of Class B office space (7 locations). By industry definition, Class B spaces are often older and require renovation and improvements. These spaces are usually well-maintained and well-managed, but infrastructure may need some capital investment to keep them functional. The average rates throughout San Francisco for Class B full service leases range from \$3.89 to \$5.92 per square foot per month (\$46.66 to \$71.06 annualized, Annualized; *Source: Jones Lang LaSalle First Quarter 2016*). Port staff proposes to raise rates on all 7 of the Port's Class B properties. As noted on Exhibit A attached hereto, Port staff proposes rates ranging from \$3.10 to \$4.50 per square foot per month (\$37.20-\$54.00 psf annualized) for the Port's seven (7) Class B properties. Note that the Port leases are net leases rather than full service leases as discussed below. Cushman and Wakefield estimates that average expenses of a net lease are \$11.60 per square foot which, when added to the Port's proposed rates, would equate to \$48.80-\$65.60 (\$4.07 to \$5.47) if the leases were full service.

Class C • The Port manages approximately 180,000 s.f. of Class C office space (17 locations). By industry definition, Class C spaces are older (usually 15-25 years), poorly located, and often in need of extensive renovation and updates to out-of-date infrastructure. They usually have lower rental rates to compensate for the lower quality office space. Class C spaces often are vacant longer than higher-classed spaces, and can be targeted for redevelopment opportunities. A fair number of the Class C office spaces in the Port's inventory are not truly office buildings but rather walk-up office spaces above retail or service businesses. San Francisco Class C office rents as of 1Q 2016 averaged \$3.00 per square foot per month (\$36.00 psf annualized). Note that the majority of the San Francisco Class C leases are full service leases (*Source: Jones Lang LaSalle First Quarter 2016*). As noted on Exhibit A attached hereto, Port staff proposes rates from \$1.15 to \$3.75 per square foot per month (\$13.80 -\$45.00 psf annualized) for the Port's 17 Class C properties. The lower range rates represent Port properties located in the Southern Waterfront further away from downtown and other amenities. Market comparables for Class C office leases in this sector of the City are difficult to find and are not well represented by the published rates that Port staff. Surveyed, as noted above, Port leases

are net leases rather than full service leases. Cushman and Wakefield estimates that average expenses of a net lease are \$11.60 per square foot which, when added to the Port's proposed rates, would equate to \$30.00-\$56.60 if the leases were full service. The commercial data provide "asking rates"³ not the final contract rates, which are often lower. The table below, provided by Jones Lang LaSalle, gives a snapshot of rental markets broken out by Class type and by geographical area as of First Quarter, 2016.

Port Industrial and Warehouse Space

The San Francisco Peninsula industrial market totaled 139,728 sq. ft. of positive net absorption in Q1 2016. This represented the largest occupancy gain since Q4 2014. The overall vacancy rate dropped 50 basis points (bps), quarter-over-quarter, to a new low of 1.8%. The average asking lease rate rose 1.4% to a new high of \$1.14 NNN (Net of maintenance, janitorial, and utilities). The manufacturing sector experienced the largest increase in Q1 2016 of 3%, quarter-over-quarter.

The Bay Area has approximately 159 million square feet of warehouse rental space along the East Bay I-80/880 Corridor and in Santa Clara, San Mateo and San Francisco Counties. The East Bay is the largest home to industrial/warehouse space and San Francisco County the smallest, representing approximately 12% of the total Bay Area warehouse rental space. The San Francisco industrial market has approximately 19.3 million square feet located in three major submarkets:

- i. Mission/South of Market (SOMA)
- ii. 3rd Street Corridor/Potrero Hill and
- iii. Bayview/India Basin

The Port directly manages approximately 1,368,215 square feet of industrial and warehouse space and represent 12% of the industrial market in San Francisco. More than three quarters of San Francisco's warehouse space is located in the Mission/SOMA and 3rd Street Corridor/Potrero Hill areas. (Source: Cushman & Wakefield 1Q 2015 Warehouse Market Bay Area)

The San Francisco-Bay Area industrial and warehouse vacancy rate dropped to 2.6% in 1Q 2016 (from 6.3% 1Q2015). Average asking rents vary by submarket from \$0.60 to \$1.11 per square foot per month, on a net basis (Source: Cushman Wakefield Industrial Report 4Q 2015 & Port of San Francisco Lease Activity April 1, 2015 to March 31, 2016, Exhibit E).

The majority of Port warehouses are categorized as Class C. The Port's industrial properties have various levels of improvements including partitions, fencing, electrical service, plumbing, etc. These industrial/warehouse spaces are typically leased under "net" leases with space defined as "gross leasable area." The majority of these spaces lack loading docks, attached office space and non-permeable concrete floors, and they share a

³ Asking Rate is the quoted rental rate before taking into account incentives or increases and is not the final contract rate. Effective Rent is the rental rate averaged out over the term of the lease and giving consideration for rent free periods or up-front incentives such as a tenant improvement allowance, wall and floor coverings, or a free rent period. The Port's Rental Rate Schedule consists of Effective Rental Rates.

common drive aisle. Despite the limited infrastructure, the Port has been able to negotiate rental rates comparable to those of private landlords that have more amenities. This is due in large part to the close proximity of the Port's warehouse space to the City's financial and social center and the scarcity of industrial land in San Francisco. During the previous twelve months, Port warehouse rates have averaged \$1.35 to \$1.50 per square foot (\$16.20 to \$18 annualized). These rates are higher than current comparable rental market conditions as shown below.

Table 5: Industrial & Warehouse Rental Rate Per Square Foot

<u>SF Monthly</u>	<u>SF Annual</u>	<u>Port Monthly</u>	<u>Port Annual</u>
\$1.13	\$13.56	\$1.35	\$16.20

Demand for Port warehouse and industrial space has strengthened through 1Q 2016. During the prior reporting period, 1Q 2015, the Port's industrial and warehouse vacancy was 9.4%. The Port's current warehouse vacancy rate has decreased to 4%. Port staff proposes to raise rates on 22 of the Port's 27 industrial and warehouse properties and hold rates flat on the remaining 5 properties due to either their poor condition or their unique support of the Port's fishing industry.

Pier 40 Storage Lockers

There are 28 existing storage lockers being used by the Pier 40 boat slip holders. The current rent is \$25.00 per month. Port staff recommends an increase of 6% equal to \$27.50 per month.

Monthly Rental Rate Schedule

The proposed Rental Rate Schedule, attached hereto as Exhibit A, is presented for Port Commission review and consideration. The Rental Rate Schedule is a minimum rental schedule and gives Port staff authority to negotiate higher rates or the flexibility to quote rates in the mid-range or lower range of the Rental Rate Schedule when justified, for properties that may be physically sub-standard or oddly configured.

The proposed Rental Rate Schedule lists all commercial properties and their associated Minimum Initial Rental Rates and Net Effective Rental Rates (see below). The Rental Rate Schedule is organized first by type of use and lease type (full vs net) and second by property/geographical location.

For each property the Rental Rate Schedule provides a range of rents on a gross basis and a net effective basis. The gross basis, entitled *Minimum Initial Lease Rental Rates*, represents the market rent range for the first year of the lease. The net effective basis, entitled *Minimum Net Effective Rental Rates*, represents the net effective rent calculated and applied over the lease term after rent credits for flooring and wall coverings are amortized over the term of the lease. The Port Commission has previously approved application of rent credits for flooring and wall coverings.

Port staff has the authority to issue tenant improvement allowances for floor and wall coverings if those credits do not result in the net rent over the term of the lease falling below the Minimum Net Effective Rental Rates found in the Rental Rate Schedule.

Port leases are annually indexed by either the Consumer Price Index (CPI) or fixed rate adjustments currently ranging from 3% to 3.5%. Most of the Port's leases provide for a "mark to market" adjustment on an extension or option date. Most also provide for a "mark to market" adjustment upon expiration if they go to month-to-month holdover status while a new lease or a termination is negotiated.

Proposed Changes to Rental Rate Schedule for Fiscal Year 2016-17

Given Port staff's market research, the Port's own leasing experience and the overview by KMA, Port staff recommends adjustment of the minimum rental rates averaging 5% to 15% for the majority (same period last year Port raised rates averaging 10%-13%) Port properties to better reflect current market conditions. Port staff proposes changes to the current Rental Rate Schedule for certain office and industrial shed space as follows.

1. The following office properties are currently in high demand and are experiencing limited vacancy rates. Staff recommends revising minimum monthly rents for these locations in recognition of demand and limited vacancy at these locations.

Port Office Class B Gross Leases

Item #	Facility	From Minimum Rate per sq. ft. / month	New Minimum Rate per sq. ft. / month
a)	Roundhouse Plaza	\$3.50	\$4.25

As illustrated in the previous table titled "San Francisco Sub-Office Markets" above, prepared by Jones Lang LaSalle, equivalent gross lease Class B office rates in the adjacent area to the Roundhouse Facility are:

Class B San Francisco Non-Commercial Business District Gross Lease	B	Monthly Average \$4.76 Gross	Annual average \$64.71 Gross
Jackson Square	B	\$5.09	\$61.13
North Waterfront	B	\$5.01	\$60.12

Port Office Class B Net Leases

Item #	Facility	From Minimum Rate per sq. ft. / month	New Minimum Rate per sq. ft. / month
a)	Pier 9 Bulkhead Bldg.	\$3.80	\$4.00
b)	Pier 9 office	\$3.80	\$4.00
c)	Pier 26 Annex. Bld.	\$3.00	\$3.15
d)	Pier 33 Bulkhead Bldg.	\$3.00	\$3.50
e)	Pier 33 ½ North	\$3.00	\$3.10
f)	Pier 35 Bulkhead Bldg.	\$3.00	\$3.10

On average, net lease rates are \$1.25-\$1.50 per square foot per month less than equivalent gross leases. Adjusted net lease rates for Class B office space in the same geographic area as those listed above, published by Jones Lang LaSalle are:

Class B San Francisco Non-CBD Net Lease	B	Monthly Average \$3.51	Annual average \$42.12
Jackson Square	B	\$2.65	\$31.80
North Waterfront	B	\$3.23	\$38.76

Port Office Class C Net

Item #	Facility	From Minimum Rate per sq. ft. / month	New Minimum Rate per sq. ft. / month
a)	Agriculture Building window office	\$3.25	\$3.35
b)	Agriculture Building interior office	\$1.50	\$1.55
c)	Pier 29½	\$2.25	\$2.75
d)	Pier 29 Annex	\$3.00	\$3.15
e)	Pier 35 interior	\$2.00	\$2.50
f)	Pier 23 Bulkhead	\$2.50	\$2.75
g)	401 Terry Francois	\$3.30	\$3.40
h)	Pier 26 Bulkhead	\$2.25	\$2.40
i)	Pier 28 Bulkhead	\$2.25	\$2.50
j)	501 Cesar Chavez	\$1.25	\$1.30
k)	Pier 38 Bulkhead Bldg.	\$00.00*	\$2.50
l)	Pier 50 Bulkhead Bldg.	\$2.75	\$3.05
m)	501 Cesar Chavez	\$1.25	\$1.30
n)	601 Cesar Chavez	\$1.65	\$1.75
o)	696 Amador	\$1.25	\$1.30
p)	Pier 96 Administration	\$1.25	\$1.35
q)	Pier 96 Gate House	\$1.10	\$1.15

- The Port had removed a minimum rate contemplating a master lessor and now included a rate to establish the fair market rate.

On average, net lease rates are \$1.25 per square foot per month less than equivalent gross leases. Adjusted net lease rates for Class C office space in the same geographic area as those listed above, published by Jones Lang LaSalle are:

Class C San Francisco Non-Commercial Business District Lease	C	Monthly Average	Annual average
North Waterfront - Net	C	\$4.33	\$51.99

Cushman & Wakefield Warehouse-Industrial Market Q4

Rates for 1Q 2016 in San Francisco as \$1.13 per square foot per month. Because of increased demand on these properties, Port staff recommends revising minimum monthly rents for the following Port industrial/warehouse locations:

Pier Shed and Land:

Northeast Waterfront

Item #	Facility	From Minimum Rate per sq. ft. / month	New Minimum Rate per sq. ft. / month
a)	Pier 33-35-45	\$1.10	\$1.25
b)	Pier 9	\$1.50	\$1.65
c)	Pier 19	\$1.35	\$1.50
d)	Pier 23	\$1.35	\$1.50

South Beach/China Basin

Item #	Facility	From Minimum Rate per sq. ft. / month	New Minimum Rate per sq. ft. / month
a)	Pier 24 Annex	\$3.25	\$3.40
b)	Piers 26-28-38	\$1.35	\$1.40
c)	Pier 40	\$1.35	\$1.40
d)	Pier 48	\$1.35	\$1.50
e)	Pier 50	\$1.35	\$1.40

Southern Waterfront

Item #	Facility	From Minimum Rate per sq. ft. / month	New Minimum Rate per sq. ft. / month
a)	SWLs 343 & 354	\$1.00	\$1.05
b)	SWL 345	\$1.00	\$1.05
c)	Pier 92 & SWLs 344 & 349	\$0.95	\$0.98
d)	699 Illinois	\$1.00	\$1.10
	Pier 80 G&M	\$0.95	\$0.98
e)	Pier 96 M&R	\$1.00	\$1.05

Open Land and Pier Uses

Port staff recommends amending paved land lease rates. Staff believes the rate should be increased to reflect strong demand.

Industrial Gross Leases

Item #	Facility	From Minimum Rate per sq. ft. / month	New Minimum Rate per sq. ft. / month
a)	Unpaved Land	\$0.30	\$0.32
b)	Paved Land	\$0.40	\$0.42
c)	Improved Land	\$0.80	\$0.85
d)	Submerged Land	\$0.17	\$0.18

3. The rental rates at Pier 45 Fish Processing Center were last adjusted in 2015. Port staff recommends adjustments in the following rate categories to better reflect current market conditions in the fishing industry.

Fishing Industry Pier Shed and Land

Item #	Facility	From Minimum Rate per sq. ft. / month	New Minimum Rate per sq. ft. / month
a)	Pier 45 Sheds	\$1.00	\$1.05
b)	Pier 45 2nd floor	\$0.50	\$0.53
c)	Pier 45 Office 1 st floor	\$1.20	\$1.25
d)	Pier 45 2nd floor mezz.	\$0.85	\$0.90
e)	Fishing Gear Storage	\$0.35	\$0.37
f)	Fish Gear Storage Non-Berth Holders	\$0.80	\$1.00
g)	Pier 33	\$1.00	\$1.05
h)	SWL 302 storage	\$1.00	\$1.05
i)	Aprons	\$0.35	\$0.36

(Research sources: Port of San Francisco, Santa Cruz Harbor, Pilar Point Harbor, Spud Point Harbor, Morro Bay Harbor, Crescent City Harbor 2015)

Telecommunications Leases

The Port may enter into leases for telecommunication sites (wireless cellular sites) for up to nine years without Port Commission approval (Resolution No. 96-123). The Port Commission's initial approved rate was \$1,600 per month. The current rate has increased 19% per year or 350% over the initial rate. Based on recent transactions, Port staff is recommending a minimum rental rate of \$6,000 per month up from \$5,700 per month for each fixed site and \$420 per day for temporary sites for up to sixty-days versus prior year which was \$380.

Parking

The Port operates a number of parking facilities where the Port leases individual parking stalls on a monthly basis totaling 356 stalls (an increase of 35 stalls over the same period last year) with annual revenues of \$538,236 for the 12 month period from April 1, 2015 to April 1, 2016, an increase of 13.5% over same period in the prior year (same period prior year revenues were \$475,778). The majority of the stall holders are Port tenants. A map is attached as Exhibit F1 that shows the location of those facilities at which the Port currently offers monthly parking. The Port's current parking stall vacancy rate is 8%. In the same period last fiscal year the vacancy rate was 18%.

The Port Commission approved the Fiscal Year 2015-16 Monthly Parking Stall Rate Schedule as part of its approval on June 23, 2015 of the Rental Rate Schedule. Since last year's parking stall rate review, the parking market has experienced improvement. Port staff recently conducted a survey of comparable parking facilities in the vicinity of Port property where the Port rents monthly parking stalls, attached hereto as Exhibit F2. The survey determined that the monthly parking stall rates for Port facilities are generally slightly under market. Staff proposes increasing parking rates by an average of 5% to better reflect current market conditions. Please note that the parking rates in this report do not include any City parking tax, currently 25%, which is paid by the stall holder and remitted to the City Tax Collector.

Proposed Changes to FY 2016-17 Monthly Parking Rate Schedule

Site	Parking Type	Current Rate		Proposed Rate		Increase (Tax Included)
		Rent	Rent & Tax	Rent	Rent & Tax	
Agriculture Bldg.	Building Tenant	\$328	\$410	\$340	\$425	\$15
Pier 9	Shed	\$304	\$380	\$320	\$400	\$20
Seawall Lot 302	Commercial Tenant	\$280	\$350	\$300	\$375	\$25
	Restaurant Tenant	\$176	\$220	\$200	\$250	\$30
Seawall Lot 303	Commercial Tenant	\$272	\$340	\$300	\$375	\$35
	Restaurant Tenant	\$176	\$220	\$200	\$250	\$30
Pier 80	Admin Bldg., Uncovered	\$36	\$45	\$40	\$50	\$5
	Truck	\$136	\$170	\$140	\$175	\$5
Pier 90	Truck	\$140	\$175	\$150	\$155	\$20
Pier 94	Truck	\$128	\$160	\$130	\$165	\$15
Pier 96	Truck	\$128	\$160	\$130	\$165	\$15

The Port makes available parking stalls, at cost, for its employees' vehicles. The parking lot operator at SWL 324 (Broadway lot) is required to provide 40 parking spaces at SWL 324 for Port employees at no cost to the Port. The Port has converted 25 underutilized metered spaces on Davis Street for Port employee parking.

Proposed Port Employees Monthly Parking Rate for FY 2016-17

Facility	For	Current Rate		Proposed Rate		Increase (Tax Included)
		Rent	Rent & Tax	Rent	Rent & Tax	
Seawall Lot 351	Port Commissioner	\$140	\$175	\$140	\$175	\$0
	Employees who have been granted a reasonable accommodation under the Americans with Disabilities	\$64.4*	\$80*	\$64.40*	\$80*	\$0

Facility	For	Current Rate		Proposed Rate		Increase (Tax Included)
		Rent	Rent & Tax	Rent	Rent & Tax	
	Act					
Seawall Lot 324	Employees assigned to Pier 1; parking available for one employee vehicle used for commuting	\$64.4*	\$80*	\$64.40*	\$80*	\$0
Pier 50 or at jobsite	Employees assigned to Pier 50 or whose collective bargaining agreement allows for free parking; one automobile space for vehicle used by the employee for commuting (no boats, trailers, three-axle vehicles, etc.)	\$0	\$0	\$0	\$0	\$0

**As per City policy, the rate is equivalent to the cost of a MUNI monthly pass plus \$10. It will be adjusted correspondingly to future MUNI monthly pass increases. Current cost of MUNI monthly pass is \$70.*

Parking, Color Curb Program

The Port has a long-standing policy of charging for parking, including curb zones, throughout the waterfront. Due to the emerging neighborhoods in the Southern Waterfront, the Port established guidelines and pricing for colored curbs in the Southern Waterfront. Color Curb Zones in the Northern Waterfront and in front of the Ferry Building were established some time ago and continue to be reviewed on a case-by-case basis. Tenants and non-tenants whose sidewalks/curbs abut Port property may make a request to have a color zone curb designated, following the color curb guidelines established by the Port Harbor Code.

The Port's methodology for determining the fee for curb zones has been to charge a monthly fee which is equivalent to a rate that the Port would otherwise expect to receive from paid parking had the equivalent curb zone been metered. The proposed curb rates represent amounts which are lower than a fully metered space with the expectation that the Port will collect some additional metered revenues from after hours and special event usage.

Parking, White Zone

As per City practice, White Zones are for passenger loading and unloading with a time limit of 5 minutes. The effective time that the white zone is in effect may vary and the Port may meter such zones for metered parking when white zones are not in use. For example, meter rates may apply on evenings and weekends when offices are closed and special events are scheduled. Posted signs and sidewalk stencils are used to indicate flex times.

Size of zone	Application fee	Set up fee	Monthly Fee	Additional zone
1-22 feet	\$0	\$380	\$290	\$280/mo.

Meter charges during flex time will be priced at standard meter rates for the surrounding area and will be posted accordingly.

Parking, Yellow Zones

Yellow zones are for active 30 minute freight loading and unloading only by commercial vehicles. Yellow zones are NOT intended for long-term parking of vehicles with commercial license plates. The effective times of yellow zones vary and are indicated by signs on the meter and/or by stencils on the curb. All Yellow Zones will be metered and charged at standard meter rates for the surrounding area and will be posted accordingly.

Size of zone	Application fee	Set up fee	Monthly Fee	Additional zone
20-44 ft.	\$0	\$400	\$0	\$0

Special Events and Filming

Special events and filming generated a combined total of \$147,826 in revenues to the Port over the past 12 months (April 2015 to March 2016). Of this amount, special events generated \$147,826 and filming \$00.00. During this period the film permitting was done by the Film Commission and those fees are retained by the Film Commission. Film permits require quick turnaround for limited revenue return to the Port. The Port does however, lease office, shed, and land to film production companies. This revenue is captured as commercial rent.

It is anticipated that in the coming year, the Operations Division of the Port will be developing an online information and reservation tool and parameter rents for the use of Port parks for special events. As the Port builds out its parks there will be more demand for these types of special event uses and Port staff wants to accommodate access, ease of use and establish rules of use.

The Port's 7½ miles of waterfront property is a popular venue for special events and filming projects produced each year in the City. Among the most notable special events are *Fleet Week*, *4th of July Celebration and Fireworks*, *Sunday Streets*, *New Year's Eve*, *Giant's Fanfest* and *the Nike Women's Marathon*.

Additionally, a number of major motion pictures and television series have been produced on Port property including Netflix's *Sense8*, and *Pushing Dead*.

The Port is also very popular with advertisers that account for the majority of still photo shoots that occur at the Port. From elegant fashion and auto ads located at Pier 7 to the more urban industrial projects shot in the Southern Waterfront, the Port offers a variety of locations sought after by creative photographers.

In order to standardize film and photography related fees charged for various Port facilities, Port staff has established a Special Event and Filming Fee Schedule. The schedule is reviewed annually to reflect current market conditions and submitted to the Port Commission for re-approval.

There are several recurring Special Events/Uses that have a strong maritime or community connection to the Port of San Francisco and customarily have been given either a fee

waiver or fee reduction by the Port Commission on an ad hoc basis. In order to streamline the administrative process and costs associated with preparing individual Port Commission Agenda Items for each event, the Port Commission typically approves the recommended fees for these events as part of its approval of the Rental Rate Schedule:

1. Proposed Fee Waiver: *4th of July Celebration; Fleet Week; City's New Year's Eve Celebration; Madonna Del Lume; and Delancey Street Flower Sale.*
2. Ongoing Fee Reductions: *Small Boat Fishing Gear Swap Meet, \$300 versus \$2,000; and Delancey Street Christmas Tree Lot, \$3,528 versus \$7,055.*

The methodology for deriving the fees described in the Special Events and Filming Fee Schedule is a combination of market research, continuous dialog with special events promoters and the Port's own experience at negotiating fees.

Proposed FY 2015-16 Special Event And Filming Rate Schedule

Port staff recommends increases to the FY 2016-17 Special Event and Filming Rate Schedule, which is listed on Exhibit C.

Recommendation

Port staff recommends that the Port Commission approve the Fiscal Year 2016-17 Monthly Rental Rates Schedule, Monthly Parking Stall Rates (monthly parking stall schedule in staff report), and Special Event and Filming Rates. If approved, the Fiscal Year 2016-17 rates will take effect on August 1, 2016.

Prepared by: Jeffrey A. Bauer, Senior Leasing Manager

For: Mark Lozovoy, Acting Director of Real Estate

ATTACHMENTS

- Exhibit A *Proposed* 2016-2017 Minimum Monthly Rental Rate Schedule
- Exhibit B 2015-2016 Minimum Monthly Rental Rate Schedule
- Exhibit C 2016-2017 Special Events and Filming Fee Schedule
- Exhibit D Bibliography of Market Research Sources
- Exhibit E Office, Bulkhead Office and Pier Shed Vacancy Rate
- Exhibit F1 Parking Facilities Located in the Vicinity 2016
- Exhibit F2 Parking Facilities Located in the Vicinity 2016
- Exhibit G Keyser Marston Memorandum 2016
- Exhibit H Port Leasing Policies
- Exhibit I Port Active Office and Warehouse Rental Transactions

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO
RESOLUTION NO. 16-27

WHEREAS, By Resolution No. 93-127, adopted September 8, 1993, and as amended by Resolution 93-135, the Port Commission authorized the Executive Director to approve and execute certain transactional documents such as leases and licenses that conform to all of the parameters set forth in those Resolutions as amended (the "delegated authority"); and

WHEREAS, Port staff has delegated authority to enter into leases, licenses, and Memorandums of Understanding with rents that conform to the applicable Monthly Rental Rate Schedule, Parking Stall Rate Schedule, and Special Event and Filming Rate Schedule as adopted and amended periodically by the Port Commission (last amended Resolution No. 15-21 for the Fiscal Year 2015-16); and

WHEREAS, the parameter Rental Rate Schedule provides that leases, licenses, and Memorandums of Understanding shall have rents that conform to the Monthly Rental Rate Schedule, Parking Stall Rate Schedule, and Special Event and Filming and Public Art Rates adopted and amended periodically by the Port Commission; and

WHEREAS, Port staff has reviewed current office/industrial-warehouse, parking, and special event and filming market data and has prepared updated delegated authorities and updated the Fiscal Year 2015-16 Monthly Rental Rate Schedule, Monthly Parking Stall Rate Schedule, and Special Event and Filming Rate Schedule; and

WHEREAS, Port staff recommends approval of the delegated authorities specified in the staff report and the Fiscal Year 2016-17 Monthly Rental Rate Schedule, Parking Rate Schedule, and Special Events and Filming Schedule, which would set rental rates for office, shed, and land space, color curbs, telecommunication sites, monthly parking stalls, and special event, and filming rates as described in the memorandum dated July 7, 2016; and

WHEREAS, Port staff recommends approval of proposed fee waiver for the following special events: 4th of July Celebration, Fleet Week, City's New Year's Eve Celebration, Madonna Del Lume, and Delancey Street Flower Sale; and

WHEREAS, Port staff further recommends approval of fee reductions for the Small Boat Fishing Gear Swap Meet, and Delancey Street Christmas Tree Lot as described in the memorandum dated July 7, 2016; now, therefore be it

RESOLVED, That the Port Commission hereby approves and adopts the Fiscal Year 2016-17 Monthly Rental Rate Schedule, Parking Rate Schedule, Special Event and Filming Rate Schedule to be implemented by Port staff in connection with the delegated authorities as described in the memorandum dated July 7, 2016 and approves the proposed fee waivers and fee reductions for certain special events as described in this Resolution; and be it further

RESOLVED, That Port Commission finds that competitively bidding the real property agreements covered by the delegated authorities and the rental rate schedules approved by this Resolution is impractical; and be it further

RESOLVED, That Port staff shall continue to provide the Port Commission, within thirty days following each calendar month, a summary of leases, licenses, and Memoranda of Understanding entered into and subleases or assignments consented to during that month.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of July 12, 2016.

Amy Quesada
Digitally signed by Amy Quesada
DN: cn=Amy Quesada, o=Port of San Francisco,
ou=Port Executive,
email=amy.quesada@fport.com, c=US
Date: 2016.07.29 14:26:17 -0700

Secretary



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

LEASE NO. L-16159

BY AND BETWEEN

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

AND

IDEO, LP, A DELAWARE LIMITED PARTNERSHIP

PIER 26 ANNEX

**ELAINE FORBES
EXECUTIVE DIRECTOR**

SAN FRANCISCO PORT COMMISSION

**WILLIE ADAMS, PRESIDENT
KIMBERLY BRANDON, VICE PRESIDENT
LESLIE KATZ, COMMISSIONER
ELENI KOUNALAKIS, COMMISSIONER
DOREEN WOO HO, COMMISSIONER**

TABLE OF CONTENTS

	<u>Page</u>
1. DEMISE.....	1
2. DEFINITIONS.....	1
3. PREMISES; AS-IS CONDITION	8
3.1. Premises	8
3.2. Accessibility Inspection Disclosure	8
3.3. No Right to Encroach.....	9
3.4. Proximity of Development Project	9
3.5. No Light, Air or View Easement	10
3.6. Unique Nature of Premises	10
3.7. Seawall.....	10
3.8. As-Is Condition	10
3.9. Reserved Rights Regarding Seawall.....	11
3.10. Port's Rights Regarding Premises	11
4. TERM OF LEASE; TERMINATION BY PORT	11
4.1. Term.....	11
4.2. Termination Rights	12
4.3. Waiver of Relocation Benefits.....	13
5. RENT	13
5.1. Base Rent	13
5.2. Default Interest.....	13
5.3. Late Charges/Habitual Late Payer	13
5.4. Returned Checks	13
5.5. Net Lease	13
5.6. Additional Charges	14
6. TAXES AND ASSESSMENTS	14
6.1. Payment of Taxes.....	14
6.2. Possessory Interest Tax.....	14
7. SECURITY DEPOSIT.....	15
8. USE OF THE PREMISES	16

8.1.	Permitted Use.....	16
8.2.	Prohibited Use.....	16
8.3.	Notice of Prohibited Use Charge	17
9.	COMPLIANCE WITH LAWS AND REGULATIONS	18
10.	PORT ACTING AS OWNER OF PROPERTY; REGULATORY APPROVALS; COMPLIANCE WITH CITY'S RISK MANAGER'S REQUIREMENTS.....	18
10.1.	Port Acting as Owner of Property.....	18
10.2.	Regulatory Approvals	18
10.3.	Compliance with City's Risk Manager's Requirements	19
11.	MAINTENANCE AND REPAIRS	19
11.1.	Tenant Maintenance and Repair Obligations.....	19
11.2.	Port's Right to Inspect.....	20
11.3.	Port's Right to Repair.....	20
11.4.	Acts of Nature	20
12.	UTILITIES AND SERVICES	21
12.1.	Utilities.....	21
12.2.	Services	22
12.3.	On-Site Renewable Energy.....	22
13.	IMPROVEMENTS AND ALTERATIONS	22
13.1.	Port Consent Required	22
13.2.	Construction Requirements.....	23
13.3.	Improvements Part of Realty	24
13.4.	Removal of Improvements.....	24
13.5.	Removal of Non-Permitted Improvements.....	25
13.6.	All-Gender Toilet Facilities	25
13.7.	Signs.....	25
13.8.	Improvements on Roof	25
13.9.	Port's Alterations.....	26
14.	LIENS	26
15.	HAZARDOUS MATERIALS	26
15.1.	Requirements for Handling.....	26
15.2.	Tenant Responsibility	26
15.3.	Tenant's Environmental Condition Notification Requirements.....	27

15.4.	Requirement to Remediate.....	28
15.5.	Port's Right to Audit	28
15.6.	Notification of Asbestos	29
15.7.	Notification of Lead.....	29
15.8.	Storm Water Pollution Prevention.....	30
15.9.	Presence of Hazardous Materials.....	30
15.10.	Survival.....	30
16.	INSURANCE.....	30
16.1.	Required Insurance Coverage	30
16.2.	Claims-Made Policies	32
16.3.	Annual Aggregate Limits.....	32
16.4.	Payment of Premiums.....	32
16.5.	Waiver of Subrogation Rights	32
16.6.	General Insurance Matters	32
17.	DAMAGE AND DESTRUCTION.....	33
17.1.	Damage and Destruction.....	33
17.2.	Waiver.....	34
18.	EMINENT DOMAIN	34
18.1.	General.....	34
18.2.	Partial Takings	34
18.3.	Taking of the Facility.....	34
18.4.	Temporary Takings.....	34
18.5.	Award; Waiver; Termination of Lease; Rent.....	34
19.	INDEMNITY AND EXCULPATION	35
19.1.	General Indemnity	35
19.2.	Hazardous Materials Indemnity.....	35
19.3.	Scope of Indemnities.....	35
19.4.	Exculpation and Waiver.....	36
19.5.	Survival.....	36
20.	ASSIGNMENT AND SUBLETTING	36
20.1.	Transfer to Affiliate	36
20.2.	Transfer to Non-Affiliate	37
20.3.	Sublease	38

20.4.	Transfer Agreement Requirements	38
20.5.	Notice to Port	39
20.6.	Transfer Audit	39
20.7.	Acknowledgement	39
20.8.	Transfer Definitions	39
21.	DEFAULT BY TENANT	39
22.	PORT'S REMEDIES	41
22.1.	Tenant's Right to Possession Not Terminated	41
22.2.	Termination of Tenant's Right to Possession	41
22.3.	Appointment of Receiver	42
22.4.	Port's Right to Cure Tenant's Default	42
22.5.	No Accord and Satisfaction	42
22.6.	Waiver of Redemption	42
22.7.	Habitual Late Payer	42
22.8.	Remedies Not Exclusive	42
23.	LITIGATION EXPENSES; ATTORNEYS' FEES	43
23.1.	Litigation Expenses	43
23.2.	Appeals	43
23.3.	City Attorney	43
24.	PORT'S ENTRY ON PREMISES	43
24.1.	Entry for Inspection	43
24.2.	General Entry	43
24.3.	Emergency Entry	44
24.4.	No Liability	44
24.5.	Nondisturbance	44
25.	SURRENDER AND QUITCLAIM	44
25.1.	Surrender	44
25.2.	Quitclaim	44
25.3.	Abandoned Property	45
25.4.	Survival	45
26.	HOLDING OVER	45
26.1.	Terms of Holdover Tenancy	45
26.2.	With Consent	45

26.3.	Without Consent	45
27.	MINERAL RESERVATION.....	45
28.	CITY AND PORT REQUIREMENTS	46
28.1.	Nondiscrimination.....	46
28.2.	Requiring Health Benefits for Covered Employees.....	46
28.3.	First Source Hiring.....	48
28.4.	Local Business Enterprises	48
28.5.	Resource-Efficient Facilities and Green Building Requirements	48
28.6.	Prohibition of Tobacco Sales and Advertising	48
28.7.	Prohibition of Alcoholic Beverages Advertising.....	48
28.8.	Graffiti Removal	48
28.9.	Restrictions on the Use of Pesticides	49
28.10.	MacBride Principles Northern Ireland.....	49
28.11.	Tropical Hardwood and Virgin Redwood Ban	49
28.12.	Preservative-Treated Wood Containing Arsenic	49
28.13.	Notification of Limitations on Contributions	50
28.14.	Sunshine Ordinance	50
28.15.	Conflicts of Interest.....	50
28.16.	Drug-Free Workplace	50
28.17.	Prevailing Wages and Working Conditions.....	50
28.18.	Public Transit Information.....	51
28.19.	Food Service and Packaging Waste Reduction Ordinance.....	51
28.20.	Consideration Of Criminal History In Hiring And Employment Decisions.....	51
28.21.	Local Hire	52
28.22.	San Francisco Bottled Water Ordinance.....	53
28.23.	Southern Waterfront Community Benefits and Beautification Policy	53
28.24.	Vending Machines; Nutritional Standards and Calorie Labeling Requirements; Offerings	53
29.	NOTICES.....	54
30.	MISCELLANEOUS PROVISIONS.....	54
30.1.	California Law	54
30.2.	Entire Agreement.....	54
30.3.	Amendments	54

30.4.	Severability	54
30.5.	Interpretation of Lease	54
30.6.	Successors	55
30.7.	Real Estate Broker's Fees	55
30.8.	Counterparts	55
30.9.	Authority	56
30.10.	No Implied Waiver	56
30.11.	Time is of Essence	56
30.12.	Cumulative Remedies	56
30.13.	Survival of Indemnities	56
30.14.	Relationship of the Parties	56
30.15.	No Recording	56
30.16.	Additional Written Agreement Required	56
31.	LIMITATION ON DAMAGES	56
31.1.	No Recourse Beyond Value of Facility	56
31.2.	Non-Liability of City Officials, Employees and Agents	57
31.3.	Limitation on Port's Liability Upon Transfer	57
32.	TENANT ESTOPPEL CERTIFICATES	57
33.	TENANT'S RIGHT OF FIRST OFFER	57
34.	APPROVAL OF BOARD OF SUPERVISORS	58

EXHIBITS AND SCHEDULES

EXHIBIT A	DESCRIPTION OF PREMISES
EXHIBIT B	COMMENCEMENT DATE AND EXPIRATION DATE MEMORANDUM
EXHIBIT C	ESTOPPEL CERTIFICATE
EXHIBIT D	SUMMARY OF SECRETARY'S STANDARDS
EXHIBIT E	PORT OF SAN FRANCISCO HISTORIC PRESERVATION REVIEW GUIDELINES FOR PIER AND BULKHEAD WHARF SUBSTRUCTURES

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

**LEASE AGREEMENT
BASIC LEASE INFORMATION**

<i>Lease Date:</i>	May 4, 2017
<i>Lease Number:</i>	L-16159
<i>Landlord or Port:</i>	CITY AND COUNTY OF SAN FRANCISCO , a municipal corporation, operating by and through the SAN FRANCISCO PORT COMMISSION
<i>Landlord's Address:</i>	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Director of Real Estate Telephone: (415) 274-0400 Facsimile: (415) 274-0494
<i>Tenant:</i>	IDEO, LP , a Delaware limited partnership
<i>Tenant's Main Contact Person and Mailing Address:</i>	Ms. Kim Powers IDEO Director of Experience Pier 26 Annex San Francisco, CA 94105 Cell: (818) 681-1141 Office: (415) 615-5000 Fax: (415) 615-5001 Email: kpowers@ideo.com
<i>Tenant's Billing Contact and Address:</i>	IDEO, LP Attn: Accounts Payable Department 150 Forest Avenue Palo Alto, CA 94301 Office: (650) 289-3400 Email: accountspayable@ideo.com
<i>Tenant's Emergency Contact and Address:</i>	Same as Main Contact
<i>Tenant's Insurance Contact and Address (not broker):</i>	Same as Main Contact

<i>Tenant's Parking Contact and Address:</i>	Same as Main Contact
<i>Contact Information for Tenant's Agent for Service of Process:</i>	<p>Ms. Kim Powers IDEO, Director of Experience Pier 26 Annex San Francisco, CA 94105 Cell: (818) 681-1141</p> <p>And</p> <p>Mr. Sean Seymour IDEO, Director of Facilities 150 Forest Avenue Palo Alto, CA 94301 Cell: (415) 748-1618</p> <p>And</p> <p>CT Corporation System (C0168406) 150 Forest Avenue Palo Alto, CA 94301</p>
<i>Premises:</i>	Pier 26 Annex
<i>Facility:</i>	Pier 26 Annex San Francisco, California 94105
<i>Premises Rentable Square Footage:</i>	<p>The Premises consists of approximately 26,901 rentable square feet of office space.</p> <p>Tenant is also granted a revocable, personal, non-assignable, non-exclusive and non-possessory privilege to enter and use the north and south stringers adjacent to the Facility (the "Stringers") and the ramp/staircase on the westerly side of the Facility, as shown in <i>Exhibit A</i>, for ingress and egress to the Premises. The Stringers and ramp/staircase are subject to the same terms and conditions as if they are part of the Premises; provided that, Tenant shall not be required to pay any Rent for use of the Stringers or ramp/staircase.</p>
<i>Length of Term:</i>	Ninety-six (96) months
<i>Commencement Date:</i>	The first day of the first calendar month following full execution by Tenant and Port after approval by the Port Commission and Board of Supervisors. Promptly following the actual Commencement Date, Port and Tenant shall execute a Commencement Date and Expiration Date Memorandum substantially in the form attached hereto as <i>Exhibit B</i> , confirming the actual Commencement Date and Expiration Date, but either party's failure to do so shall not affect the commencement or expiration of the Term.

<i>Rent Commencement Date:</i>	Commencement Date			
<i>Anniversary Date:</i>	The first and each subsequent anniversary of the Commencement Date; provided, however, that if the Commencement Date is not the first day of a month, then each Anniversary Date shall be calculated from the first day of the thirteenth month after the Commencement Date.			
<i>Expiration Date:</i>	The last day of the ninety-sixth (96 th) month after the Commencement Date.			
<i>Monthly Base Rent:</i>	Months	Sq. Ft.	Monthly Base Rate	Total Monthly Base Rent
	1-12	26,901	\$3.35/sf	\$90,118.35
	13-24	26,901	\$3.60/sf	\$96,843.60
	25-36	26,901	\$3.71/sf	\$99,802.71
	37-48	26,901	\$3.82/sf	\$102,761.00
	49-60	26,901	\$3.94/sf	\$105,989.94
	61-72	26,901	\$4.06/sf	\$109,218.06
	73-84	26,901	\$4.18/sf	\$112,446.18
	85-96	26,901	\$4.31/sf	\$115,943.31
<i>Security Deposit:</i>	Two Hundred Thirty-One Thousand Eight Hundred Eighty-Six and 62/100 Dollars (\$231,886.62)			
<i>Permitted Use:</i>	<p>The Premises shall be used solely for general office use and as a model making workshop, which may include scale model making, foam core and soft goods prototyping and use of small power tools, and for no other purpose.</p> <p>Tenant shall maintain a currently certified fire extinguisher for each 3,000 square feet of leased premises at all times.</p>			
<i>Maintenance and Repair:</i>	Port, at its sole cost and expense, shall maintain the substructure (including the structural portions of the pier underlying the Premises), roof and exterior walls of the Premises, with the exception of all doors,			

	<p>windows and the ramp/staircase on the westerly side of the Facility, which shall be maintained by Tenant. Tenant shall be solely responsible for all other repair and maintenance as further described in Section 11 below.</p>
<p><i>Utilities:</i></p>	<p>Tenant, at its sole cost and expense, shall make arrangements and pay for all Utilities and services to be furnished on, in or to the Premises.</p> <p>With respect to maintenance and repair of Utilities:</p> <p><u>Water:</u> Port, at its sole cost and expense, shall maintain the water line up to Port deduct meters on the northerly exterior wall of Pier 28. Tenant, at its sole cost and expense, shall maintain the water lines from the deduct meters to and throughout the Premises. The Port Plumbing Shop shall test backflow devices that supply potable water to the Premises as required by applicable codes.</p> <p><u>Sewer:</u> Port, at its sole cost and expense, shall maintain the common sewer line to the sewer main. Tenant, at its sole cost and expense, shall maintain sewer lines within the Premises and to the junction where the sewer line becomes a common sewer line with other tenant(s).</p> <p><u>Gas:</u></p> <p>Existing Service: Port, at its sole cost and expense, shall maintain the gas line up to the connection point in Pier 28. Tenant, at its sole cost and expense, shall maintain the gas line from the connection point in Pier 28 with a Port gas line upstream of the existing gas meter installed by Tenant and to and throughout the Premises.</p> <p>New Service: Should Tenant install a new independent gas houseline at Pier 26 Annex for gas supply, Tenant, at its sole cost and expense, shall maintain the gas line from the meter to and throughout the Premises.</p> <p><u>Electricity:</u> Port, at its sole cost and expense, shall maintain the service entrance conductors, the building's service equipment in Piers 28 and 26, and certain branch circuits for utilization equipment. Tenant, at its sole cost and expense, shall be responsible for the installation, connection and maintenance of its feeder, branch circuits and overcurrent protection devices to and throughout the Premises.</p> <p><u>Fire Sprinkler:</u> Port, at its sole cost and expense, shall maintain the existing fire sprinkler system within the Premises and be responsible for the inspection and testing of a backflow device on the exterior of the south wall of Pier 26 Annex as required by applicable codes. Tenant, at its sole cost and expense, shall maintain the new fire sprinkler system installed as part of the tenant improvement work performed under former Lease No. L-14796 with IDEO, LLC.</p> <p>Refer to Section 12.</p>
<p><i>Location of Asbestos in Facility:</i></p>	<p>See <i>Schedule 1</i> attached hereto.</p>

<i>Substructure Reports:</i>	See <i>Schedule 2</i> .
<i>Occupancy Limitations:</i>	The entire building has a maximum occupancy of two hundred eight (208). Should Tenant desire to exceed the maximum occupancy requirement temporarily, Tenant shall obtain a P242 Temporary Place of Assembly fire permit from the Port Fire Marshal.
<i>Development Project:</i>	Mixed use development project at Pier 38.
<i>Right of First Offer:</i>	Tenant shall have a right to make an offer to extend or renew this Lease under the terms and conditions set forth in Section 33.
<i>Lease Prepared By:</i>	Elsa Lamb, Commercial Property Manager

LEASE AGREEMENT

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

1. DEMISE.

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

2. DEFINITIONS.

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

"ACMs" is defined in Section 15.6 below.

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

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

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

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

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

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

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

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

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

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

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

"**Books and Records**" means all of Tenant's books, records, and accounting reports or statements relating to its business, this Lease, and the operation and maintenance of the Premises, including cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the Premises and any other bookkeeping documents used in Tenant's business operations for the Premises, whether maintained by Tenant or a third-party contractor.

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

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

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

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

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

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

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

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

"**Conduct Code**" is defined in Section 28.13 below.

"**Concession**" is defined in Section 30.16 below.

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

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

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

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

"disturbed or removed" is defined in Section 13.2(g) below.

"Encroachment Area" is defined in Section 3.3 below.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**Hard costs**" is defined in Section 11.3 below.

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

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

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

"**HEPA**" is defined in Section 13.2(g) below.

"**HRC**" means the San Francisco Human Rights Commission.

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

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

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

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

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

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

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

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

"Late Charge" means a fee equivalent to fifty dollars (\$50.00).

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

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

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

"Notice of Removal" is defined in Section 13.4 below.

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

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

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

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

"PACMs" is defined in Section 15.6 below.

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

"Port" means the San Francisco Port Commission.

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

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

"Port Work" is defined in Section 13.9 below.

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

"preservative-treated wood containing arsenic" is defined in Section 28.12 below.

"prevailing party" is defined in Section 23.1 below.

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

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

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

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

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

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

"Rent" means the Base Rent, Additional Rent and all other sums payable by Tenant to Port hereunder, including, without limitation, any Late Charge and any interest assessed pursuant to Section 55.

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

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

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

"saltwater immersion" is defined in Section 28.12 below.

"Seawall" is defined in Section 3.7.

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

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

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

"**SWPPP**" is defined in Section 15.8(a) below.

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

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

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

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

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

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

The parties agree that Tenant works closely with Tenant's clients on projects and that Tenant may have employees and contractors of such clients work within the Premises on joint projects with Tenant on a temporary basis. Port and Tenant agree that such individuals are Tenant's Agent or Invitee and shall not be subject to Section 20 (Assignment and Subletting). Such use must comply with all the terms and conditions of this Lease and a breach by Tenant's Agent or Invitee constitutes a breach by Tenant. Tenant is solely responsible for ensuring that each of its Agents and Invitees are aware of and comply with all of the provisions of this Lease and Tenant acknowledges that it shall be subject to default and termination provisions under this Lease if its Agents or Invitees fail to comply with the terms and conditions of this Lease.

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

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

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

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

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

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

"Waiving Party" is defined in Section 16.5 below.

"Work" when used in reference to construction is defined in Section 13.2(c) below.

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

3. PREMISES; AS-IS CONDITION.

3.1. *Premises.*

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

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

3.2. *Accessibility Inspection Disclosure.*

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

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

arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.”.

3.3. No Right to Encroach.

(a) If Tenant (including, its Agents, Invitees, successors and assigns) uses or occupies space outside the Premises without the prior written consent of Port (the "Encroachment Area"), then upon written notice from Port ("Notice to Vacate"), Tenant shall immediately vacate such Encroachment Area and pay as Additional Rent for each day Tenant used, occupied, uses or occupies such Encroachment Area, an amount equal to the rentable square footage of the Encroachment Area, multiplied by the higher of the (i) highest rental rate then approved by the San Francisco Port Commission for the Premises or the Facility, or (ii) then current fair market rent for such Encroachment Area, as reasonably determined by Port (the "Encroachment Area Charge"). If Tenant uses or occupies such Encroachment Area for a fractional month, then the Encroachment Area Charge for such period shall be prorated based on a thirty (30) day month. In no event shall acceptance by Port of the Encroachment Area Charge be deemed a consent by Port to the use or occupancy of the Encroachment Area by Tenant, its Agents, Invitees, successors or assigns, or a waiver (or be deemed as a waiver) by Port of any and all other rights and remedies of Port under this Lease (including Tenant's obligation to Indemnify Port as set forth in the last paragraph of this Section 3.3(c), at law or in equity.

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

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

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

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

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

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

3.6. Unique Nature of Premises. Tenant acknowledges that: (a) the Facility is located along the waterfront in a building on a pier and/or wharf, supported by a partially-submerged substructure in a marine environment, which was originally built approximately 100 years ago; and/or (b) the Facility is located along adjacent to, or on top of, and/or bayward of the Seawall that is in need of repair and presents increased risk of damage to property and injury or death to persons from seismic events, as further described in Section 3.7; and (c) Port's regular maintenance may involve activities, such as pile driving, that create noise and other effects not normally encountered in locations elsewhere in San Francisco due to the unique nature of the Premises; (d) there is a risk that all or a portion of the Premises will be inundated with water due to floods or sea level rise; (e) there is a risk that sea level rise will increase the cost of Substructure repairs and/or prevent or limit the ability to make repairs to the Substructure; and (f) Port cannot guarantee that piers, decks, wharves, and aprons will be suitable for leased occupancy during the entire Term of this Lease.

3.7. Seawall. The City is engaged in an effort to prepare for a major earthquake and to create more resilient City infrastructure. As part of this effort, the Port is developing a plan to strengthen the Northern Waterfront Seawall which stretches from Fisherman's Wharf to Mission Creek ("Seawall") to maintain viability of Port's operations, increase protection of Port and City assets, and enhance life safety in the face of degradation, flooding, earthquakes, climate change, and security hazards. The Seawall was constructed over 100 years ago within the Bay and supports reclaimed land, or fill, and as a result is more vulnerable to seismic risk. Earthquake performance of reclaimed land is an issue for coastal communities worldwide. The *Seawall Earthquake Vulnerability Study of the Northern Waterfront Seawall, San Francisco, California July 2016* and information about Port and City's resiliency goals and plans and improvements can be found on the Port's website at: <http://sfport.com/seawall>. Tenant agrees that its waiver of Claims set forth in Section 19 below (Indemnity and Exculpation) is given with full knowledge of the direct or indirect, known or unknown, and foreseeable or unforeseeable losses and claims (including the potential additional risks of injury or death to persons or damage to property) due to the Seawall's condition or the proximity of the Premises to the Bay and the Seawall.

3.8. As-Is Condition. Tenant acknowledges and agrees that Tenant is familiar with the Premises, the Premises is being leased and accepted in their "as-is" condition, without any improvements or alterations by Port, without representation or warranty of any kind, and subject to all applicable Laws governing their use, occupancy and possession. Tenant represents and warrants to Port that Tenant has received and reviewed the disclosures regarding the Seawall in Section 3.7 including *The Seawall Earthquake Vulnerability Study of the Northern Waterfront Seawall, San Francisco, California July 2016* and information on the Port's website; the FEMA disclosure notice attached as *Schedule 3* and a copy of the report(s), if any, relating to the substructure and/or structure of the Facility, as further described in *Schedule 2* attached hereto. Tenant further represents and warrants to Port that Tenant has investigated and inspected, either independently or through agents of Tenant's own choosing, the condition of the Premises and the suitability of the Premises for Tenant's business and intended use. Tenant acknowledges and

agrees that neither Port nor any of its agents have made, and Port hereby disclaims, any representations or warranties, express or implied, concerning the rentable area of the Premises, the physical or environmental condition of the Premises or the Facility (including, but not limited to the substructure and/or the Seawall), the present or future suitability of the Premises for Tenant's business, or any other matter whatsoever relating to the Premises, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

3.9. Reserved Rights Regarding Seawall. Port will have the right to use the Premises on an extended basis to the extent required to perform the activities described at the end of this sentence, without charge, and Tenant shall cooperate by providing access and other reasonably requested assistance at no cost to Port and permit Port and its Agents to enter the Premises upon reasonable prior notice (except in the event of an emergency which poses an imminent danger to public health or safety) for the purpose of inspecting, repairing and rebuilding the Seawall as Port reasonably deems necessary. Except in the event of an emergency which poses an imminent danger to public health or safety, Port agrees to provide Tenant with not less than ten (10) business days prior notice if Port's access is likely to disrupt Tenant's operations within the Premises for more than two (2) hours. Nothing herein shall imply any duty upon the part of Port to perform any work which under any provision of this Lease Tenant may be required to perform or place upon Port any obligation, or liability, for the care, supervision or repair of the Premises or Seawall; provided that, if the Port causes any damage while using the Premises for the activities performed by Port in accordance with this Section 3.9, upon satisfactory documentation of such damage, Port shall promptly restore the Premises to the same condition as before at its cost. If Port elects to perform work on the Seawall within the Premises pursuant to this Section, 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 commercially reasonable efforts to conduct the activities in a manner that, to the extent reasonably practicable, will minimize inconvenience or disturbance to the activities of Tenant, its Subtenants (if any), and their respective Invitees. If use of the Premises is required by Port or its Agents under this Section, then the Parties will coordinate their use of the Premises and use their good faith efforts to minimize adverse impacts to each of their respective needs. To the extent Port's activities under this Section prevents Tenant or its Subtenants (if any) from using all or a portion of the Premises for a period in excess of five (5) consecutive days, then Port will negotiate in good faith to provide a proportionate reduction of the Base Rent otherwise payable under this Lease during the period that the Premises or a portion thereof is unusable (starting after the five (5) day period). Port will have the absolute right to use the Premises without charge in the event of an emergency involving the Seawall.

3.10. Port's Rights Regarding Premises. Port shall have the full right and authority to make, revoke, impose, and amend any Rules and Regulations pertaining to and reasonably necessary for the proper use, operation and maintenance of the Facility. If no Rules and Regulations currently exist for the Facility, Tenant agrees to be bound by any Rules and Regulations Port later imposes on the Facility. Tenant also acknowledges that Port's exercise of any of its rights regarding the Premises and other Port property in the vicinity of the Premises will not entitle Tenant to any abatement or diminution of Rent.

4. TERM OF LEASE; TERMINATION BY PORT.

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

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

4.2. *Termination Rights.*

(a) Port has the right to terminate this Lease under this Section when the Premises is needed in connection with a Port program or project. Port may exercise this right without liability or expense, except as specifically set forth in this Section, upon ninety (90) days' prior written notice. Tenant agrees and shall be required to surrender possession of the Premises by the end of the 90-day period.

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

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

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

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

5. RENT.

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

5.1. Base Rent. Throughout the Term, Tenant shall pay to Port the Base Rent set forth in the Basic Lease Information. Tenant shall make the first payment of Base Rent upon execution of this Lease and from and after the Rent Commencement Date, shall pay the Base Rent, in advance, on or before the first day of each calendar month throughout the Term. If the Rent Commencement Date is other than the first day of the month, or the Expiration Date is other than the last day of the month, the Base Rent for those months shall be apportioned based on a thirty (30) day month.

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

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

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

5.5. Net Lease. It is the purpose of this Lease and intent of Port and Tenant that all Rent shall be absolutely net to Port, so that this Lease shall yield to Port the full amount of the Rent at all times during the Term, without deduction, abatement or offset. Except as otherwise expressly set forth in this Lease, under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties shall Port be expected or required to incur any expense or make any payment of any kind with respect to this Lease or Tenant's use or occupancy of the Premises, including any Improvements. Without limiting the foregoing, but except as expressly provided to the contrary in this Lease, Tenant shall be solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which Port would otherwise be or become liable by reason of Port's

estate or interests in the Premises and any Improvements, any rights or interests of Port in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, renovation, use or occupancy of the Premises, any Improvements, or any portion thereof. No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or shall otherwise relieve Tenant from any of its obligations under this Lease, or shall give Tenant any right to terminate this Lease in whole or in part, except as otherwise expressly provided in this Lease. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation, provided that such waiver shall not affect or impair any right or remedy expressly provided Tenant under this Lease.

5.6. Additional Charges. Without limiting Port's other rights and remedies set forth in this Lease, at law or in equity, in the event Tenant fails to submit to the appropriate party, on a timely basis, the items identified in Sections: 12.1 (Utilities), 15.3 (Tenant's Environmental Condition Notification Requirements), 15.8. (Storm Water Pollution Prevention), 28.1(d) (HRC Form), and 32 below or to provide evidence of the required insurance coverage described in Section 16 below, then upon written notice from Port of such failure, Tenant shall pay, as Additional Rent, an amount equaling One Hundred Dollars (\$100.00). In the event Tenant fails to provide the necessary document within the time period set forth in the initial notice and Port delivers to Tenant additional written notice requesting such document, then Tenant shall pay to Port, as Additional Rent, an amount equaling One Hundred Fifty Dollars (\$150.00) for each additional written notice Port delivers to Tenant requesting such document. The parties agree that the charges set forth in this Section 5.6 represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Tenant's failure to provide the documents identified in this Section 5.6 and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this Lease, at law or in equity. By signing this Lease, each party specifically confirms the accuracy of the statements made in this Section 5.6 and the reasonableness of the amount of the charges described in this Section 5.6.

6. TAXES AND ASSESSMENTS.

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

6.2. Possessory Interest Tax. Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Tenant may be

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

7. SECURITY DEPOSIT.

(a) Tenant shall pay to Port upon execution of this Lease, in addition to the advance payment of the first month's Base Rent, the Security Deposit, in cash or at Tenant's election, subject to the provisions of subsections (b)-(e) below, in the form of a standby letter of credit, in the sum specified in the Basic Lease Information, as security for the faithful performance by Tenant of all terms, covenants and conditions of this Lease. If Base Rent is increased beyond the amount set forth in the Basic Lease Information for the last year of the Term, then from and after such increase, Tenant shall increase the amount of the Security Deposit to maintain the same ratio of the Security Deposit to Base Rent as existed on the date immediately prior to such Base Rent increase. Any increase in the Security Deposit shall be delivered to Port on the same date that such increase in Base Rent is first due.

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

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

(b) If Tenant elects to provide a Security Deposit in the form of a letter of credit, the provisions of this subsection and subsections (c)-(e) below apply ("the "Letter of Credit"). Neither the Letter of Credit nor any portion of the proceeds ("LC Proceeds") will be deemed an advance of Rent, an advance of any other payment due to Port under this Lease, a security deposit subject to the California Civil Code, or a measure of Port's damages upon an

Event of Default. Port will not be required to keep LC Proceeds segregated from its other funds or to deposit them into an interest-bearing account;

(c) The Letter of Credit must:

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

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

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

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

(d) Port may use any portion of LC Proceeds in a manner consistent with use of the Security Deposit as described above. If Port makes a draw in any amount, Tenant must deliver to Port an amendment to the Letter of Credit or a replacement Letter of Credit providing Port with the full LC Value within five (5) business days after notice from Port to Tenant specifying the amount of the draw and the particular purpose to which the LC Proceeds were applied.

(e) Tenant agrees that Port:

(i) may apply all or any portion of the LC Proceeds in a manner consistent with manner consistent with use of the Security Deposit as described above;

(ii) may retain all or any portion of the LC Proceeds in a manner consistent with use of the Security Deposit as described above;

(iii) will have until three (3) months after the Expiration Date (or later date of Port's acceptance of Tenant's surrender of the Premises) to return any LC Proceeds drawn but not applied towards Port costs or damages; and

(iv) will have no further liability to Tenant with respect to the Letter of Credit or LC Proceeds following a transfer of the beneficial interest to a transferee in accordance with the Issuer's requirements.

8. USE OF THE PREMISES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

of the statements made in this Section and the reasonableness of the amount of the charges described in this Section.

9. COMPLIANCE WITH LAWS AND REGULATIONS.

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

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

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

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

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

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

Any fines or penalties imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval shall be promptly paid and discharged by Tenant, and Port shall have no liability, monetary or otherwise, for any fines and penalties. To the fullest extent permitted by Law, Tenant agrees to Indemnify City, Port and their Agents from and against any Claim which City or Port may incur as a result of Tenant's failure to obtain or comply with the terms and conditions of any Regulatory Approval.

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

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

11. MAINTENANCE AND REPAIRS.

11.1. Tenant Maintenance and Repair Obligations. Unless otherwise set forth in the Basic Lease Information, Tenant shall at all times during the Term, starting on the Commencement Date, including any period of occupancy or use of the Premises by Tenant under another lease or license with Port for the same Premises, and at its sole cost and expense, maintain, repair and replace in good and working order, condition and repair the Premises and all Improvements and Alterations thereon, including, but not limited to, glazing. Port shall not be obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the Premises nor to any Improvements or Alterations now or hereafter located thereon. Tenant hereby waives all rights to make repairs at Port's expense under Sections 1932(1), 1941 and 1942 of the California Civil Code or under any similar Law now or hereafter in effect. Notwithstanding any maintenance obligations of Port that may be set forth in the Basic Lease Information, in the event that Tenant, its Agents or Invitees cause any damage to the Premises or any other property within Port's jurisdiction, Tenant shall be responsible for repair

and Port may repair the same at Tenant's sole cost and expense and Tenant shall immediately reimburse Port therefor.

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

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

11.2. Port's Right to Inspect. Without limiting Section 24 below, Port may make periodic inspections of the Premises and may advise Tenant when maintenance or repair of the Premises is required, but such right of inspection shall not relieve Tenant of its independent responsibility to maintain such Premises and Improvements in a condition as good as, or better than, their condition at the Commencement Date, excepting ordinary wear and tear.

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

In addition, upon delivery of the initial notice relating to Tenant's failure to maintain the Premises in accordance with Section 11 ("Maintenance Notice"), Tenant shall pay, as Additional Rent, an amount equaling Two Hundred Dollars (\$200.00). In the event Port determines during subsequent inspection(s) that Tenant has failed to maintain the Premises in accordance with Section 11, then Tenant shall pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300) for each additional Maintenance Notice, if applicable, delivered by Port to Tenant following each inspection. By signing this Lease, each party specifically agrees that the charges associated with each inspection of the Premises and delivery of each Maintenance Notice represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the Premises and issuance of each Maintenance Notice. Tenant's failure to comply with the applicable Maintenance Notice and Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this Lease, at law or in equity. The amounts set forth in this Section shall be due within three (3) business days following delivery of the applicable Maintenance Notice.

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

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

12. UTILITIES AND SERVICES.

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

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

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

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

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

consumed on the Premises, and the cost of such meter or other corrective measures and the installation and maintenance thereof shall be paid for by Tenant.

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

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

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

13. IMPROVEMENTS AND ALTERATIONS.

13.1. Port Consent Required.

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

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

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

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

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

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

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

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

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

(e) Tenant expressly acknowledges that the facility is a contributing resource to the Port of San Francisco Embarcadero Historic District on the National Register. Accordingly, all interior and exterior Alterations (including but not limited to, any repair, alteration, improvement, or construction to the interior or exterior of the Facility) are subject to review by Port for consistency with the design policies and criteria set forth in the Waterfront Land Use Plan, Design and Access Element, the Secretary of the Interior's Standards for the Treatment of Historic Properties, which are published by the National Park Service and posted on its website at <http://www.nps.gov/history/hps/tps/Standards/index.htm> (the "Secretary's Standards") and summarized in the attached *Exhibit D*, and the Port of San Francisco Historic Preservation Review Guidelines for Pier and Bulkhead Wharf Substructures attached hereto as *Exhibit E* ("Port's Guidelines"). Tenant expressly agrees to comply with the Secretary's Standards for all current and future interior and exterior repair, alteration, improvement or construction. Additionally, Tenant expressly agrees to comply with Port's Guidelines as applicable.

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

(g) Tenant, on behalf of itself and its Agents or Invitees, shall comply with all requirements of the Port Building Code, Section 3424, and all other Laws, including, without limitation, the California and United States Occupational Health and Safety Acts and their implementing regulations, when the work of Alterations or Improvements disturbs or removes lead-based or presumed lead-based paint (as described below). Tenant and its Agents or Invitees shall give to Port three (3) business days prior written notice of any disturbance or removal of lead-based or presumed lead-based paint. Further, Tenant and its Agents or Invitees, when disturbing or removing lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter ("HEPA") local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers, without Port's prior written consent; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool, without Port's prior written consent; and (e) heat guns operating above 1,100 degrees Fahrenheit. Paint on the interior and exterior of buildings built before December 31, 1978, is presumed to be lead-based paint unless lead-based paint testing, as defined in Section 3424 of the Port Building Code, demonstrates an absence of lead-based paint on the surfaces of such buildings. Under this Section 13.2(g), lead-based paint is "disturbed or removed" if the work of Alterations or Improvements involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on an interior or exterior surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface.

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

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

required demolition or removal on or before the termination of this Lease, Port may perform such removal or demolition at Tenant's expense, and Tenant shall reimburse Port within three (3) business days after demand therefor.

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

13.6. *All-Gender Toilet Facilities.* If applicable, Tenant shall comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of any new building on City-owned land and within existing buildings leased by the City, including the Premises, where extensive renovations are made. An "all-gender toilet facility" means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures, and "extensive renovations" means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by this section. If Tenant has any question about applicability or compliance, Tenant should contact the Port's Property Manager for guidance.

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

13.8. *Improvements on Roof.* Tenant shall not install any equipment on the roof or any other part of the Facility outside of the Premises without Port's prior written consent. If Port consents, then Tenant shall have a non-exclusive revocable license on and over the roof and/or other areas of the Facility necessary to install, maintain and repair the equipment in a location mutually agreeable to Port and Tenant, subject to and consistent with all necessary Regulatory Approvals, including a building or encroachment permit issued by Port. Port makes no representation with respect to Tenant's ability to obtain such Regulatory Approvals. Tenant's use of any licensed areas shall be subject to all the terms and conditions of this Lease and Tenant shall have the obligations and liabilities as if the licensed areas are included in the Premises under this Section, and Sections 3.7, 9-11, 13, 15, 16, 19 and 25 of this Lease. The license granted to Tenant hereunder is for the sole purpose of constructing, maintaining, restoring, replacing and operating Tenant's approved equipment, including any necessary conduits, only in connection with Tenant's Permitted Uses under this Lease and Tenant shall not have the right to install any other equipment outside of the Premises, including without limitation a telecommunications (cell) site or any other equipment that can be used for any commercial purpose. The license granted hereby includes the right of ingress and egress through the Facility during non-business hours for access to or from the Premises and Tenant's equipment, provided that Tenant must notify the Port's Property Manager at least 24 hours in advance of any access and shall comply with all reasonable requirements of such designated person with respect to Tenant's requested access. In the event of an emergency, Tenant shall have the right to enter the

licensed areas provided it makes good faith efforts if possible to notify Port in advance of such entry.

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

14. LIENS.

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

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

15. HAZARDOUS MATERIALS.

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

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

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

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

15.3. Tenant's Environmental Condition Notification Requirements.

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

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

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

(ii) Any notice of a violation, or a potential or alleged violation, of any Environmental Law that Tenant or its Agents or Invitees receives from any Environmental Regulatory Agency relating to the Premises, the Facility or any other Port property;

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

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

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

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

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

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

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

15.4. Requirement to Remediate.

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

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

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

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

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

(b) Notwithstanding anything to the contrary in this Section 15.4 or elsewhere in this Lease, unless Tenant or its Agents or Invitees Exacerbate the Hazardous Material Condition, Tenant will not be obligated to Remediate any Hazardous Material Condition: (i) caused solely by City, Port, or their Agents during Tenant's occupancy of the Premises; or (ii) arising before the Commencement Date or the date of Tenant's first use of the Premises under another lease or license with Port for the same Premises, whichever is earlier; or (iii) outside of the Premises that was not caused or permitted by Tenant, its Agents or Invitees.

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

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

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

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

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

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

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

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

be construed as a constructive or other eviction of Tenant, or (iv) constitute or be construed as a breach of Port's covenant assuring Tenant's quiet enjoyment of the Premises. Notwithstanding any other provisions of this Lease, Tenant agrees to Indemnify Port for its acts or omissions that result in (1) lead-related enforcement actions, including both administrative or judicial proceedings, and (2) any Claims arising from an alleged violation of Cal-OSHA Construction Safety Order for Lead and/or exposures to lead.

15.8. Storm Water Pollution Prevention.

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

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

15.9. Presence of Hazardous Materials. California Law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Tenant is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Premises, including, but not limited to, vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as asbestos, naturally-occurring radionuclides, lead and formaldehyde. Further, the following known Hazardous Materials are present on the property: asbestos in building, if any, as described in *Schedule 1* attached hereto, and in Summary Report: Asbestos and Lead Content Roof Surveys for Piers 15, 17, 19, 26, 26-Annex, 28 and 45C, SCA Environmental, Inc., December 1999, a copy of which has been delivered to or made available to Tenant. By execution of this Lease, Tenant acknowledges that the notice set forth in this section satisfies the requirements of California Health and Safety Code Section 25359.7 and related Laws. Tenant must disclose the information contained in this Section 15.9 to any subtenant, licensee, transferee, or assignee of Tenant's interest in this Lease. Tenant also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

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

16. INSURANCE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16.6. General Insurance Matters.

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

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

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

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

17. DAMAGE AND DESTRUCTION.

17.1. *Damage and Destruction.* If the Premises or the Facility is damaged by fire or other casualty, then Port shall repair the same provided that funds for such repairs are appropriated by Port, in its sole discretion, for such purpose and that such repairs can be made within the Repair Period. In the event such conditions are satisfied, this Lease shall remain in full force and effect except that so long as such damage or casualty is not attributable to Tenant, its Agents or Invitees, Tenant shall be entitled to a proportionate reduction of Base Rent during the Repair Period based upon the extent to which such damage and the making of such repairs materially interferes with Tenant's use or occupancy of the Premises less any insurance proceeds Tenant receives, or would have received if Tenant complied with the requirements set forth in Section 16 above, which proceeds are to be applied against the payment of Rent during any Repair Period.

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

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

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

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

17.2. Waiver. Port and Tenant intend that the provisions of Section 17 govern fully in the event of any damage or destruction and accordingly, Port and Tenant each hereby waives the provisions of Section 1932, subdivision 2, Section 1933, subdivision 4, Sections 1941 and 1942 of the Civil Code of California or under any similar Law now or hereafter in effect.

18. EMINENT DOMAIN.

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

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

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

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

18.5. Award; Waiver; Termination of Lease; Rent. Upon termination of this Lease in its entirety pursuant to Section 18.3, or pursuant to an election under Section 18.2, then: (i) Tenant's obligation to pay Rent shall continue up until the date of termination and thereafter shall cease, and (ii) Port shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease and any Improvements Pertaining to the Realty), and Tenant shall have no claim against Port for the value of any unexpired term of this Lease, provided that Tenant may make a

separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Property. Port and Tenant intend that the provisions of Section 18 shall govern fully in the event of condemnation and accordingly, Port and Tenant each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.110, 1265.120, 1265.130, and 1265.140 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

19. INDEMNITY AND EXCULPATION.

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

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

19.2. Hazardous Materials Indemnity.

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

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

(c) Without limiting Tenant's Indemnity obligations with respect to the Premises or the Facility, Port agrees that Tenant's Indemnity for Hazardous Material Conditions relating to "other Port property" as set forth above in subsection (a) applies only if such Claims arise directly or indirectly out of Tenant's, its Agent's or Invitee's acts, omissions or negligence.

19.3. Scope of Indemnities. The Indemnification obligations of Tenant set forth in this Lease shall be enforceable regardless of the joint or concurrent, active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is

imposed or sought to be imposed on the Indemnified Parties. The Indemnification obligations of Tenant set forth in this Lease shall be enforceable except to the extent that such Indemnity is void or otherwise unenforceable under applicable Law in effect on, or validly retroactive to, the date of this Lease. Except as specifically provided otherwise, the Indemnification obligations of Tenant set forth in this Lease shall exclude Claims resulting solely from the willful misconduct or gross negligence of the Indemnified Parties.

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

19.4. Exculpation and Waiver. Tenant, as a material part of the consideration to be rendered to Port, hereby waives any and all Claims, including without limitation all Claims arising from the joint or concurrent, active or passive, negligence of the Indemnified Parties, but excluding any Claims caused solely by the Indemnified Parties' willful misconduct or gross negligence. The Indemnified Parties shall not be responsible for or liable to Tenant, and Tenant hereby assumes the risk of, and waives and releases the Indemnified Parties from all Claims for, any injury, loss or damage to any person or property in or about the Premises by or from any cause whatsoever including, without limitation, (i) any act or omission of persons occupying adjoining premises or any part of the Facility adjacent to or connected with the Premises, (ii) theft, (iii) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (iv) stopped, leaking or defective Facility Systems, (v) Facility defects, (vi) damages to goods, wares, goodwill, merchandise, equipment or business opportunities, (vii) Claims by persons in, upon or about the Premises, the Facility or any other Port property for any cause arising at any time, (viii) alleged facts or circumstances of the process or negotiations leading to this Lease prior to the Commencement Date, (ix) inability to use all or any portion of the Premises due to sea level rise, and (x) any other acts, omissions or causes.

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

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

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

19.5. Survival. The provisions of Section 19 shall survive the expiration or earlier termination of this Lease.

20. ASSIGNMENT AND SUBLETTING.

20.1. Transfer to Affiliate.

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

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

20.2. Transfer to Non-Affiliate.

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

(i) Tenant agrees that any of the following will be a reasonable basis for Port to withhold its consent: (1) at the time Tenant requests Port's consent, an Event of Default, or an event that with notice or the passage of time or both would constitute an Event of Default if not cured, has occurred and remains uncured; (2) the Transfer is an Assignment or a Sublease by a Transferee of Tenant; (3) the Transferee's financial condition is or may become insufficient to support all of the financial and other obligations of this Lease; (4) the Transferee's intended use of the Premises is inconsistent with this Lease or otherwise will affect any Port interest materially and adversely; (5) the nature of the Transferee's use of the Premises would involve an increased risk of the Handling or Release of Hazardous Materials or of fire or other casualty; (6) the business reputation or character of the Transferee or any of its Affiliates is not reasonably acceptable to Port; (7) the Transferee is not likely to conduct a business in the Premises of a quality substantially equal to Tenant's or otherwise reasonably acceptable to Port; or (8) Tenant has not cured an Event of Default or an event that with notice or the passage of time or both would constitute an Event of Default if not cured.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20.7. Acknowledgement. Tenant acknowledges and agrees that Port's rights with respect to Transfers are reasonable limitations for purposes of California Civil Code Section 1951.4 and waives any Claims arising from Port's actions under this Section 20.2.

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

21. DEFAULT BY TENANT.

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

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

(b) abandonment or vacation of the Premises by Tenant for a period in excess of twenty (20) consecutive days without Port's written consent; or

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

(d) failure by Tenant to execute and deliver to Port the estoppel certificate within the time period and in the manner required by Section 32 below, and Tenant's failure to cure the foregoing default within five (5) days following written notice from Port; or

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

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

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

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

(i) failure by Tenant to observe, keep or perform any of the other terms, covenants, agreements or conditions contained in this Lease and required to be observed or performed by Tenant and not specifically enumerated in this Section 21, and such failure continues for a period of fifteen (15) days after written notice by Port, provided that if such default is not capable of cure within such fifteen (15) day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such fifteen (15) day period and thereafter diligently prosecutes the same to completion within sixty (60) days after the receipt of notice of default from Port. Port shall not be required to provide such notice more than twice in any twelve (12) month period with respect to any material non-monetary defaults and after the second notice in any calendar year, any subsequent failure by Tenant during such twelve (12) month period shall automatically constitute an Event of Default hereunder; or

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

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

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

(m) without limiting the provisions of Sections 21(c) or 21(g) above or lengthening the cure periods under those subsections, failure by Tenant to comply with Laws and

Tenant's failure to cure the foregoing default within forty-eight (48) hours following written notice from Port.

22. PORT'S REMEDIES.

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

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

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

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

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

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

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

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

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

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

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

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

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

22.8. *Remedies Not Exclusive.* The remedies set forth in Section 22 are not exclusive; they are cumulative and in addition to any and all other rights or remedies of Port now

or later allowed by Law or in equity. Tenant's obligations hereunder shall survive any termination of this Lease.

23. LITIGATION EXPENSES; ATTORNEYS' FEES.

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

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

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

24. PORT'S ENTRY ON PREMISES.

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

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

- (a) To perform any necessary maintenance, repairs or restoration to the Premises or Seawall, or to perform any services which Port has the right or obligation to perform;
- (b) To serve, post, or keep posted any notices required or allowed under the provisions of this Lease;
- (c) To post "For Sale" signs at any time during the Term; to post "For Lease" signs during the last six (6) months of the Term or during any period in which Tenant is in default;
- (d) On an occasional basis, at all reasonable times after giving Tenant reasonable advance written or oral notice, to show the Premises to prospective tenants or other interested parties;
- (e) If any excavation or other construction is undertaken or is about to be undertaken on any property or street adjacent to the Premises, to shore the foundations, footings or walls of the Premises and to erect scaffolding and protective barricades around and about the Premises as reasonably necessary in connection with such activities (but not so as to prevent or unreasonably restrict entry to the Premises), and to do any other act or thing necessary for the safety or preservation of the Premises during such excavation or other construction; or

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

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

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

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

25. SURRENDER AND QUITCLAIM.

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

If the Premises is not surrendered at the end of the Term or sooner termination of this Lease, and in accordance with the provisions of this Section 25 and Section 13.4, Tenant shall continue to be responsible for the payment of Rent (as the same may be increased pursuant to Section 26.2 or 26.3 below as applicable) until the Premises is surrendered in accordance with these Sections, and Tenant shall Indemnify Port from and against any and all loss or liability resulting from delay by Tenant in so surrendering the Premises including, without limitation, any costs of Port to obtain possession of the Premises; any loss or liability resulting from any Claim against Port made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each instance, reasonable attorneys' fees and costs.

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

25.2. *Quitclaim.* Upon the expiration or earlier termination of this Lease, the Premises shall automatically, and without further act or conveyance on the part of Tenant or

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

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

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

26. HOLDING OVER.

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

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

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

27. MINERAL RESERVATION.

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

28. CITY AND PORT REQUIREMENTS.

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

28.1. *Nondiscrimination.*

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

(b) Subleases and Other Contracts. Tenant shall include in all subleases and other contracts relating to the Premises a non-discrimination clause applicable to such subtenant or other contractor in substantially the form of Section (a) above. In addition, Tenant shall incorporate by reference in all subleases and other contracts the provisions of Sections 12B.2 (a), 12B.2 (c)-(k) and 12C.3 of the Administrative Code and shall require all subtenants and other contractors to comply with such provisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements to equal or exceed \$75,000.00 in the fiscal year.

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

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

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

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

28.7. Prohibition of Alcoholic Beverages Advertising. Tenant acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Premises. For purposes of this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

28.8. Graffiti Removal. Tenant agrees to remove all graffiti from the Premises, including from the exterior of the Facility if included within the Premises, within forty-eight (48) hours of the earlier of Tenant's: (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a tenant to breach any lease or other agreement that it may have concerning its use of the real property. "Graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and that is visible from the public right-of-way, but

does not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of this Lease or the Port Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (Calif. Civil Code §§ 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

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

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

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

28.12. Preservative-Treated Wood Containing Arsenic. Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited

to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Tenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Tenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

28.13. Notification of Limitations on Contributions. If this Lease is subject to the approval by City's Board of Supervisors, Mayor, or other elected official, the provisions of this Section 28.13 shall apply. Through its execution of this Lease, Tenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Tenant further acknowledges that, if applicable, the prohibition on contributions applies to each Tenant; each member of Tenant's board of directors, and Tenant's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Tenant; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that if this Section 28.13 applies, Tenant must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 and must provide to City the name of each person, entity or committee described above.

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

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

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

28.17. Prevailing Wages and Working Conditions. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Tenant shall require its contractors and subcontractors performing (i) labor in connection with a "public work" as defined under California Labor Code Section 1720 et seq. (which includes certain construction, alteration, maintenance, demolition,

installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction to: (A) pay workers performing such work not less than the highest prevailing rate of wages, (B) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (C) employ apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, "Prevailing Wage Requirements"). Tenant agrees to cooperate with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Prevailing Wage Requirements.

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

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

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

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

28.20. Consideration Of Criminal History In Hiring And Employment Decisions

(a) Tenant agrees to comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment

Decisions; “Chapter 12T”), which are hereby incorporated, including the remedies and implementing regulations as may be amended from time to time, with respect to applicants and employees of Tenant who would be or are performing work at the Premises.

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

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

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

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

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

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

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

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

Improvements or Alterations, Tenant shall contact City's Office of Economic Workforce and Development ("OEWD") to determine the work is a Covered Project subject to the Local Hiring Requirements.

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

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

28.23. Southern Waterfront Community Benefits and Beautification Policy. The Port's "Policy for Southern Waterfront Community Benefits and Beautification" identifies beautification and related projects in the Southern Waterfront (from Mariposa Street in the north to India Basin) that require funding. Under this policy, Tenant shall provide community benefits and beautification measures in consideration for the use of the Premises. Examples of desired benefits include: (i) beautification, greening and maintenance of any outer edges of and entrances to the Premises; (ii) creation and implementation of a Community Outreach and Good Neighbor Policy to guide Tenant's interaction with Port, neighbors, visitors and users; (iii) use or support of job training and placement organizations serving southeast San Francisco; (iv) commitment to engage in operational practices that are sensitive to the environment and the neighboring community by reducing engine emissions consistent with the City's Clean Air Program, and use of machines at the Premises that are low-emission diesel equipment and utilize biodiesel or other reduced particulate emission fuels; (v) commitment to use low impact design and other "green" strategies when installing or replacing stormwater infrastructure; (vi) employment at the Premises of a large percentage of managers and other staff who live in the local neighborhood or community; (vii) use of truckers that are certified by the San Francisco Human Rights Commission as "Local Business Enterprises" under the City's Local Business Enterprise and Non-Discrimination Ordinance (SF Administrative Code Chapter 14B, as amended); and (viii) use of businesses that are located within the Potrero Hill and Bayview Hunters Point neighborhoods. Tenant agrees to provide Port with documents and records regarding these activities upon Port's request.

28.24. Vending Machines; Nutritional Standards and Calorie Labeling Requirements; Offerings. Tenant shall not install or permit any vending machine on the Premises without the prior written consent of Port. Any permitted vending machine must comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code section 4.9- 1(c), as may be amended from time to time (the "Nutritional Standards Requirements"). Tenant agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section shall be deemed a material breach of this Lease. Without limiting Port's other rights and remedies under this Lease, Port shall have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements. In

addition, any Restaurant including any employee eating establishment located on the Premises is encouraged to ensure that at least twenty-five percent (25%) of Meals (as capitalized terms are defined in San Francisco Administrative Code section 4.9-1) offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code section 4.9-1(e), as may be amended.

29. NOTICES.

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

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

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

30. MISCELLANEOUS PROVISIONS.

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

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

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

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

30.5. Interpretation of Lease.

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

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

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

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

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

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

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

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

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

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

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

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

of which shall be deemed to be an original and all of which shall constitute one and the same Lease.

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

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

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

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

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

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

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

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

31. LIMITATION ON DAMAGES.

31.1. No Recourse Beyond Value of Facility. Notwithstanding anything to the contrary contained in this Lease, Tenant agrees that Tenant will have no recourse with respect to, and Port shall not be liable for, any obligation of Port under this Lease, or for any claim based upon this Lease, except to the extent of the fair market value of Port's fee interest in the Premises (as encumbered by this Lease). Tenant shall look solely to the fair market value of Port's fee interest in the Premises for the recovery of any judgment or award. By Tenant's execution and

delivery hereof and as part of the consideration for Port's obligations hereunder, Tenant expressly waives all other liability. Before filing suit for an alleged default by Port, Tenant shall give Port notice and reasonable time to cure the alleged default.

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

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

32. TENANT ESTOPPEL CERTIFICATES.

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

33. TENANT'S RIGHT OF FIRST OFFER.

33.1. Tenant shall have a personal one-time right to make an offer to extend or renew this Lease for an additional period as provided in this Section. If Tenant, no later than ninety (90) days prior to the Expiration Date, submits to Port a written offer proposing terms and conditions for an extension term or new lease ("*Offer*"), Port shall exclusively negotiate with Tenant for a period of no less than thirty (30) days. The Offer must be for the entire Premises and must state Tenant's proposed financial terms which must, at a minimum comply with the then-current Port Commission-approved rental rates. If Port and Tenant have not reached an agreement for an extension term or new lease within thirty (30) days after Tenant's Offer (subject to extension by mutual consent of both parties), Port shall have no further obligation under this Section. Port's acceptance or rejection of the Offer shall be in the Port's sole discretion.

33.2. If any Event of Default by Tenant has occurred or is outstanding hereunder either at the time of Tenant's Offer or at any time prior to the execution of an agreement pursuant to this right of first offer (or if any event shall have occurred which with the giving of notice or the passage of time or both would constitute such a default), then this Section shall be null and void and Port may elect to proceed as it wishes, in its sole discretion.

33.3. If Tenant fails to provide an Offer within the time frame set forth above or if Tenant's Offer is inconsistent with this Section, Port shall have no obligation under this Section.

33.4. Tenant will be solely responsible for all costs Tenant incurs related to or arising from negotiations with Port. Tenant will have no claims against Port for reimbursement.

33.5. The parties agree that the right of first offer is not intended to create any agreement or obligation by Port to negotiate a final agreement and imposes no duty whatsoever on Port to continue negotiations, other than to engage in arm's length exclusive negotiations

subject to the limitations specified in this Section. The parties agree that Port cannot deliver a final amendment for an extension term or a new lease unless and until the Port Commission and Board of Supervisors (each, if required and in their sole discretion) have approved such agreement.

33.6. Notwithstanding any other provision of this Lease and notwithstanding any allowable Transfer of the rights under this Lease, the right of first offer provided by this Section is personal to Tenant and, may not be Transferred without Port's prior consent, which may be withheld in Port's sole and absolute discretion. Any Transfer in violation of this Section will be an incurable Event of Default.

33.7.

34. APPROVAL OF BOARD OF SUPERVISORS.

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

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

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

By: _____
Mark Lozovoy
Acting Deputy Director, Real Estate

Date Signed: _____

TENANT: IDEO, LP, A DELAWARE LIMITED PARTNERSHIP

By: KEPOX
Name: DIRECTOR OF EXPEDITION
Title: KIM POWERS

Date Signed: 5/9/17

By: MADISON MOUNT
Name: MADISON MOUNT
Title: PARTNER

Date Signed: 05-09-17

Two Corporate Officers
MUST SIGN

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

By: _____
Name: Rona H. Sandler
Deputy City Attorney

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

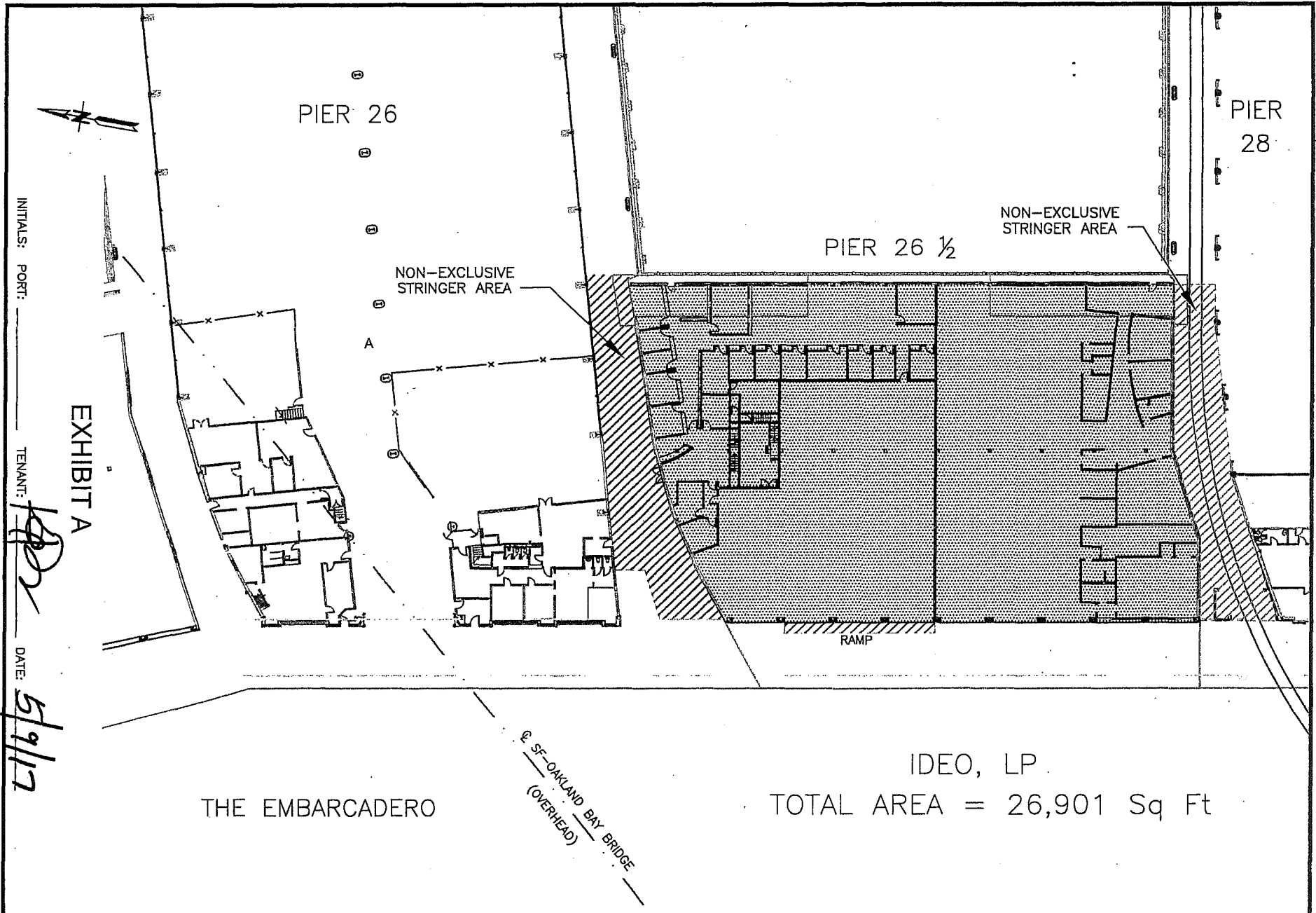
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EXHIBIT A

DESCRIPTION OF PREMISES

[Attachment on following page]

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INITIALS: PORT: _____

TENANT: *LP*

DATE: *5/9/17*

EXHIBIT A

THE EMBARCADERO

SF-OAKLAND BAY BRIDGE
(OVERHEAD)

IDEO, LP
TOTAL AREA = 26,901 Sq Ft


LEASE NO. L-16159	 SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO DEPARTMENT OF ENGINEERING	TENANT IDEO, LP	DRAWN BY: ECC	DATE: MAY 9, 2017
			CHECKED BY: E. LAMB	SCALE: NONE
			PLACE CODE NO. 1260-BLOO1	SHEET NO. OF SHEETS

EXHIBIT B

COMMENCEMENT DATE AND EXPIRATION DATE MEMORANDUM

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

Tenant:

Lease Number:

Lease Date:

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

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

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

By: _____
Mark Lozovoy
Acting Deputy Director, Real Estate

Date Signed: _____

Tenant:

By: _____
Name: _____
Title: _____

Date Signed: _____

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EXHIBIT C

TENANT ESTOPPEL CERTIFICATE

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

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

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

Dated: _____, 20__.

[Name of Tenant]

By:

Name:

Title:

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

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

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EXHIBIT E

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

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

Background

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

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

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

Port of San Francisco Review Process – Overview

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

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

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

Pier and Bulkhead Wharf Substructures

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

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

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SCHEDULE 1

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

[Attachment on following page(s)]

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SCHEDULE 2

SUBSTRUCTURE REPORT(S)

[Attachment on following page(s)]

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SCHEDULE 3

FEMA Disclosure Notice

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

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

On September 21, 2007, FEMA issued a preliminary FIRM of San Francisco tentatively identifying SFHAs along City's shoreline in and along the San Francisco Bay consisting of "A zones" (areas subject to inundation by tidal surge) and "V zones" (areas subject to the additional hazards that accompany wave action). These zones generally affect City property under the jurisdiction of the Port of San Francisco and other areas of the San Francisco waterfront, including parts of Mission Bay, Hunters Point Shipyard, Candlestick Point, Treasure and Yerba Buena Islands, and an area adjacent to Islais Creek.

FEMA prepares the FIRMs to support the National Flood Insurance Program ("NFIP"), a federal program that enables property owners, businesses, and residents in participating communities to purchase flood insurance backed by the federal government. The San Francisco Board of Supervisors has adopted a floodplain management ordinance governing new construction and substantial improvements in flood prone areas of San Francisco and authorizing the City's participation in NFIP (as amended, the "Floodplain Ordinance"). The Floodplain Ordinance imposes requirements on any new construction or substantial improvement of structures in city-designated flood zones that are intended to minimize or eliminate flood hazard risks. NFIP regulations allow a local jurisdiction to issue variances to its floodplain management ordinance under certain narrow circumstances, without jeopardizing the local jurisdiction's eligibility in the NFIP. However, the particular projects that are granted variances by the local jurisdiction may be deemed ineligible for federally-backed flood insurance by FEMA.

FEMA is performing detailed coastal engineering analyses and mapping of the San Francisco Bay shoreline in accordance with FEMA's February 2005 Pacific guidelines for new coastal studies. The San Francisco Bay Area Coastal Study includes both regional hydrodynamic and wave modeling of the San Francisco Bay, as well as detailed onshore coastal analysis used to estimate wave runup and overtopping, as well as overland wave propagation. These onshore analyses will form the basis for potential revisions to the Base Flood Elevations (BFEs) and Special Flood Hazard Areas (SFHAs) within the coastal areas. The new coastal study will revise and update the flood and wave data based on current conditions within the coastal Flood Insurance Study reports and Flood Insurance Rate Maps for each of the nine counties. For San Francisco, the preliminary FIRMs will replace the preliminary FIRMs issued in 2007. FEMA issued preliminary FIRMs for San Francisco in November 2015, with an intended effective date in mid-2016.

The federal legislation and regulations implementing the NFIP are located at 42 U.S.C. §§ 4001 et seq.; 44 C.F.R. Parts 59-78, §§ 59.1-78.14. FEMA also publishes "Answers to Questions About the NFIP" and FEMA Publication 186 entitled "Mandatory Purchase of Flood Insurance Guidelines." Additional information on this matter can be found on the City's and FEMA's websites at the following links: <http://www.fema.gov/plan/prevent/fhm/index.shtm>; [http://www.r9map.org/Docs/Oct13-SanFranCo-FEMA_Factsheet_rev%20\(2\).pdf](http://www.r9map.org/Docs/Oct13-SanFranCo-FEMA_Factsheet_rev%20(2).pdf); <http://www.fema.gov/business/nfip/index.shtm>; and <http://www.sfgov.org>.



July 12, 2017

Angela Calvillo, Clerk of the Board
Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Subject: Lease No. L-16159 between Port of San Francisco and IDEO, LP, a Delaware Limited Partnership

Dear Ms. Calvillo:

Attached please find an original and four copies of a proposed resolution for the Board of Supervisors approval of Lease No. L-16159 between the City and County of San Francisco, through the Port Commission ("Port") and IDEO, LP, a Delaware Limited Partnership ("IDEO"), approving an eight (8) year lease for office space at Pier 26 Annex, located south of the Ferry Building and adjacent to and just north of Pier 28.

Attached you will also find the following supporting documents:

1. Five copies of the Port Commission Staff Report and Resolution 17-18, (approving the proposed lease and recommending the lease to the Board of Supervisors); and
2. Five copies of the proposed Port Commission Lease No. L-16159.

If you have any questions, I may be reached at (415) 274-0500. Thank you for your consideration.

Sincerely,

Elsa Lamb
Commercial Property Manager


cc: Mike Martin, Deputy Director, Real Estate
Mark Lozovoy, Asst. Deputy Director, Real Estate
Elliott Riley, Senior Property Manager

BOARD OF SUPERVISORS
SAN FRANCISCO
2017 JUL 12 AM 10:54
RZ

OFFICE OF THE MAYOR
SAN FRANCISCO



EDWIN M. LEE

TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: *for* Mayor Edwin M. Lee 
RE: Lease Agreement – Eight (8) Year Lease with IDEO, LP – Pier 26
DATE: July 25, 2017

Attached for introduction to the Board of Supervisors is a resolution approving Lease No. L-16159 between IDEO, LP., and the Port for approximately 26,901 square feet of office space located at Pier 26 Annex Building, for a term of eight (8) years.

Should you have any questions, please contact Mawuli Tugbenyoh (415) 554-5168.

RECEIVED
BOARD OF SUPERVISORS
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2017 JUL 25 PM 4:01

