

**City and County of San Francisco
London N. Breed, Mayor**

**Ground Lease
(No. L- 16662)**

Between

**THE CITY AND COUNTY OF SAN FRANCISCO
acting by and through the
SAN FRANCISCO PORT COMMISSION**

as Landlord

and

**CALIFORNIA BARREL COMPANY LLC,
a Delaware limited liability company**

as Tenant

Dated as of _____, 2020

**Elaine Forbes
Executive Director**

San Francisco Port Commission

**Kimberly Brandon, President
Willie Adams, Vice- President
Gail Gilman, Commissioner
Victor Makras, Commissioner
Doreen Woo Ho, Commissioner**

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LIST OF LEASE EXHIBITS

<u>Exhibit</u>	<u>Description</u>
Exhibit A-1	Premises
Exhibit A-2	Port Open Space
Exhibit A-3	Port 23rd St. Property
Exhibit A-4	Port Bay Property
Exhibit A-5	Port Craig Lane Property
Exhibit A-6	City Sub-Area
Exhibit A-7	Tenant's Craig Lane Property
Exhibit B	Site Plan
Exhibit C	Project Approvals
Exhibit D	Form of Craig Lane REA
Exhibit E	Form of Public Trust Easement Deed
Exhibit F	Form of Memorandum of Public Trust Option
Exhibit G	Port Approval Items
Exhibit H	Form of Assignment and Assumption Agreement
Exhibit I	Intentionally Omitted
Exhibit J	Hazardous Materials Disclosure
Exhibit K	Port's Zero Waste Events and Activities Policy
Exhibit L	FEMA Disclosure Notice
Exhibit M	Memorandum of Lease
Exhibit N	Approved Operating Standards and Reporting Requirements
Exhibit O	Design for Development
Exhibit P	Form of Guaranty
Exhibit Q	Mitigation Measures and Improvement Measures
Exhibit R	Operations Plan
Exhibit S	Scope of Development
Exhibit T	Workforce Agreement

GROUND LEASE
(No. L- _____)

BASIC LEASE INFORMATION

The terms set forth in the Basic Lease Information below have the meanings given to them in the Basic Lease Information.

Effective Date: _____ 2020

Landlord: THE CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, operating by and through the
SAN FRANCISCO PORT COMMISSION (“Port”)

Tenant: CALIFORNIA BARREL COMPANY LLC, a
Delaware limited liability company

Tenant’s Address for Notices: California Barrel Company LLC
c/o Associate Capital
420 23rd Street
San Francisco, CA 94107
Attn: Project Director, Potrero Power Plant Project

with copies to:

Paul Hastings LLP
101 California Street, 48th Floor
San Francisco, CA 94111
Attn: David Hamsher, Esq.

and

Jim Abrams, Esq.
J. Abrams Law, P.C.
One Maritime Plaza, Suite 1900
San Francisco, CA 94111

Port’s Address for Notices: Port of San Francisco
Pier 1, The Embarcadero
San Francisco, CA 94111
Attn: Deputy Director, Real Estate and
Development

with a copy to:

Port of San Francisco
Pier 1, The Embarcadero
San Francisco, CA 94111
Attn: Port General Counsel

Premises:

All that real property located in the City and County of San Francisco, California, as more particularly described in Exhibit A-1 attached hereto, comprised of the “**Port Open Space**” and the “**Port Bay Property**” described in Recital D (collectively, the “**Land**” and together with all rights and privileges appurtenant to the Land, and any Improvements hereafter constructed on the Land by Tenant or its Agents, but not including any public infrastructure owned by the City or Port as set forth in any subdivision map or public improvement agreement, the “**Premises**”). The Premises contains approximately 1.5 acres of land area and is shown generally on the Site Plan attached hereto as Exhibit B.

Permitted Uses:

From and after the Commencement Date and continuing until receipt of the required permit from BCDC for the construction of the Initial Improvements (the “**BCDC Permit**”), Tenant may use the Premises for testing, temporary storage and construction staging related to the Project, and upon receipt of the BCDC Permit, Tenant may use the Premises to construct the Initial Improvements and use and operate the Premises for public open space and public park purposes, including a portion of the Bay Trail, a public recreational dock and uses ancillary to the foregoing such as events, retail sales and services and food and beverage sales primarily for on-site consumption, in compliance with the Public Trust and subject to the limitations herein (collectively, the “**Permitted Uses**”).

Initial Improvements:

The Initial Improvements are comprised of two (2) phases of improvements to the Premises, all as shown in the Scope of Development.

Commencement Date:

[INSERT DATE THAT IS THE FIRST DAY OF THE FIRST FULL MONTH FOLLOWING THE EFFECTIVE DATE]

Expiration Date: [INSERT DATE THAT IS 66 YEARS AFTER THE COMMENCEMENT DATE]

Annual Base Rent: \$1.00

Security Deposit: None

Security for Completion of Initial Improvements: Tenant shall provide Adequate Security on the terms and conditions contained in Section 9.5(a)(iii) herein.

Environmental Oversight Deposit: \$10,000

Project Approvals: Those certain approvals for the Potrero Power Station project listed on Exhibit C, attached hereto and made a part hereof.

Single Point of Entry for Subsurface Mineral Rights: Located in California Latitude 37°45'20.66"N Longitude 122°22'53.35"W

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GROUND LEASE
(No. L-16662)

THIS GROUND LEASE (No. L- 16662) (this “**Lease**”) is entered into as of the Effective Date by and between Port, as landlord, and Tenant, as tenant. The Basic Lease Information that appears on the preceding pages and all Exhibits attached hereto are incorporated herein by this reference and shall be construed as a single instrument and a part of this Lease for all purposes. All initially capitalized terms used herein are defined in Article 40 or have the meanings given them when first defined.

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

A. Port is an agency of the City, exercising its functions and powers over property under its jurisdiction and organized and existing under California Statutes of 1968, Chapter 1333, as amended (the “**Burton Act**”), and the City’s Charter. The Waterfront Plan is Port’s adopted land use document for property within Port jurisdiction, which provides the policy foundation for waterfront development and improvement projects.

B. Port owns approximately 7-1/2 miles of tidelands and submerged lands in the City along San Francisco Bay. The Burton Act grants to Port the power, among other things, to administer and control the property under its jurisdiction in conformance with the public trust for commerce, navigation and fisheries and the statutory trust imposed by the provisions of the Burton Act (collectively, the “**Public Trust**”).

C. Tenant owns approximately twenty-one (21) acres of developed and undeveloped land located in the City that is generally bounded by 22nd Street to the north, the San Francisco Bay to the east, 23rd Street to the south, and Illinois Street to the west, as shown on the Site Plan attached hereto as Exhibit B (“**Tenant’s Property**”). Existing structures on Tenant’s Property consist primarily of vacant buildings and facilities associated with the former power station use of Tenant’s Property.

D. Port owns approximately 2.9 acres of land located in the City that is comprised of the following three noncontiguous sites in the vicinity of Tenant’s Property (collectively, the “**Port Sub-Area**”): (i) approximately 1.5 acres of land located between Tenant’s Property and the San Francisco Bay, as more particularly described on Exhibit A-2 (the “**Port Open Space**”); (ii) approximately 1.3 acres of land located along 23rd Street between Tenant’s Property and Illinois Street, as more particularly described on Exhibit A-3 (the “**Port 23rd St. Property**”); and (iii) less than 0.1 acres of land located near the northeast corner of Tenant’s Property and adjacent to the San Francisco Bay, as more particularly described on Exhibit A-4 (the “**Port Bay Property**”). Port also owns approximately 0.25 acres of land adjacent to the northern border of Tenant’s Property, as more particularly described on Exhibit A-5 (the “**Port Craig Lane Property**”), which is subject to a Development Agreement between the City and master developer of the adjacent Pier 70 project (“**Pier 70 Master Developer**”), a Disposition and Development Agreement between Port and Pier 70 Master Developer, and a Master Lease between Port and Pier

70 Master Developer (collectively, the “**Pier 70 Agreements**”). The Port Open Space and the Port Bay Property comprise the Land leased by Tenant under this Lease.

E. City owns less than 0.1 acres of land located in the City that is between Tenant’s Property and the Port 23rd St. Property, as more particularly described on Exhibit A-6 (the “**City Sub-Area**” and, collectively with Tenant’s Property and the Port Sub-Area, the “**Project Site**”).

F. Tenant proposes a multi-phased, mixed-use development on the Project Site that will include a new publicly accessible network of improved parkland and open space and a mixed-use urban neighborhood, including up to approximately 2,600 dwelling units and approximately 1.6 million square feet of commercial uses (the “**Project**”).

G. The Project includes construction and maintenance of publicly accessible open space, totaling approximately 6.9 acres, including (i) a series of contiguous, integrated waterfront parks, including extension of the Blue Greenway and Bay Trail and creation of a 4.0-acre “**Waterfront Park**”, for the benefit of the residents of the “Dogpatch” neighborhood community in the City and the residents of the City and the State of California at large, (ii) a 1.3-acre central green space in the interior of the Project Site, (iii) a 0.3-acre plaza-type open space, and (iv) a publicly accessible soccer field.

H. As of the Effective Date, City and Tenant entered into a Development Agreement (as amended from time to time, the “**DA**”), setting forth the terms and conditions under which Tenant would undertake the development of the Project Site as the master developer. Various City departments, including Port, consented to the DA.

I. The Burton Act and Article X, Section 3 of the California Constitution prohibit the fee title conveyance of property subject to the Public Trust. Consequently, the DA sets forth a process under which Port and Tenant will enter into this Lease for the construction of a portion of the Waterfront Park on the Premises and the operation and maintenance of the Premises consistent with the Public Trust.

J. As additional consideration for this Lease, Tenant has agreed to grant to Port an option to impress the Public Trust on approximately one and ninety-seven hundredths (1.97) acres of real property adjacent to the Premises, as shown generally on the Site Plan attached hereto as Exhibit B (the “**Public Trust Easement Parcel**”), on the terms and conditions described in Section 2.9. Impressing the Public Trust on the Public Trust Easement Parcel would provide significant benefits to the Public Trust by consolidating and expanding the total acreage of lands protected by the Public Trust, providing and protecting public access and recreation along the San Francisco Bay shoreline, and enhancing the physical configuration of Public Trust lands along the San Francisco Bay shoreline.

K. [Subject to the terms and conditions set forth herein, including Section 1.4, Port, Tenant and the Pier 70 Master Developer have agreed to enter into a Reciprocal Easement Agreement (the “**Craig Lane REA**”) pursuant to which, among other things, (i) Tenant shall grant to Port, its invitees and certain other Persons a perpetual easement over the portion of Craig Lane shown on the diagram attached hereto as Exhibit A-7 (“**Tenant’s Craig Lane Property**”) for vehicular, pedestrian and bicycle access, parking and loading, (ii) Port shall grant to Tenant, its

invitees and certain other Persons a perpetual easement over the Port Craig Lane Property for vehicular, pedestrian and bicycle access, parking and loading, and (iii) Tenant shall agree to maintain in perpetuity the improvements required to be constructed under the DA on Tenant's Craig Lane Property and the Port Craig Lane Property, as more particularly described therein.]¹

L. Port has been authorized to enter into this Lease by the Port Commission pursuant to Resolution No. [____], and the Board of Supervisors pursuant to Board Resolution No. [____] (File No. [____]).

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

1. PREMISES; TERM

1.1. Premises.

(a) Lease of Premises. Port hereby leases to Tenant, and Tenant hereby leases from Port, the Premises, subject to the terms of this Lease.

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

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

(c) San Francisco Disability Access Disclosures. Tenant is hereby advised that the Premises may not currently meet all applicable construction-related accessibility standards. Tenant understands and agrees that Tenant may be subject to legal and financial liabilities if the Premises does not comply with applicable federal and state disability access Laws. As further set forth in Article 6, Tenant further understands and agrees that it is Tenant's obligation, at no cost to Port, to cause the Premises and Tenant's use thereof to be conducted in compliance with the Disabled Access Laws. Tenant shall notify Port if it is making any alterations or Improvements to the Premises that might impact accessibility standards required under the Disabled Access Laws.

(d) Subsurface Mineral Rights. Under Section 2 of the Burton Act, the State of California (“**State**”) has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the Premises. In accordance with the provisions of Sections 2 and 3.5(a) of the Burton Act, Tenant and Port hereby acknowledge that the State has reserved the right to explore, drill for and extract such subsurface minerals, including oil and gas deposits, solely from the Single Point of Entry for Subsurface Mineral Rights, provided that such right shall not be exercised so as to disturb or otherwise interfere with the Leasehold Estate or the use or operation of the Premises, including the ability of the Premises to support the Improvements, but provided further that, without limiting any remedies the Parties may have against the State or other Persons, any such disturbance or interference that causes damage or destruction to the Premises shall be governed by Article 11. Port shall have no liability under this Lease arising out of any exercise by the State of such mineral rights (unless the State has succeeded to Port’s interest under this Lease, in which case such successor owner may have such liability).

(e) AS IS WITH ALL FAULTS

TENANT AGREES THAT PORT IS LEASING THE PREMISES, AND THE PREMISES ARE HEREBY ACCEPTED BY TENANT, IN THEIR EXISTING STATE AND CONDITION, “AS IS, WITH ALL FAULTS”, SUBJECT TO THE TERMS OF THIS LEASE. TENANT ACKNOWLEDGES AND AGREES THAT NEITHER PORT NOR ANY OF THE OTHER INDEMNIFIED PARTIES HAS MADE, AND THERE IS HEREBY DISCLAIMED, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND, WITH RESPECT TO THE CONDITION OF THE PREMISES, THE CONDITION OF TITLE TO THE PREMISES, THE SUITABILITY OR FITNESS OF THE PREMISES OR ANY APPURTENANCES THERETO FOR THE DEVELOPMENT, USE OR OPERATION OF THE IMPROVEMENTS, THE COMPLIANCE OF THE PREMISES WITH ANY LAWS, ANY MATTER AFFECTING THE USE, VALUE, OCCUPANCY OR ENJOYMENT OF THE PREMISES OR ANY OTHER MATTER PERTAINING TO THE PREMISES.

Tenant further acknowledges and agrees that it has been afforded a full opportunity to inspect Port’s records relating to conditions in, on, around, under, and pertaining to the Premises. Port makes no representation or warranty as to the accuracy or completeness of any matters contained in such records. Tenant is not relying on any such information. All information contained in such records is subject to the limitations set forth in this Section 1.1(e). Tenant acknowledges and agrees that Tenant has performed a diligent and thorough inspection and investigation in, on, around, under, and pertaining to the Premises, either independently or through its own experts, including with respect to (i) the quality, nature, adequacy and physical condition in, on, around, under, and pertaining to the Premises, including the structural elements, foundation, and all other physical and functional aspects in, on, around, under, and pertaining to the Premises; (ii) the quality, nature, adequacy, and physical, geotechnical and environmental condition in, on, around, under, and pertaining to the Premises, including the soil and any groundwater (including Hazardous Materials conditions (including the presence of asbestos or lead) with regard to soils and any groundwater); (iii) the suitability in, on, around, under, and pertaining to the Premises for the development of the Improvements, the Permitted Uses or Tenant’s planned use of the Premises or other occupancy, use or enjoyment of the Premises; (iv) title matters, the zoning, land use regulations, and other Laws, including Environmental Laws, governing use of or construction in, on, around, under, and pertaining to on the Premises, the appurtenances thereto or the

Improvements; and (v) all other matters of material significance affecting, in, on, around, under, and pertaining to the Premises and its development and use under this Lease (the foregoing, collectively, the “**Property Matters**”).

As part of its agreement to accept the Premises in its “AS IS, WITH ALL FAULTS” condition, effective upon the Commencement Date, Tenant, on behalf of itself and its successors and assigns, shall be deemed to waive any right to recover from, and forever release, acquit and discharge, Port, the City, and their Agents of and from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that Tenant may now have or that may arise on account of or in any way be connected with the Property Matters; provided, however, the foregoing waiver shall not apply to Losses arising from or relating to the sole negligence or willful misconduct of any of the Indemnified Parties or constitute a release, acquittal or discharge of any of Port’s obligations under this Lease.

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

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

Tenant agrees that the waivers and releases contained in this Section 1.1(e) include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims pertaining to the subject matter of the waivers and releases. Tenant acknowledges that it has agreed upon this Lease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefits of California Civil Code Section 1542, or any other statute or similar law now or later in effect, in connection with the waivers and releases contained in this Section 1.1(e). Notwithstanding anything to the contrary contained in this Lease, the foregoing waivers and releases shall survive any expiration or earlier termination of this Lease.

Initials: _____

(f) Title Defect. Port shall have no liability to Tenant in the event any defect exists in Port’s title to the Premises as of the Effective Date and no such defect shall be grounds for a termination of this Lease by Tenant. Tenant’s sole remedy with respect to any such existing title defect shall be to obtain compensation by pursuing its rights against any title insurance company or companies issuing title insurance policies to Tenant.

(g) Unique Nature of Premises. Tenant acknowledges that: (a) Port’s activities in and around the Premises 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; (b) there is a risk that all or a portion of the Premises will be inundated with water due to floods or sea level rise; and (c) there is a risk that sea level rise will increase the cost of operations, maintenance, and repair of the Premises.

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

1.2. Term.

This Lease shall commence on the Commencement Date and shall expire at 11:59 p.m. on the Expiration Date, unless earlier terminated or extended in accordance with the terms of this Lease. The period from the Commencement Date until the Expiration Date or earlier termination of this Lease in accordance with its terms is referred to as the “**Term**”. Port shall consider in good faith requests from Tenant from time to time to extend the Term to the extent permitted by applicable law, provided that Port shall retain the right to grant or deny such requests in its sole discretion.

1.3. Port Termination Right.

Notwithstanding anything to the contrary contained in this Lease, if Tenant has not Commenced: (i) the initial Phase of the Initial Improvements by July 31, 2027 (subject to extension in accordance herewith, including due to Excusable Delay, the “**Initial Improvements Deadline**”), then as its sole remedy Port shall have the right to terminate this Lease by delivery of sixty (60) days’ prior written notice to Tenant, and this Lease shall automatically terminate on the expiration of such sixty (60) day period (the “**Termination Date**”) unless Tenant Commences such Phase before the Termination Date; or (ii) the second Phase of the Initial Improvements by July 31, 2036 (subject to extension in accordance herewith, including due to Excusable Delay), then as its sole remedy Port shall have the right to terminate this Lease solely with respect to the applicable portion of the Premises (but not including any portion of the Premises on which the Initial Improvements are covered by Adequate Security) by delivery of sixty (60) days’ prior written notice to Tenant, and this Lease shall automatically terminate solely with respect to such portion of the Premises on the expiration of such sixty (60) day period (the “**Partial Termination Date**”) unless Tenant Commences such Phase before the Partial Termination Date.

1.4. Craig Lane REA.

Promptly following the satisfaction of the following conditions, Port, Tenant and the Pier 70 Master Developer shall enter into the Craig Lane REA in substantially the form attached hereto as Exhibit D: (i) the approval pursuant to the DA of the Development Phase (as defined in the DA) that includes Tenant’s Craig Lane Property; and (ii) the receipt of the approval of Pier 70 Master Developer as contemplated under Exhibit D, subject to this Section 1.4. Prior to entering into the Craig Lane REA, Port and Tenant shall reasonably cooperate regarding the development process contemplated under the Craig Lane REA so that the development and operation of Craig Lane is undertaken in an efficient manner notwithstanding Craig Lane’s location in two project areas.

2. RENT

2.1. Tenant’s Covenant to Pay Rent.

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

2.2. Minimum Rent.

On the Commencement Date and on or before the first day of each and every annual anniversary thereof during the Term (“**Anniversary Date**”), Tenant shall pay to Port in advance as annual minimum rent for the Premises the sum of the Annual Base Rent (“**Minimum Rent**”). At Tenant’s election, Tenant may pre-pay Minimum Rent for the Term (or any portion thereof) in advance at any time. The Parties acknowledge that due to the Tenant’s obligation to construct the Initial Improvements and cause the development of the Premises in accordance with the requirements hereof, and Tenant’s obligations hereunder relating to the Public Trust Easement Parcel and the Craig Lane REA, the Minimum Rent payable hereunder is nominal.

2.3. Manner of Payment.

Tenant shall pay all Rent to Port in lawful money of the United States of America at the address for notices to Port specified in this Lease, or to such other Person or at such other place as Port may from time to time designate by notice to Tenant. Minimum Rent shall be payable at the times specified in Section 2.2 without prior notice or demand. Additional Rent shall be due and payable at the times otherwise provided in this Lease, provided that if no date for payment is otherwise specified, or if payment is stated to be due “upon demand”, “promptly following notice”, “upon receipt of invoice” or the like, then such Additional Rent shall be due thirty (30) days following the receipt by Tenant of such demand, notice, invoice or the like specifying that such sum is presently due and payable.

2.4. Interest on Delinquent Rent.

If any installment of Minimum Rent or Percentage Rent is not paid within ten (10) days following the date it is due, or if any Additional Rent is not paid within thirty (30) days following Tenant’s receipt of written notice from Port of Tenant’s failure to pay Additional Rent when due, such unpaid amount shall bear interest from the date due until paid at an annual interest rate (the “**Default Rate**”) equal to the greater of (i) ten percent (10%) or (ii) five percent (5%) in excess of the Prime Rate that is in effect as of the date the applicable payment is due, but in any event not more than the maximum amount permitted under any applicable usury or similar Law. Payment of interest shall not excuse or cure any default by Tenant.

2.5. Late Charges.

Tenant acknowledges and agrees that late payment by Tenant to Port of Rent will cause Port increased costs not contemplated by this Lease. The exact amount of such costs is extremely difficult to ascertain. Such costs include processing and accounting charges. Accordingly, without limiting any of Port’s rights or remedies hereunder and regardless of whether such late payment results in an Event of Default, if any installment of Minimum Rent or Percentage Rent is not paid within ten (10) days following the date it is due, or if any Additional Rent is not paid within thirty (30) days following Tenant’s receipt of written notice from Port of Tenant’s failure to pay Additional Rent when due, Tenant shall pay a late charge (the “**Late Charge**”) equal to one and one-half percent (1.5%) of all such unpaid Rent. Tenant shall also pay Attorneys’ Fees and Costs

incurred by Port by reason of Tenant's failure to pay any Rent within the time periods described in the preceding sentence. The Parties agree that such Late Charge represents a fair and reasonable estimate of the cost that Port will incur by reason of a late payment by Tenant.

2.6. Additional Rent.

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

2.7. Net Lease.

It is the purpose of this Lease and intent of Port and Tenant that all Rent will be absolutely net to Port, so that this Lease will yield to Port the full amount of the Rent at all times during the Term, without deduction, abatement or offset. Except as may be provided in this Lease, Port shall not be expected or required to incur any expense or make any payment of any kind with respect to this Lease or Tenant's use or occupancy of the Premises, including any Improvements. Without limiting the foregoing, except as otherwise expressly provided in 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, all as more particularly described herein. Except as expressly provided in Articles 11 and 12, no occurrence or situation arising during the Term and no 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, shall relieve Tenant from any of its obligations under this Lease, shall give Tenant any right to seek redress against Port, or, except as set forth in this Lease, shall give Tenant any right to terminate this Lease in whole or in part. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation, provided that such waiver shall not affect or impair any right or remedy expressly provided Tenant under this Lease.

2.8. Percentage Rent.

(a) Percentage Rent. Tenant agrees to pay to Port, in addition to the Minimum Rent payable by Tenant, yearly percentage rent in an amount equal to fifty percent (50%) of Adjusted Gross Revenues ("**Percentage Rent**"). Percentage Rent shall be determined and paid by Tenant for each Lease Year within ninety (90) days after the end of such Lease Year.

(b) Annual Statement. Within ninety (90) days after the end of each Lease Year, Tenant shall furnish a complete statement showing the computation of the Percentage Rent for such Lease Year ("**Annual Statement**"). Each Annual Statement shall set forth in reasonable

detail Gross Revenues (including an itemized list of any and all deductions or exclusions from Gross Revenues that Tenant may claim and that are expressly permitted under this Lease), Budgeted Operating Expenses, Operating Reserves, Capital Reserves and a computation of the Percentage Rent for the applicable Lease Year. Each Annual Statement shall be certified as accurate and complete in accordance with the requirements hereof by Novogradac & Company LLP, any national independent certified public accounting firm selected by Tenant from time to time or any other independent certified public accounting firm reasonably approved by Port from time to time.

(c) Failure to Submit Annual Statement. Upon the occurrence and during the continuance of an Event of Default for Tenant's failure to deliver any Annual Statement within the time period set forth in this Section 2.8 (irrespective of whether any Percentage Rent is actually paid or due to Port), Port shall have the right, among its other remedies under this Lease, to employ a certified public accountant to examine Tenant's Books and Records as may be necessary to certify the amount of Tenant's Gross Revenues, Budgeted Operating Expenses, Operating Reserves and Capital Reserves for such Lease Year. Within thirty (30) days following Port's delivery to Tenant of such certification and an invoice for the total cost of the examination and any reasonable supporting documentation requested by Tenant, Tenant shall pay to Port the total reasonable cost of the examination, together with the full amount of Percentage Rent due and payable for the applicable Lease Year, if any.

(d) Books and Records. Tenant shall keep complete and accurate Books and Records that contain all information required to permit Port to verify Gross Revenues, Budgeted Operating Expenses, Operating Reserves and Capital Reserves for each Lease Year in accordance with this Lease and with generally accepted accounting practices in the United States consistently applied with respect to all operations to be conducted in or from the Premises. Tenant shall retain such Books and Records for each Lease Year until the later of (i) four (4) years after the end of such Lease Year and (ii) if an audit is commenced or if a controversy arises between the Parties regarding the Percentage Rent payable hereunder for such Lease Year, until such audit or controversy is concluded, in each case, notwithstanding the expiration or earlier termination of this Lease (the "**Audit Period**").

(e) Audit. Acceptance by Port of any monies paid to Port by Tenant as Percentage Rent as shown by any Annual Statement shall not be an admission of the accuracy of said Annual Statement or the amount of such Percentage Rent payment. During the Audit Period for each Lease Year, Tenant agrees to make its Books and Records for such Lease Year available to Port or to any City auditor or other person or auditor authorized to act on behalf of Port in connection with the Percentage Rent calculations (the "**Port Representative**"), upon no less than fifteen (15) Business Days' prior written notice to Tenant, for the purpose of auditing said Books and Records to determine the accuracy of Tenant's reporting of Percentage Rent for such Lease Year, as shown in the Annual Statement for such Lease Year. No Port Representative shall be compensated on a contingency fee basis. Tenant shall cooperate with the Port Representative during the course of any such audit; provided, however, such audit shall occur at Tenant's business office, or at such other location in San Francisco where the Books and Records are kept, and no Books and Records shall be removed by the Port Representative without the prior express written consent of Tenant. Such audit shall be diligently pursued to completion by Port within a reasonable time of its commencement, provided that Tenant makes available to the Port Representative all reasonably

requested Books and Records in a timely manner. Upon completion of the audit, Port shall promptly deliver a copy of the audit report to Tenant. If an audit reveals that Tenant has understated its Gross Revenues or overstated its Budgeted Operating Expenses, Operating Reserves or Capital Reserves, in each case, for the applicable Lease Year, then within thirty (30) days following Port's delivery to Tenant of such audit report and, if payment is being requested pursuant to clause (ii) of this sentence, an invoice for the total cost of the audit and any reasonable supporting documentation requested by Tenant, (i) Tenant shall pay to Port the difference between the amount of Percentage Rent paid for such Lease Year and the amount of Percentage Rent that is due for such Lease Year, plus interest at the Prime Rate from the date that Percentage Rent for such Lease Year became due under this Lease, and (ii) if as a result thereof Port is entitled to an increase in Percentage Rent equal to more than the greater of (a) ten thousand dollars (\$10,000) or (b) five percent (5%) of the prior amount, Tenant shall pay to Port the total reasonable cost of the audit.

2.9. Public Trust Easement Option.

(a) Grant of Option. As additional consideration for this Lease, Tenant hereby grants to Port the option to impress the Public Trust Easement Parcel (or any portion thereof) with the Public Trust on the terms and conditions of this Section 2.9 (the "**Public Trust Option**"). Port may exercise the Public Trust Option any time during the period commencing with the date that is three (3) years after the Effective Date (or such earlier date as Tenant and Port may agree in their respective sole discretion) and ending with the date that is four (4) years after such commencement (the "**Option Period**") by giving Tenant written notice of its exercise of the Public Trust Option (the "**Option Notice**") identifying the portion of the Public Trust Easement Parcel for which it has elected. If the Option Notice identifies less than all of the Public Trust Easement Parcel, then Port shall retain the right to exercise the Public Trust Option as to the remainder of the Public Trust Easement Parcel for the remainder of the Option Period.

(b) Conveyance of Public Trust Easement. Promptly (and in any event within one hundred twenty (120) days after Port's delivery of the Option Notice), Tenant shall duly execute, acknowledge and deliver to Port a Public Trust Easement Deed substantially in the form attached hereto as Exhibit E. Port shall cause the Public Trust Deed to be recorded (and shall first duly execute, acknowledge and deliver the Public Trust Deed to the extent required).

(c) No Further Encumbrances. Prior to the recordation of the Public Trust Deed (or, if Port fails to exercise the Public Trust Option within the Option Period, prior to the expiration of the Option Period), Tenant shall not, without the prior written consent of Port, enter into any new leases, further encumber the Public Trust Easement Parcel or, through Tenant's act or omission, allow any third party to encumber the Public Trust Easement Parcel. . Notwithstanding the foregoing, Tenant may, without Port's consent, enter into and record utility and public access easements consistent with those contemplated under the DA (including under the Design for Development and the Infrastructure Plan (as defined in the DA)), provided Tenant has provided Port with the proposed form of any such easement at least ten (10) Business Days prior to entering into such easement, and provided that, if requested by Port within the 10 day period, Tenant has met and conferred in good faith with Port prior to entering into the easement.

(d) Operation and Use of Public Trust Easement Parcel. Prior to the recordation of the Public Trust Deed (or, if Port fails to exercise the Public Trust Option within the Option Period, prior to the expiration of the Option Period), Tenant may operate, use and maintain the Public Trust Easement Parcel in a manner consistent with the DA (including the Design for Development and Infrastructure Plan), provided that Tenant shall not, without the prior written consent of Port, construct any structures or improvements on the Public Trust Easement Parcel that will remain in place after Port's due exercise of the Public Trust Option, other than public parks and open space and street improvements that are consistent with the DA (including the Design for Development and Infrastructure Plan).

(e) Binding Effect; Memorandum of Option. The covenants, terms and conditions of the Public Trust Option set forth in this Section 2.9 shall run with the Public Trust Easement Parcel for the benefit of the Premises and shall be binding on any successor or transferee of Tenant's interest in the Public Trust Easement Parcel. Tenant and Port shall cause a Memorandum of Public Trust Option substantially in the form attached hereto as Exhibit F to be duly executed, acknowledged and recorded against the Public Trust Easement Parcel within thirty (30) days after the Effective Date. Upon any termination or expiration of the Public Trust Option in whole or in part, Port and Tenant shall, promptly following the request of either of them, execute, acknowledge and record a termination of such Memorandum of Public Trust Option with respect to the property for which the Public Trust Option so terminated or expired.

3. USES

3.1. Uses within Premises.

Tenant shall use and operate the Premises only for the Permitted Uses. Tenant agrees that following Completion of each Phase of the Initial Improvements the Completed portions of the Premises shall remain open to the public at all times, subject to such reasonable rules as may be adopted by Tenant and approved by Port from time to time and applied in a nondiscriminatory manner, including the Rules and Regulations. Except as provided herein, Tenant shall not allow any changes or additions to the Permitted Uses without the prior written consent of the Port Commission, by resolution. Any changes in use together with any conditions thereon may be implemented through a resolution of the Port Commission accepted in writing by Tenant, without need of further amendment to this Lease.

3.2. Advertising and Signs.

Tenant shall not have the right to place, construct or maintain any sign, flag, advertisement, awning, banner or other decoration (collectively, "**Sign**") on the Premises that does not comply with the Design for Development without the Port Director'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 building permit requirements, and Tenant shall obtain all Regulatory Approvals required therefor. Port makes no representation with respect to Tenant's ability to obtain such Regulatory Approvals. 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.

3.3. Limitations on Uses by Tenant.

(a) Prohibited Activities. Tenant shall not conduct or permit on the Premises any of the following activities, and such activities shall not constitute Permitted Uses, in any case without the approval of Port in writing:

- (i) any activity that violates the Public Trust;
- (ii) any activity that will cause a cancellation of any fire or other insurance policy covering the Premises required to be carried by Tenant hereunder, any part thereof or any of its contents;
- (iii) any activity that constitutes waste or nuisance to owners or occupants of adjacent properties, including the preparation, manufacture or mixing of anything that might emit any unusually objectionable odors, noises or lights onto adjacent properties, the use of light apparatus that can be seen outside the Premises or the use of loudspeakers or sound apparatus that can be heard outside the Premises; provided that increased vehicle and truck traffic, re-routing of traffic, traffic delays, loss of street and public parking, dust, dirt, construction noise and visual obstructions reasonably expected for the construction of the Initial Improvements or Subsequent Construction shall not be considered or deemed a nuisance;
- (iv) any activity that will materially injure, unreasonably obstruct or unreasonably interfere with the rights of ingress and egress of other tenants, owners or occupants of adjacent properties;
- (v) use of the Premises for personal living quarters or overnight sleeping or camping; or
- (vi) private membership clubs or private eating or drinking establishments.

(b) Land Use Restrictions. Tenant may not enter into agreements granting licenses, easements or access rights over the Premises if the same would be binding on Port's reversionary interest in the Premises, or obtain changes in applicable land use laws or special or conditional use authorizations or other permits for any uses not provided for hereunder, in each instance without Port's prior written consent, which consent may be withheld in Port's sole discretion, and subject to the provisions of Section 6. The Parties recognize that for Tenant to carry out its intended use, it may be necessary or desirable to obtain additional zoning, regulatory or land use approvals or special or conditional use authorization relating to the Premises. Port agrees to, from time to time, reasonably cooperate with Tenant, at no out of pocket cost or liability to Port, in pursuing such aforementioned regulatory approvals or authorizations, including executing documents, applications or petitions relating thereto, subject to the limitations of Section 6.2.

3.4. Consistency With Public Trust.

In approving this Lease, the Port Commission has made certain findings that this Lease and the proposed development of the Waterfront Park promotes Public Trust objectives. Consequently, it shall be reasonable for Port to withhold its consent to any change in the Permitted Uses or to the type, location or size of the Initial Improvements as further described in the Scope of Development, if such changes violate the Public Trust or Port's obligations under the Burton Act.

3.5. Public Dock.

Any recreational dock constructed on the Premises shall be open and accessible to the public and available for commercial shoreline small vessel service on a non-discriminatory basis, subject to such reasonable rules as may be adopted by Tenant and approved by Port from time to time and applied in a nondiscriminatory manner, including the Rules and Regulations.

4. TAXES AND ASSESSMENTS

4.1. Payment of Possessory Interest Taxes and Other Impositions.

(a) Payment of Possessory Interest Taxes. Tenant shall pay or cause to be paid to the proper authority before delinquency all Impositions assessed, levied, confirmed, or imposed on the Premises or any of the Improvements or Personal Property (excluding the personal property of any subtenant whose interest is separately assessed) located on the Premises or on its Leasehold Estate (but excluding any such taxes separately assessed, levied or imposed on any subtenant), or on any use or occupancy of the Premises hereunder, to the full extent of installments or amounts payable or arising during the Term, whether in effect at the Commencement Date or which become effective thereafter. Tenant shall not permit any such Impositions to become a defaulted lien on the Premises or the Improvements thereon; provided that if applicable Law permits Tenant to pay such taxes in installments, Tenant may elect to do so. In addition, Tenant shall pay any fine, penalty, interest or cost as may be charged or assessed for nonpayment or delinquent payment of such taxes. Tenant shall have the right to contest the validity, applicability or amount of any such taxes in accordance with Section 5.1.

(i) Acknowledgment of Possessory Interest. Tenant specifically recognizes and agrees that this Lease creates a possessory interest, which is subject to taxation, and that this Lease requires Tenant to pay any and all possessory interest taxes levied upon Tenant's interest pursuant to an assessment lawfully made by the County Assessor. Tenant further acknowledges that any Transfer permitted under this Lease and any exercise of any option to renew or extend this Lease may constitute a change in ownership, within the meaning of the California Revenue and Taxation Code, and therefore may result in a reassessment of any possessory interest created hereunder in accordance with applicable Law. For the avoidance of doubt, Tenant's Indemnity obligations under Section 15.1 shall apply to all Losses resulting from any assessment or reassessment of any possessory interest created under this Lease, subject to Section 15.1.

(ii) Reporting Requirements. San Francisco Administrative Code Sections 23.38 and 23.39 require that certain information relating to the creation, renewal, extension, assignment, sublease, or other transfer of this Lease be provided to the County Assessor within sixty (60) days after the transaction. Accordingly, Tenant must provide a copy of this Lease to the County Assessor not later than sixty (60) days after the Effective Date, and any failure of Tenant to timely provide a copy of this Lease to the County Assessor shall be a default under this Lease. Tenant shall also provide within a reasonable period of time any information that City may reasonably request to ensure compliance with San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute) or any other reporting requirement under applicable Law.

(b) Other Impositions. Without limiting the provisions of Section 4.1(a), and except as otherwise provided in this Section 4.1(b) and Article 5, Tenant shall pay or cause to be paid all Impositions, to the full extent of installments or amounts payable or arising during the Term (subject to the provisions of Section 4.1(c)), that may be assessed, levied, confirmed or imposed on or in respect of or be a lien upon the Premises, any Improvements now or hereafter located thereon, any Personal Property now or hereafter located thereon (but excluding the personal property of any subtenant whose interest is separately assessed), the Leasehold Estate, or any subleasehold estate permitted hereunder, including any taxable possessory interest which Tenant or any other Person may have acquired pursuant to this Lease (but excluding any such Impositions separately assessed, levied or imposed on any subtenant). Subject to the provisions of Section 5.1, Tenant shall pay all Impositions directly to the taxing authority, before delinquency, provided that if any applicable Law permits Tenant to pay any such Imposition in installments, Tenant may elect to do so. In addition, Tenant shall pay any fine, penalty, interest or cost as may be assessed for nonpayment or delinquent payment of any Imposition. The foregoing or subsequent provisions notwithstanding, Tenant shall not be responsible for any Impositions arising from or related to, Port's fee ownership interest in the Land or Premises, or Port's interest as landlord under this Lease, including Impositions relating to the fee, transfer taxes associated with the conveyance of the fee, or business or gross rental taxes attributable to Port's fee interest or transfer thereof.

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

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

4.2. Covenants Regarding Community Facilities Districts.

(a) Community Facilities District. As material consideration for Port entering into this Lease, Tenant shall comply with all of the covenants and acknowledgements set forth in the Financing Plan under and as defined in the DA with respect to CFD (as defined in the DA).

(b) Contingent Services Special Tax. Tenant acknowledges and agrees that the occurrence and continuance of an Event of Default under Article 7 relating to Tenant's obligation to maintain, repair, replace or operate the Premises in accordance with the requirements of this Lease shall be a Contingent Trigger Event (as defined in the Financing Plan).

4.3. Port's Right to Pay.

Unless Tenant is exercising its right to contest in accordance with Section 5.1, if Tenant fails to pay and discharge any Imposition (including fines, penalties and interest) before delinquency, Port, at its sole option, may (but is not obligated to) pay or discharge the same, provided that before paying any such delinquent Imposition, Port shall give Tenant written notice specifying a date that is at least ten (10) days following the date such notice is given after which Port intends to pay such Impositions. If Tenant fails, on or before the date specified in such notice,

either to pay the delinquent Imposition or to notify Port that it is contesting such Imposition pursuant to Section 5.1, then Port may thereafter pay such Imposition, and the amount so paid by Port (including any interest and penalties thereon paid by Port), together with interest thereon at the Default Rate computed from the date Port makes such payment until paid by Tenant, shall be payable by Tenant as Additional Rent.

4.4. Information Required by the County Assessor.

The County Assessor has notified Port that it requires certain information in order to facilitate completion of Assessor Block Maps, updates to ownership records, and assessment of in-progress construction, completed new construction, sales and other assessable transfers of property. Each Party shall provide to the County Assessor any information requested in writing by the County Assessor in the format required by the County Assessor within ninety (90) days of the applicable Party's receipt of a written request for such requested information.

5. CONTESTS

5.1. Right of Tenant to Contest Impositions and Liens.

Subject to Section 4.3, Tenant has the right to contest the amount, validity or applicability, in whole or in part, of any Imposition or other lien, charge or encumbrance against or attaching to the Premises or any portion of, or interest in, the Premises, including any lien, charge or encumbrance arising from work performed or materials provided to Tenant or other Person to improve the Premises or any portion of the Premises, by appropriate proceedings conducted in good faith and with due diligence, at no cost to Port. Tenant shall give notice to Port before the commencement of any such contest, and upon completion, shall notify Port of the final determination of such contest. Subject to Section 4.2, nothing in this Lease shall require Tenant to pay any Imposition as long as it contests the validity, applicability or amount of such Imposition in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition to be forfeited to the entity levying such Imposition as a result of its nonpayment. If any Law requires, as a condition to such contest, that the disputed amount be paid under protest, or that a bond or similar security be provided, Tenant shall be responsible for complying with such condition as a condition to its right to contest. Tenant shall be responsible for the payment of any interest, penalties or other charges, which may accrue as a result of any contest, and Tenant shall provide a statutory lien release bond or other security reasonably satisfactory to Port in any instance where Port's interest in the Premises may be subjected to such lien or claim. Tenant shall not be required to pay any Imposition or lien being so contested during the pendency of any such proceedings unless payment is required by the court, quasi-judicial body or administrative agency conducting such proceedings. Port, at its own expense and at its sole option, may elect to join in any such proceeding whether or not any Law requires that such proceedings be brought by or in the name of Port or any owner of the Premises. Port shall not be subjected to any liability for the payment of any fines or penalties, and except as provided in the preceding sentence, costs, expenses or fees, including Attorneys' Fees and Costs, in connection with any such proceeding. For the avoidance of doubt, Tenant's Indemnity obligations under Section 15.1 shall apply to all Losses resulting from Tenant's contest of any Impositions, subject to Section 15.1.

5.2. Port's Right to Contest Impositions.

At its own cost and after notice to Tenant of its intention to do so, Port may, but in no event shall be obligated to, contest the validity, applicability or the amount of any Impositions, by appropriate proceedings conducted in good faith and with due diligence. Nothing in this Section 5.2 shall require Port to pay any Imposition as long as it contests the validity, applicability or amount of such Imposition in good faith, and so long as it does not allow any portion of the Premises to be forfeited to the entity levying such Imposition as a result of its nonpayment and so long as such activities do not cause a default under any Mortgage in effect at the time. Port shall give notice to Tenant before the commencement of any such contest and promptly following the final determination of such contest. Port shall reimburse Tenant within thirty (30) days after demand from Tenant for any such fines, penalties, costs, interest, expenses or fees, including Attorneys' Fees and Costs, which Tenant is legally obligated to pay as a result of Port's contest of such Impositions.

6. COMPLIANCE WITH LAWS

6.1. Compliance with Laws and Other Requirements.

(a) Tenant's Obligation to Comply. During the Term, Tenant shall with respect to the Premises comply, at no cost to Port, with (i) all applicable Laws (including Regulatory Approvals), the Project Approvals and the Mitigation and Improvement Measures, in each case to the extent applicable to the Project (for the avoidance of doubt, during the term of the DA, solely to the extent applicable to the Project in accordance with the DA), and (ii) the requirements of all policies of insurance required to be maintained pursuant to Article 16. The foregoing sentences shall not be deemed to limit Port's ability to act in its legislative or regulatory capacity, including the exercise of its police powers. In particular, Tenant acknowledges that the Permitted Uses do not limit Tenant's responsibility to obtain Regulatory Approvals for such uses, including special use permits under the Design for Development or building permits pursuant to the Port of San Francisco Building Code, nor do such uses limit Port's responsibility in the issuance of any such Regulatory Approvals to comply with applicable Laws. It is understood and agreed that Tenant's obligation to comply with Laws includes the obligation to make, at no cost to Port, all additions to, modifications of, and installations on the Premises that may be required by any Laws relating to or affecting the Premises.

(b) Unforeseen Requirements. The Parties acknowledge and agree that Tenant's obligation to comply with all present or future Laws to the extent required pursuant to Section 6.1(a) and other requirements of this Section 6.1(b) is a material part of the bargained-for consideration under this Lease. Tenant's obligation to comply with Laws may include the obligation to make substantial or structural repairs and alterations to the Premises (including the Improvements), regardless of, among other factors, the relationship of the cost of the curative action to the Rent under this Lease, the length of the then remaining Term, the relative benefit of the repairs to Tenant or Port, the degree to which curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the Parties contemplated the particular Law involved, or the relationship between the Law involved and Tenant's particular use of the Premises. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel Port to make any repairs to comply with any such Laws, on account of any such occurrence or situation, except to the extent provided in Articles 11 or 12.

(c) Proof of Compliance. Tenant shall promptly upon Port's reasonable request provide Port with reasonable supporting evidence of its compliance with any of the obligations required under this Section 6.1.

6.2. Regulatory Approvals.

Tenant understands and agrees that Port is entering into this Lease in its proprietary capacity as the holder of fee title to the Premises for the public benefit on the terms of the Public Trust, and not in its capacity as a Regulatory Agency. Tenant understands that the entry by Port into this Lease shall not be deemed to imply that Tenant will be able to obtain any required approvals from Port itself in a regulatory capacity or any other City departments, boards or commissions that have jurisdiction over the Premises. By entering into this Lease, Port is in no way modifying Tenant's obligations to cause the Premises to be used and occupied in accordance with all Laws, as provided herein. Tenant further acknowledges and agrees that any time limitations on Port review or approval within this Lease apply only to Port in its proprietary capacity, not in its regulatory capacity.

6.3. BCDC Permit.

Notwithstanding that Port and Tenant are or will be co-applicants/co-permittees under the BCDC Permit, Tenant shall be responsible at its sole cost and expense for complying with the BCDC Permit and satisfying all conditions thereof. For the avoidance of doubt, Tenant's Indemnity obligations under Section 15.1 shall apply to all Losses arising under the BCDC Permit, subject to Section 15.1.

7. TENANT'S COVENANTS

7.1. Maintenance, Repair and Continuous Operation.

(a) Tenant's Obligation. Tenant shall, at no cost to Port, maintain, repair and, following Completion of each Phase of the Initial Improvements and any Subsequent Construction, continuously operate the Premises or applicable portion thereof, or cause such portion to be maintained, repaired and continuously operated, during the Term in a manner consistent with standards for the maintenance, repair and operation of a first-class public waterfront park and open space project located on property within Port's jurisdiction and in compliance with all applicable Laws and the requirements of this Lease, subject to the provisions of Articles 11 and 12 relating to damage and destruction and Condemnation. Tenant shall be exclusively responsible, at no cost to Port, for the management and operation of the Improvements. In connection with managing and operating the Project, Tenant shall provide (or require others to provide) such services as Tenant deems necessary and appropriate for the uses to which the Improvements are put, including: (a) repair and maintenance of the Improvements, as more fully described in this Article 7; (b) utility services to the extent, if any, customarily provided by equivalent projects located in the City; (c) cleaning, janitorial, extermination, and trash removal; (d) landscaping and groundskeeping; (e) security services; (f) maintenance of continuous public access consistent with the Public Trust and the requirements of this Lease; and (g) such other services as may be necessary or appropriate for a first-class public waterfront park and open space project located on property within Port's jurisdiction. Tenant shall prepare CC&Rs under and as defined in the DA (and, for

the avoidance of doubt, obtain all approvals thereof required under the DA and this Lease) that require Tenant or a Management Association, as applicable, to maintain, repair and operate the Improvements in accordance with this Lease by designating the Premises as a “common area” under the CC&Rs during the Term. The CC&Rs shall provide that (i) Tenant or a Management Association shall be responsible for complying with the periodic monitoring and reporting requirements under the BCDC Permit, (ii) to the extent voters ever reduce or eliminate the Contingent Services Special Taxes, each owner shall pay a fee equal to such owner’s proportionate share of the reasonable cost of the maintenance, repair and operation of the Premises to the standard required pursuant to this Lease for the applicable fiscal year, not to exceed the amount of Contingent Services Special Taxes that such owner would have been required to pay (if any) for such fiscal year pursuant to the RMA absent such reduction or elimination, less (if the Contingent Services Special Taxes are reduced but not eliminated) any amount of Contingent Services Special Taxes that such owner is required to pay for such fiscal year, (iii) to the extent that the Management Association performs maintenance, repair and operation of the Premises and is not Tenant hereunder, Port shall be indemnified by the Management Association for the Management Association’s acts and omissions in connection with its maintenance, repair and operation of the Premises under indemnification provisions consistent herewith, (iv) Port shall have the right to enforce against the Management Association the maintenance and repair provisions of the CC&Rs applicable to the Premises, and (v) any provisions of the CC&Rs that benefit Port shall not be amended without Port’s approval. Tenant shall not cause the CC&Rs to be recorded against Tenant’s leasehold interest in the Premises without obtaining, to the extent required hereunder, Port approval, which shall not be unreasonably withheld. Port approval shall not be required with respect to any provisions of the CC&Rs related to voting rights, owner maintenance obligations, architectural control, enforcement and remedial action, mortgagee protections or cost allocations so long as such provisions of the CC&Rs do not conflict with Port’s rights or Tenant’s obligations under this Lease. Following termination of the CC&Rs as to the Premises, Tenant shall take all actions reasonably necessary to cause the CC&Rs to be removed as an encumbrance against the Premises, which obligation shall survive the expiration or earlier termination of this Lease. Port shall take all actions necessary to cause the CC&Rs (and any amendments thereto, subject to Port approval to the extent required under the CC&Rs) to be recorded against Tenant’s leasehold interest in the Premises promptly upon Tenant’s request after Port’s approval of the CC&Rs or amendments, as applicable. Any financings or other encumbrances placed by Port on Tenant’s leasehold interest in the Premises from and after the Effective Date shall be subordinate to the CC&Rs.

(b) Approved Operating Standards and Reporting Requirements. All Tenant’s operations on the Premises shall be conducted in accordance with the Approved Operating Standards and Reporting Requirements and the Operations Plan (collectively, the “**Rules and Regulations**”). Port may, from time to time, review the Rules and Regulations and make recommendations for amendments.

(c) Repairs. Tenant shall with reasonable promptness make (or cause others to make) all necessary or appropriate repairs, renewals and replacements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, foreseen or unforeseen, except as otherwise provided in Articles 11 or 12. Tenant shall make such repairs with materials, apparatus and facilities as originally installed and approved by Port under this Lease, or, if not originally subject to Port approval or not commercially available, with materials, apparatus and facilities at

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

(d) Annual Budget Updates. Following Completion of each Phase of the Initial Improvements, Tenant shall provide to Port a copy of its annual budget update for the maintenance and operation of the Completed portions of the Premises promptly after Tenant completes each such update.

(e) Capital Reserves. Tenant shall establish and maintain Capital Reserves to pay for Capital Items within the Premises to the extent and on the terms and conditions required under the CC&Rs. Upon Port's request, Tenant shall provide Port a statement from the depository institution where the Capital Reserves are held showing the then current balance and any activity on such account together with an explanation on Tenant's expenditures from such funds.

(f) Disabled Access. Tenant acknowledges that the Disabled Access Laws require that the programs, services and other activities provided at the Premises must be accessible to the disabled public. Without limiting Tenant's obligations under this Lease to comply with applicable Laws, Tenant shall fulfill that obligation and shall not discriminate against disabled persons in the provision of services, benefits or activities pursuant to this Lease.

7.2. Facilities Condition Report.

(a) Facilities Condition Report. No less than ninety (90) days before each FCR Date, Tenant shall deliver to Port a facilities condition report (the "**Facilities Condition Report**") prepared by a qualified team of professionals including a structural engineer, each with at least ten (10) years of experience in constructing, renovating and/or evaluating major park and open space projects and shoreline or pier structures in California. The Facilities Condition Report shall describe at a minimum the condition and structural integrity of the Improvements, as well as an estimate of the remaining useful life of all the Improvements. Additionally, if a Facilities Condition Report is prepared by Tenant or another party in connection with any Transfer or refinancing, then Tenant shall provide or cause the other party to provide, a copy of such Facilities Condition Report to Port.

(b) Failure to Revise or Submit Report. If Port reasonably believes the Facilities Condition Report does not satisfy the requirements set forth in this Section 7.2, then Port shall notify Tenant of such deficiency within forty-five (45) days following receipt of the Facilities Condition Report, and Tenant shall revise the Facilities Condition Report to address Port's concerns within sixty (60) days. If Tenant fails to provide a Facilities Condition Report, or a revised Facilities Condition Report to Port within such period of time, Port after giving thirty (30) days' notice to Tenant shall have the right, but not the obligation, to cause the preparation of a Facilities Condition Report by construction professionals of Port's choice, satisfying the experience requirements set forth in Section 7.2(a) at Tenant's sole cost. Upon Port's delivery to Tenant of an invoice for such Facilities Condition Report, Tenant shall promptly reimburse Port the amount set forth in such invoice.

(c) Maintenance and Repair of Identified Items. Tenant shall use commercially reasonable efforts to perform the recommended repairs identified in the Facilities Condition Report in a manner consistent with standards for the repair of a first-class public waterfront park and open space project located on property within Port's jurisdiction and in compliance with all applicable Laws and the requirements of this Lease.

7.3. Dredging.

Tenant shall be solely responsible for any dredging and dredging-related activities (including any Investigation or Remediation associated with a Hazardous Materials Claim arising from Tenant's dredging and dredging-related activities on the Premises or adjoining property) that are required to maintain a depth of at least six (6) feet below MLLW within an approximately one hundred foot navigation corridor for its recreational dock operations in connection with the Project (the "**Dredging Work**"), and for all costs associated with the Dredging Work, including hydrographic surveys, pre-dredge testing, sampling, chemical analyses, bioassays permitting, and all consultant and dredging contracting. Tenant shall also promptly provide at no cost to Port copies of all pre-dredge and post-dredge surveys, submittals to applicable Regulatory Agencies, soundings, reports, data, and any other information obtained in connection with the Dredging Work. Tenant shall be responsible for testing, sampling, removing, and disposing of the sediment, debris, and other materials dredged from the Bay all in accordance with this Lease. Dredging Work shall be performed in accordance with the requirements of the permit issued to Tenant by the Dredged Material Management Office for the San Francisco Bay Region.

Tenant shall also comply with the Risk Management and Monitoring Plan for the Potrero Offshore Sediment Areas (the "**RMMP**"), including notification and coordination with Pacific Gas & Electric Company, Port and the San Francisco Bay Regional Water Quality Control Board as applicable to any of Tenant's in-water construction, dredging or other activities that may disturb sediment in the RMMP area.

7.4. City Reservation System.²

Without limiting Tenant's rights with respect to the Premises, Port and Tenant shall cooperate in good faith with respect to any process by which members of the public reserve open spaces and associated facilities within the Premises, including any open recreation areas or areas designed for group gatherings (both of which may be used by groups for activities including yoga, tai chi, or badminton) and picnic tables. To the extent required under the DA, Port and Tenant shall provide an online reservation system for the same that is linked to a broader City reservation system, such as the SFRPD website, similar to what is currently provided for other non-SFRPD open spaces located on Port property.

7.5. Storm Water Pollution Prevention.

(a) Compliance with Statewide Permit. Tenant shall 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, developing and

² NTD: To be confirmed upon finalization of DA Exhibit L-2.

implementing a site-specific Storm Water Pollution Prevention Plan (“SWPPP”) and conducting storm water monitoring and reporting, in each case, with respect to the Premises. Tenant’s SWPPP and a copy of a Notice of Intent for the Premises shall be submitted to Port’s Real Estate Division before beginning operations on the Premises.

(b) Post-Construction Requirements. In addition to the requirements under Section 7.5(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 Management Requirements, subject to review and permitting by Port or SFPUC, as applicable. To the extent of any inconsistency between the Statewide General Permit and the San Francisco Stormwater Management Requirements, the San Francisco Stormwater Management Requirements shall control.

8. NO OBLIGATION OF PORT TO REPAIR

8.1. No Obligation of Port; Waiver of Rights.

From and after the Commencement Date, Tenant shall be solely responsible for the condition, operation, repair, maintenance and management of the Premises, including the Initial Improvements, Subsequent Construction, and any and all other Improvements. Port shall not, as a result of this Lease, have any obligation to make repairs or replacements of any kind or maintain the Premises or any portion of any of them. Tenant waives the benefit of any Law that would permit Tenant to make repairs or replacements at Port’s expense, or abate or reduce any of Tenant’s obligations under, or terminate, this Lease, on account of the need for any repairs or replacements. Without limiting the foregoing, Tenant hereby waives any right to make repairs at Port’s expense as may be provided by California Civil Code Sections 1932(1), 1941 and 1942, as any such provisions may from time to time be amended, replaced or restated.

8.2. Port’s Right to Repair.

In the event Tenant fails to maintain and repair the Premises in accordance with Section 7.1(c) and such failure continues without cure for more than thirty (30) days following Tenant’s receipt of a Maintenance Notice therefor (unless such cure cannot be reasonably completed within such thirty (30) day period and Tenant commences such cure within such thirty (30) day period and thereafter prosecutes such cure diligently to completion within a reasonable time thereafter), then Port may repair the same at Tenant’s cost and expense and Tenant shall reimburse Port therefor as provided in Article 19, provided that if such failure to maintain and repair the Premises gives rise to an emergency that creates an imminent danger to public health or safety, as reasonably determined by Port, Port may at its sole option, but shall not be obligated to, perform such obligation for and on behalf of Tenant, provided that, if there is time, Port first gives Tenant such notice and opportunity to take corrective action as is reasonable under the circumstances. In the event Port notifies Tenant of a failure to maintain and repair the Premises and specifies the nature of such failure (“**Maintenance Notice**”), Tenant shall pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300), which amount shall be increased by One Hundred Dollars (\$100) on the tenth (10th) Anniversary Date and every ten (10) years thereafter, upon delivery of the Maintenance Notice. In the event Port determines during subsequent inspection(s) that Tenant has failed to so maintain the Premises in accordance

with this Article 8, then Tenant shall pay to Port, as Additional Rent, an amount equaling Four Hundred Dollars (\$400), which amount shall be increased by One Hundred Dollars (\$100) on the tenth (10th) Anniversary Date and every ten (10) years thereafter, for each additional Maintenance Notice, if applicable, delivered by Port to Tenant following each inspection. The Parties agree that the charges associated with each inspection of the Premises and delivery of each Maintenance Notice represent a fair and reasonable estimate of the administrative cost and expense that 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 is in addition to and not in lieu of any and all other rights and remedies of Port under this Lease.

Initials: _____ Tenant

9. IMPROVEMENTS

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

Tenant shall construct the Initial Improvements in compliance with the Project Approvals and subject to all the terms, covenants, conditions and restrictions in this Lease, including Section 9.3(a).

9.2. Title to Improvements.

During the Term, Tenant shall own all of the Improvements, including all Subsequent Construction and all appurtenant fixtures, machinery and equipment installed therein. At the expiration or earlier termination of this Lease, title to the Improvements, including appurtenant fixtures (but excluding trade fixtures and other Personal Property), shall vest in Port without further action of any Party, and without compensation or payment to Tenant. Tenant shall have the right at any time, or from time to time, including at the expiration or upon the earlier termination of the Term, to remove Personal Property from the Premises; provided, however, that if the removal of Personal Property causes material damage to the Premises, Tenant shall promptly cause the repair of such damage at no cost to Port.

9.3. Port Approval Items; Subsequent Construction Approvals.

(a) Port Approval Items. Tenant shall not commence construction of any Phase of the Initial Improvements without obtaining Port's approval of the items within such Phase set forth on Exhibit G (the "**Port Approval Items**") pursuant to the DA and this Lease. If Port fails to deliver to Tenant notice of its approval or disapproval (and set forth in such notice the reasons for any such disapproval in reasonable detail) of any of the Port Approval Items with respect to the initial Phase of the Initial Improvements within sixty (60) days following Tenant's submission to Port thereof, then the Initial Improvements Deadline shall be extended by one (1) day for each day following the expiration of such sixty (60)-day period that such failure continues.

(b) Subsequent Construction Approvals. Tenant shall have the right, from time to time during the Term, to perform Subsequent Construction in accordance with the provisions of this Article 9, provided that Tenant cannot perform Subsequent Construction that would adversely affect public access to, or the use or appearance of, the Premises (other than as reasonably

necessary during Subsequent Construction and only on a temporary basis) without Port's prior approval, which approval may be withheld in Port's sole and absolute discretion. Tenant acknowledges that any Subsequent Construction undertaken by Tenant shall be subject to Articles 6 and 9. Nothing herein alters Tenant's obligation to obtain all applicable Regulatory Approvals, including, where applicable, from Port itself to the extent required under the Project Approvals. Without limiting the foregoing, Tenant acknowledges that it shall comply with the Design for Development to the extent applicable.

9.4. Construction Schedule.

(a) Performance. Once Commenced, Tenant shall prosecute the construction of each Phase of the Initial Improvements and all Subsequent Construction with reasonable diligence, subject to Excusable Delay.

(b) Reports and Information. During the construction of the Initial Improvements and all Subsequent Construction, Tenant shall submit to Port written progress reports when and as reasonably requested by Port.

9.5. Construction.

(a) Commencement of Construction. Tenant shall not Commence any Phase of the Initial Improvements or any Subsequent Construction until the following conditions have been satisfied or waived by Port to the extent applicable:

(i) Tenant has prepared construction documents, obtained and paid for all building permits, obtained all other Regulatory Approvals, financing and Port approvals, in each case to the extent required to Commence such construction in accordance with this Lease and the Project Approvals.

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

(iii) With respect to each Phase of the Initial Improvements, Tenant has delivered to Port Adequate Security for such Initial Improvements.

(iv) Tenant has provided notice thereof in accordance with Section 13.2.

(b) Construction Standards. The construction of each Phase of the Initial Improvements and Subsequent Construction shall be accomplished expeditiously, diligently and in accordance with good construction and engineering practices and applicable Laws. Tenant shall undertake commercially reasonable measures to minimize damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all Persons affected by such work. Dust, noise and other effects of such work shall be controlled using commercially-accepted methods customarily used to control deleterious effects associated with construction projects in populated or developed urban areas. In addition, in the case of such

construction which begins after the initial Phase of the Initial Improvements have opened for use by the general public, Tenant shall erect, to the extent reasonably possible, construction barricades substantially enclosing the area of such construction and maintain them until such construction has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

(c) Costs of Construction. Port shall have no responsibility for costs of construction of any Initial Improvements or Subsequent Construction. Tenant shall pay (or cause to be paid) all such costs.

(d) Prevailing Wage.³ Any undefined, initially-capitalized term used in this Section 9.5(d) 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, in each case, at the Premises to (1) pay workers performing such work not less than the Prevailing Rate of Wages, (2) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (3) employ Apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, "Prevailing Wage Requirements"). Tenant agrees to reasonably 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, 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. Provided that Tenant complies with the foregoing obligations under this Section 9.5(d), (i) Tenant shall not be found to be in breach of this Lease due to a Contractor’s or Subcontractor’s failure to pay Prevailing Wages, employ Apprentices or otherwise comply with this Section 9.5(d) and (ii) if a Contractor or Subcontractor fails to pay Prevailing Wages, employ Apprentices or otherwise comply with this Section 9.5(d), the City will seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching Contractor or Subcontractor directly (and not against Tenant). For the current Prevailing Rate of Wages, see www.sfgov.org/olse or call the City’s Office of Labor Standards Enforcement at 415-554-6235. Tenant shall also pay, and shall require its subtenants, 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),

³ NTD: Subject to continuing Tenant review.

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).

(e) Safety Matters. Tenant, while performing the construction of the Initial Improvements and any Subsequent Construction or maintenance or repair of the Improvements (for purposes of this Section 9.5(e) 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 erect appropriate construction barricades to enclose the areas of such Work and maintain them until such Work has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

9.6. As-Built Plans and Specifications.

With respect to each Phase of the Initial Improvements and any Subsequent Construction (but excluding tenant improvements) costing Five Hundred Thousand Dollars (\$500,000) as Indexed, or more, for which Port’s approval was required under Article 9, Tenant shall furnish to Port one set of design/permit drawings in their finalized form and as-built plans and specifications (in both hard copy and AutoCad format, or such other form as reasonably requested by Port), specifications and surveys with respect to such Initial Improvements and Subsequent Construction within one hundred twenty (120) days following Completion. As used in this Section 9.6 “**as-built plans and specifications**” means as-built field documents prepared during the course of construction, including all requests for information responses, field orders, change orders and other corrections to the documents made during the course of construction. Submittals shall be both in the form of full-size, hard paper copies and converted into electronic format (or such other format as is industry standard at the time of submittal), and in such format as is reasonably required by Port’s building department at the time of submittal. If Tenant fails to provide such as-built plans and specifications to Port within the time period specified herein, and such failure continues for an additional thirty (30) days following written request from Port, Port shall thereafter have the right to cause an architect or surveyor selected by Port to prepare as-built plans and specifications showing such Initial Improvements and Subsequent Construction, and the reasonable cost of preparing such plans and specifications shall be reimbursed by Tenant to Port as Additional Rent. Nothing in this Section 9.6 shall limit Tenant’s obligations, if any, to provide plans and specifications in connection with the Initial Improvements and Subsequent Construction under applicable regulations adopted by Port in its regulatory capacity. Tenant is permitted to disclaim any representations or warranties with respect to the as-built plans and specifications provided hereunder, and, at Tenant’s request, Port shall provide Tenant with a release from liability for future use of the applicable materials, in a form acceptable to Tenant and Port.

9.7. Adequate Security.

Tenant shall have the right to substitute any Adequate Security provided hereunder, or any portion thereof, for another form of Adequate Security that meets all of the requirements of Adequate Security hereunder. If more than one instrument of Adequate Security is provided by Tenant for a Phase of the Initial Improvements, then such instruments shall not be cross-defaulted and liability thereunder shall be several and not joint. In the event that a claim or demand may be

made against more than one instrument of Adequate Security, Port shall have the right to proceed against any or all of such Adequate Security instruments simultaneously or in such order as may be determined by Port. If at any time that a Guaranty has been provided, a Material Change to Guarantor occurs, Tenant shall notify Port as soon as reasonably practicable and within twenty (20) days after the occurrence of such Material Change to Guarantor, deliver to Port a new Guaranty (or other form of Adequate Security). Any Adequate Security provided by Tenant shall be proportionately reduced upon partial satisfaction of the obligations secured thereby to the extent reasonably approved by Port or provided in such Adequate Security, and, if requested by Tenant or the obligor under such Adequate Security, Port shall provide a written confirmation of such reduction promptly (and, in any event, within five (5) Business Days) following such request. Port shall release and return any unused portion of any Adequate Security promptly (and, in any event, within thirty (30) days) following the Completion of the Phase of the Initial Improvements secured thereby and, if requested by Tenant or the obligor under such Adequate Security, provide a written confirmation of such release and return promptly (and, in any event, within five (5) Business Days) following such request.

10. UTILITY SERVICES

10.1. Utility Services.

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

10.2. Hetch-Hetchy Power.

At Port's request given no more than sixty (60) days following Tenant's notice to Port that SFPUC has completed and delivered the Feasibility Study under and as defined in the DA, Tenant will purchase all of its electricity for the Improvements from the City's utility, Hetch-Hetchy Water

and Power, at then prevailing market rates for comparable types of load so long as it is reasonably available for Tenant's needs and the City determines based on the Feasibility Study that such service is feasible, provided that Tenant under no circumstances shall have an obligation to purchase such services from the City if the level of services is materially less, or the price paid is materially more, than that available on the open market. At Tenant's request from time to time, Port shall reasonably cooperate with Tenant, at no out of pocket cost or liability to Port, in connection with the purchase of such electricity, including, to the extent that Port has available capacity and all necessary rights and the ability to do so, in connection with making such electricity available to the Premises through such other property owned by Port.

10.3. Waiver.

Tenant hereby waives any benefits of any applicable Law, including the provisions of California Civil Code Section 1932(1), permitting the termination of this Lease due to any interruption or failure of utility services. The foregoing does not constitute a waiver by Tenant of any claim it may now or in the future have (or claim to have) against any public utility provider relating to the provision of (or failure to provide) utilities to the Premises.

11. DAMAGE OR DESTRUCTION

11.1. General; Notice; Waiver.

(a) General. If at any time during the Term any damage or destruction occurs to all or any portion of the Premises, including the Improvements thereon, and including any Major Damage or Destruction, the rights and obligations of the Parties shall be as set forth in this Article 11.

(b) Notice. If there is any damage to or destruction of all or part of the Premises or the Improvements (i) that could materially impair use or operation of any portion of the Improvements for their intended purposes for a period of thirty (30) days or longer, or (ii) for which the estimated cost of Restoration exceeds in an individual instance, the amount of Two Hundred Fifty Thousand Dollars (\$250,000) or an aggregate amount of Five Hundred Thousand Dollars (\$500,000) (which amount includes both hard and soft costs of a Restoration, including architectural fees, permit and financing costs), Tenant shall promptly, but not more than ten (10) days after the occurrence of any such damage or destruction, give written notice thereof to Port describing with as much specificity as is reasonable, given the ten-day time constraint, the nature and extent of such damage or destruction; provided, however, that Tenant shall provide Port with a supplemental and more detailed written report describing such matters with specificity within ninety (90) days after the occurrence of the damage or destruction.

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

11.2. Rent and other Obligations after Damage or Destruction.

If there is any damage to or destruction of the Premises, including the Improvements thereon, or any part thereof, from fire or any other cause, (i) this Lease shall not terminate, Tenant shall not be permitted to surrender this Lease, and Tenant shall not be relieved from any obligations hereunder, in any case except as otherwise specifically provided herein, and (ii) at all times before completion of Restoration or any termination in accordance with this Article 11, Tenant shall continue to pay to Port all Rent at the times and in the manner described in this Lease.

11.3. Tenant's Restoration.

If all or part of the Premises or the Improvements are damaged or destroyed by an event that does not constitute an Uninsured Casualty or Major Damage or Destruction and Tenant does not terminate this Lease under Section 11.4(a), then Tenant shall, within a reasonable period of time (allowing for securing necessary Regulatory Approvals and subject to Excusable Delay), commence and diligently Restore the Improvements without regard to the amount or availability of insurance proceeds. All such Restoration performed by Tenant shall be in accordance with the procedures set forth in Article 9 relating to Subsequent Construction and shall be at Tenant's sole expense. Subject to the rights of any Lender, Tenant shall use all applicable insurance proceeds for the Restoration and Tenant shall have the sole right to negotiate an insurance settlement for claims in connection with such Restoration. If this Lease terminates for any reason before completion of the Restoration, Tenant shall assign and transfer to Port all unexpended insurance proceeds as well as Tenant's rights to all future insurance proceeds relating to the damage and destruction.

11.4. Major Damage or Destruction or Uninsured Casualty.

(a) Tenant's Election to Restore or Terminate.

(i) Uninsured Casualty or Major Damage or Destruction.

If an event of Major Damage or Destruction occurs during the last ten (10) years of the Term, or if an event of Uninsured Casualty occurs at any time during the Term, then at any time prior to the date that is one hundred eighty (180) days following the occurrence of such Major Damage or Destruction or Uninsured Casualty Tenant shall provide Port with written notice (the "**Casualty Notice**") either (1) electing to commence and complete Restoration of the Improvements, or (2) electing to terminate this Lease (subject to Section 11.4(b)). If Tenant elects to Restore the Improvements, all such Restoration performed by Tenant shall be in accordance with the procedures set forth in Article 9 relating to Subsequent Construction and shall be at Tenant's sole expense.

(ii) Other Circumstance Allowing Termination.

Notwithstanding the foregoing or subsequent provisions of this Article 11, Tenant shall not be required to Restore the Improvements and may elect to terminate this Lease in accordance with this Article 11 if the then existing Laws would not allow Tenant to Restore the Improvements.

(b) Conditions to Termination. As a condition precedent to the effectiveness of Tenant's termination of this Lease upon the occurrence of either of the events set forth in Section 11.4(a), Tenant shall do all of the following:

(i) in its election to terminate described in Section 11.4(a), state the estimated cost of Restoration, and, with respect to the Uninsured Casualty only, the amount by which the estimated cost of Restoration plus the amount of any applicable policy deductible exceeds insurance proceeds payable under the insurance policies required to be carried by Tenant hereunder (or those insurance proceeds that would have been payable but for Tenant's failure to maintain the insurance policies and coverages required to be carried by Tenant hereunder);

(ii) at its sole cost and expense, restore the Premises to a safe, clean and good condition, including any partial construction as needed to secure and use the Premises to the extent possible and reasonable, in accordance with plans approved by Port, or at Port's request, demolish and remove the Improvements;

(iii) cure all Events of Default that are reasonably susceptible to cure;

(iv) pay in full all utility charges and Impositions payable by Tenant hereunder that are incurred up to and including the effective date of the termination; and

(v) maintain all the insurance required to be maintained under Article 16 until the effective date of the termination, and assign to Port as of the effective date of termination all insurance policies and rights to future insurance proceeds, as well as any unexpended insurance proceeds received by Tenant relating to the Premises (other than business interruption proceeds), to the extent that such policies, rights and proceeds relate to the casualty and are assignable by Tenant to Port.

(c) Payment of Insurance Proceeds on Termination. If Tenant terminates this Lease under Section 11.4(a), then Tenant shall pay or cause to be paid the following amounts solely from the insurance proceeds from the insurance policies required to be carried by Tenant hereunder related to the applicable casualty as and to the extent available arising from the applicable casualty promptly following receipt of such proceeds, in the order required by any senior Mortgage, and if none, in the following order of priority:

(i) First, to Tenant, for the actual costs incurred by Tenant for any work required to be performed by Tenant to Restore the Premises and to alleviate any conditions caused by such casualty that could cause an immediate or imminent threat to the public safety and welfare or damage to the environment, including any demolition, restoration and hauling of rubble or debris and, for the avoidance of doubt, including costs of restoration under Section 11.4(b);

(ii) Second, to Port, for all accrued and unpaid amounts owed to Port under this Lease, if any, by Tenant, up to the effective date of the termination;

(iii) Third, to each Non-Affiliate Lender demanding payment, in order of priority, a portion of the remaining casualty insurance proceeds arising out of or in connection with the casualty in an amount not to exceed the aggregate amounts that are secured by the applicable Non-Affiliate Mortgage then owed to each such Non-Affiliate Lender (to the extent the Non-Affiliate Lender has the legal right to payment in lieu of the payments being used for Restoration);

(iv) Fourth, to the appropriate governmental or quasi-governmental entity for all Impositions due up to the effective date of the termination;

(v) Fifth, any such remaining insurance proceeds from property or casualty insurance, to Port for Restoration or demolition work to the Premises related to such casualty; and

(vi) Finally, any such remaining insurance proceeds relating to loss of use shall be divided proportionately between Port, for the value of Port's reversionary interest in the Premises and Improvements (in their condition immediately before the casualty event) as of the date the Term would have expired but for the casualty event, and Tenant, for the value of the Improvements for the remaining unexpired portion of the Term (in their condition immediately before the event of damage or destruction) less any proceeds distributed in repayment of any Mortgages as provided in Section 11.4(c)(iii).

(d) Port's Election Upon Notice of Termination. Notwithstanding the foregoing, if Tenant elects to terminate this Lease solely due to an Uninsured Casualty under circumstances permitted by Section 11.4(a) then Port may, upon such occurrence by notice in writing given to Tenant within sixty (60) days after the date Tenant provides Port the Casualty Notice, elect by notice thereof to Tenant: (i) to accept the termination, or (ii) continue the Lease in effect and pay to Tenant the amount by which the cost of Restoration (including the cost of any required code upgrades) exceeds the net proceeds of any insurance payable under the policies of insurance that Tenant is required to carry under Article 16 (or those insurance proceeds that would have been payable but for Tenant's failure to maintain the insurance policies and coverages required by this Lease) by more than Five Hundred Thousand Dollars (\$500,000), as Indexed, plus the amount of any applicable policy deductible (except that in the case of damage or destruction caused by earthquake or flood, the amount of the policy deductible shall be deemed to be the lesser of the amount of the policy deductible for non-earthquake damage under Tenant's property insurance policy maintained under Section 16.1(a)(ii) as of the date of casualty, or the actual amount of the policy deductible) and require Tenant to Restore the Premises. Such required Restoration shall be performed by Tenant in accordance with the procedures set forth in Article 9 relating to Subsequent Construction, subject to receipt of such payment from Port. Port's failure to make any such election within the time frame provided above shall be deemed an election under clause (i).

(e) Termination. Upon termination in accordance with this Article 11, Tenant shall deliver possession of the Premises to Port. Upon such termination, the Parties shall be released of future obligations under this Lease that first arise or accrue after the effective date of the termination; provided, however, that the surrender and Indemnification provisions of this Lease, and any other provision that explicitly survives the expiration or earlier termination of this Lease, shall survive any such termination with respect to matters arising before the effective date of the termination.

11.5. Distribution Upon Lease Termination Due to Default.

If this Lease is terminated by Port due to Tenant's Event of Default before Tenant completes any Restoration as provided herein, all insurance proceeds shall be paid to and retained by Port until the Restoration is complete and all damages and awards have been paid to Port. Any excess proceeds shall be paid to Tenant as determined by the applicable court.

11.6. Effect of Termination.

If Tenant elects to terminate the Lease under Section 11.4(a), then this Lease shall terminate effective as of the date that Tenant has fully complied with all other provisions of Section 11.4(a). Upon the effective date of the termination, the Parties shall be automatically released from this Lease without further obligations to the other Party; provided the Indemnification provisions of this Lease shall survive any such termination with respect to matters arising before the effective date of the termination. The rights of any Lender hereunder and any rights of Tenant or Port to receive insurance proceeds in accordance with the provisions of this Lease shall survive the termination of this Lease.

11.7. Use of Insurance Proceeds.

All all-risk property coverage insurance proceeds, earthquake and flood proceeds, boiler and machinery insurance proceeds, and any other insurance proceeds required hereunder that are paid to Tenant by reason of damage to or destruction of any Improvements, if any (other than business or rental interruption insurance), must be used by Tenant for the Restoration of such Improvements, except as specifically provided to the contrary in this Article 11. All insurance proceeds payable as a result of any damage or destruction of any Improvements that are to be used by Tenant for Restoration shall be payable to Tenant and used by Tenant to the extent necessary for payment of the cost of Restoration required hereby, except to the extent otherwise provided by the terms of any applicable Mortgages permitted hereunder.

12. CONDEMNATION

12.1. General; Notice; Waiver.

(a) General. If at any time during the Term there is any Condemnation of all or any portion of the Premises, including any of the Improvements thereon, the rights and obligations of the Parties shall be as set forth in this Article 12.

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

(c) Waiver. Except as otherwise provided in this Article 12, the Parties intend that the provisions of this Lease shall govern their respective rights and obligations in the event of a Condemnation. Accordingly, but without limiting any right to terminate this Lease given Tenant in this Article 12, Tenant waives any right to terminate this Lease upon the occurrence of a Partial Condemnation under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure, as such sections may from time to time be amended, replaced or restated.

12.2. Total Condemnation.

If there is a Condemnation of the entire Premises or the Leasehold Estate (a “**Total Condemnation**”), this Lease shall terminate as of the Condemnation Date. Upon such termination, except as otherwise set forth in this Lease, the Parties shall be released without further obligations to the other Party as of the Condemnation Date, subject to the payment to Port of accrued and unpaid Rent up to the Condemnation Date and the provisions that explicitly survive the expiration or earlier termination of this Lease.

12.3. Substantial Condemnation, Partial Condemnation.

If there is a Condemnation other than a Total Condemnation, the rights and obligations of the Parties shall be as follows:

(a) Substantial Condemnation. If there is a Substantial Condemnation, this Lease shall terminate at Tenant’s option (which shall be exercised, if at all, at any time within ninety (90) days after the Condemnation Date by delivering written notice of termination to Port) as of the Condemnation Date. Notwithstanding the foregoing, Tenant shall have no right to terminate this Lease under this Section 12.3(a) if (1) the Condemnation is of the Leasehold Estate for less than one year (unless such Condemnation occurs during the last five (5) years of the Term) or (2) the condition that renders the Premises or any portion thereof untenable, unsuitable or economically infeasible for the Permitted Uses, as the case may be, can be cured by the performance of Restoration (unless such Condemnation occurs during the last five (5) years of the Term or if Tenant reasonably anticipates, based upon a schedule of performance for such Restoration prepared with due diligence by Tenant in consultation with Port, that at the time of completion of the Restoration less than five (5) years would remain in the Term), and the cost of such Restoration, after application of any Award received by Tenant for such Restoration, is (x) not more than the Threshold Amount, or (y) Port (without any obligation to do so) gives written notice to Tenant within thirty (30) days (subject to extension as provided below) after receipt of Tenant’s termination notice that Port agrees, at its cost and expense, to pay any amount by which the costs of such Restoration exceeds the sum of (x) any Award received by Tenant for such Restoration and (y) the Threshold Amount. Port’s right to exercise the option described in clause (2) above shall be conditioned upon Port and Tenant reaching an agreement within ninety (90) days following Port’s delivery of such notice with respect to the schedule of performance for such Restoration, the timing of payments of Port’s contribution to the costs of Restoration (including to the extent not available from Port’s share of the Award), and any other related issues that may be necessary or appropriate for resolution in connection with such Restoration and the payment for such Restoration. If such satisfactory agreement is reached, Tenant shall thereafter commence and complete such Restoration as promptly as reasonably practicable by using commercially reasonable diligence in accordance with the procedures set forth in Article 9 relating to Subsequent Construction, subject to receipt of such payment from Port and Section 12.4, subject to events of Excusable Delay. If no satisfactory agreement is reached within such ninety (90) day period, then Tenant shall have the right to terminate this Lease in accordance with this Section 12.3 notwithstanding Port’s notice.

(b) Partial Condemnation. If there is a Condemnation of any portion of the Premises or the Leasehold Estate that does not result in a termination of this Lease under Section 12.2 or Section 12.3(a) (a “**Partial Condemnation**”), this Lease shall terminate only as to the portion of the Premises or the Leasehold Estate taken in such Partial Condemnation, effective as of the

Condemnation Date. In the case of a Partial Condemnation, this Lease shall remain in full force and effect as to the portion of the Premises or the Leasehold Estate remaining immediately after such Condemnation, and Tenant shall promptly commence and complete, subject to events of Excusable Delay, any necessary Restoration of the remaining portion of the Premises. All such Restoration performed by Tenant shall be in accordance with the procedures set forth in Article 9 relating to Subsequent Construction and shall be at Tenant's sole expense.

12.4. Awards.

Subject to Sections 12.5 and 12.6, Awards and other payments to either Port or Tenant on account of a Condemnation, less reasonable costs, fees and expenses of either Port or Tenant (including Attorneys' Fees and Costs) incurred in the collection thereof ("**Net Awards and Payments**") shall be allocated between Port and Tenant as follows:

- (i) First, to Port for the payment of all unpaid Rent;
- (ii) Second, for a Partial Condemnation, to pay costs of Restoration incurred by Tenant, in which case, the portion of the Net Awards and Payments allocable to Restoration shall be payable to Tenant in accordance with the requirements governing payment of insurance proceeds set forth in Section 11.7⁴;
- (iii) Third, to Port for the value of the condemned land only, subject to the particular uses of the Premises existing immediately before the Condemnation Date, and without reference to, or inclusion of, Port's reversionary interest in the value of the Improvements;
- (iv) Fourth, to each Non-Affiliate Lender, in order of priority, in an amount not to exceed the aggregate amounts that are secured by the applicable Non-Affiliate Mortgage then owed to each such Non-Affiliate Lender, together with its reasonable out of pocket expenses and charges in collecting the Net Awards and Payments, including its reasonable attorneys' fees incurred in the Condemnation;
- (v) Fifth, to Tenant to the extent that the Net Awards and Payments are attributable to the Leasehold Estate, not including the value of the Improvements, for the remaining unexpired portion of the Term to the original scheduled Expiration Date; and
- (vi) Sixth, the balance of the Net Awards and Payments shall be divided proportionately between Port, for the value of Port's reversionary interest in the Improvements (based on the original scheduled Expiration Date), and Tenant, for the value of the Improvements for the remaining unexpired portion of the Term to the original scheduled Expiration Date.
- (vii) Notwithstanding anything to the contrary set forth above, any portion of the Net Awards and Payments that has been specifically designated by the condemning authority or in the judgment of any court to be payable to Port or Tenant on account of any interest in the Premises or the Improvements separate and apart from the value of Port's reversionary interest in the land and Improvements, the Leasehold Estate, or the value of the Improvements on the

⁴ NTD: To be confirmed once insurance provisions are final.

Premises for the remaining unexpired portion of the Term, shall be paid to Port or Tenant, as applicable, as so designated by the condemning authority or judgment.

12.5. Temporary Condemnation.

If there is a Partial Condemnation for a temporary period lasting less than the remaining Term, this Lease shall remain in full force and effect, and the entire Award shall be payable to Tenant.

12.6. Personal Property.

Notwithstanding Section 12.4, Port shall not be entitled to any portion of any Net Awards and Payments payable in connection with the Condemnation of any Personal Property.

13. LIENS

13.1. Liens.

Tenant shall not create or permit the attachment of, and shall promptly discharge at no cost to Port, any lien, security interest, or encumbrance on the Premises or the Leasehold Estate, other than (i) this Lease and matters permitted hereunder, including permitted subleases and the CC&Rs, (ii) liens for non-delinquent Impositions, except only for Impositions being contested as permitted by Article 5, (iii) Mortgages permitted under Article 34, and (iv) liens of mechanics, material suppliers or vendors, or rights thereto, for sums that under the terms of the related contracts are not at the time due or that are being contested as permitted by Article 5.

13.2. Mechanics' Liens.

Tenant shall keep the Premises and the Leasehold Estate free from any liens arising out of any work performed, materials or services furnished, or obligations incurred by Tenant or any of its Agents. Tenant shall provide thirty (30) days' advance written notice to Port of the Commencement of any Phase of the Initial Improvements or any Subsequent Construction to allow Port to post a notice of non-responsibility on the Premises. If Tenant does not, within sixty (60) days following the imposition of any such lien, cause the same to be released of record or post a bond or take such other action reasonably acceptable to Port, it shall constitute an Event of Default (after notice and cure periods as provided in Section 20.1(h)), and Port shall have, in addition to all other remedies provided by this Lease or by Law, the right but not the obligation to cause the same to be released by such means as it deems proper, including payment of the claim giving rise to such lien. All sums paid by Port (together with interest thereon at the Default Rate computed from the date Port makes such payment until paid by Tenant) for such purpose and all expenses incurred by Port in connection therewith must be reimbursed to Port by Tenant upon demand by Port. Port shall include with its demand, supporting documentation.

14. TRANSFERS AND SUBLEASES

14.1. Transfer.

(a) Port Notice and Consent. Tenant shall not (i) suffer or permit any Significant Change to occur, or (ii) assign or sell any interest in this Lease, either voluntarily or by operation of law (each of clauses (i) and (ii) above, a “**Transfer**”), without the prior written consent of Port. Notwithstanding the foregoing, if Tenant assigns its right, title and interest under the DA with respect to the Premises to any Person (for the avoidance of doubt, including any Management Association), then Tenant shall contemporaneously assign this Lease to such Person (for the avoidance of doubt, without obtaining any consent of Port); provided, however, that Tenant shall not be permitted to assign this Lease to any Management Association without the consent of Port pursuant to this sentence unless as of the date of assignment the Initial Improvements have been substantially completed, the CC&Rs have been recorded and the RMA (as defined in the DA) with a Contingent Services Special Tax has been adopted in accordance with the Financing Plan, in each case to the extent applicable to the portion of the Premises so assigned. Tenant shall provide not less than ten (10) Business Days’ notice to Port before any anticipated Transfer.

(b) Mortgaging of Leasehold. Notwithstanding anything to the contrary in this Lease, at any time during the Term, Tenant shall have the right, without Port’s consent, to directly or indirectly Transfer to a Lender or other purchaser at a foreclosure sale under the provisions of a Mortgage, subject to the limitations, rights and conditions set forth in Article 34.

(c) Conditions. Except to the extent waived by Port, any Transfer (other than to a Lender or other purchaser at a foreclosure sale) shall be subject to the conditions precedent that at the time of such Transfer there shall be no Event of Default continuing on the part of Tenant under this Lease, unless Tenant or the proposed transferee has made provisions to cure the applicable Event of Default and such provisions are satisfactory to Port in its reasonable discretion, and that Tenant has delivered the following to Port:

(i) With respect to any Transfer other than a Significant Change, an assignment and assumption agreement, in recordable form, to be executed by Tenant and the proposed transferee, wherein such proposed transferee assumes all obligations of Tenant (a) under this Lease to and including the end of the Term and (b) to the extent that the DA is in effect with respect to the Premises at the time of such Transfer, under the DA with respect to the Premises to and including the end of the Term (as defined in the DA), in each case to the extent of the Transfer. The assignment and assumption agreement shall be in substantially the form attached as Exhibit H and any material changes to the attached form shall be subject to the review and approval of the Port Director, which shall not be unreasonably withheld, conditioned or delayed. The Port Director shall use good faith efforts to complete such review and grant or withhold approval within thirty (30) days after the Port Director’s receipt of such material changes.

(ii) Information about the proposed transferee reasonably requested by Port;

(iii) Sufficient funds to reimburse Port for its Attorneys’ Fees and Costs to review the proposed Transfer, provided if Port has not delivered to Tenant an invoice for Attorneys’ Fees and Costs before the effective date of Transfer, Tenant shall reimburse Port for same upon receipt of such invoice; and

(iv) An estoppel certificate executed by Tenant pursuant to Section 25, which estoppel certificate shall be effective as of the effective date of Transfer.

(d) Preservation of Port Rights and Remedies. It is the intent of the Parties, to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Lease, that no Transfer, however consummated or occurring, and whether voluntary or involuntary, may operate, legally or practically, to deprive or limit Port of or with respect to any rights or remedies or controls provided in this Lease with respect to the Premises and the construction of the Improvements that Port would have had, had there been no such Transfer.

(e) No Release of Tenant's Pre-Transfer Liability or Waiver by Virtue of Consent. The consent by Port to a Transfer is not in any way to be construed to (i) from and after the date of such Transfer, relieve Tenant of any liability arising out of or with regard to the performance of any covenants or obligations to be performed by Tenant hereunder or under the DA (if in effect) before the date of such Transfer, or (ii) relieve any transferee of Tenant from its obligation to obtain the express consent in writing of Port to any further Transfer.

(f) Notice of Significant Changes. If requested by Port, Tenant shall furnish Port with (i) a certificate signed and certified as true, correct and complete by an appropriate officer of Tenant setting forth the purchaser or purchasers of the ownership interest resulting in the Significant Change and (ii) a reaffirmation from Tenant that it shall continue to be obligated under all the terms and conditions of this Lease.

(g) Determination of Whether Consent is Required. At any time Tenant may submit a request to Port for the approval of the terms of a proposed Transfer or for a decision by Port as to whether in its opinion a proposed Transfer requires Port consent under the provisions of this Article 14. Within thirty (30) days of the making of such a request and the furnishing by Tenant to Port of all documents and instruments with respect thereto reasonably requested by Port, Port must notify Tenant in writing of Port's reasonable business grounds for its approval or disapproval of the proposed Transfer or of Port's determination that the proposed Transfer does not require Port's consent. If Port disapproves the proposed Transfer, or determines that it requires the consent of Port, as applicable, it must specify in writing the grounds for its disapproval, its reason that consent is required, or both, as applicable.

(h) Scope of Prohibitions on Assignment. The prohibitions provided in this Section 14.1 shall not be deemed to prevent the granting of any Mortgage subject to compliance with Article 34.

14.2. Subleases.

(a) Qualifying Subleases. Tenant has the right to enter into subleases for any Permitted Uses comprising two hundred (200) square feet or less without the prior written consent of Port upon satisfaction of the following conditions:

(i) The sublease (and any further sub-subleases) are all subject to the applicable terms and conditions of this Lease, and the terms and conditions of the sublease and further sub-subleases are consistent with the provisions of this Lease (or to the extent of any inconsistency, the provisions of this Lease shall prevail), provided that subtenants need not be obligated for

Restoration nor to undertake any obligations with respect to the subleased space that is Tenant's obligation under such sublease;

(ii) The term of the sublease does not extend beyond the Term;

(iii) The sublease rental rates reflect an arms-length transaction at fair market rents for subleases as reasonably determined by Tenant, except to the extent that the subtenant is a governmental entity or non-profit organization (or any joint venture with such organization) or the sublease is for non-profit purposes;

(iv) The sublease contains (or incorporates by reference) an Indemnification and waiver of claims provision benefitting Port and the City that is substantially and materially the same as Article 15 except that the term "Tenant" in such provision means the subtenant and subtenant's obligation to Indemnify Port from any Losses arising outside the Premises shall be limited to Losses arising from the acts or omissions of subtenant or its Agents;

(v) The sublease requires that under all liability and other insurance policies, **"THE CITY AND COUNTY OF SAN FRANCISCO, THE SAN FRANCISCO PORT COMMISSION, AND THEIR OFFICERS, AGENTS, EMPLOYEES AND REPRESENTATIVES"** are additional insureds by written endorsement and acknowledging Port's rights to reasonably demand increased coverage to normal amounts consistent with the subtenant's business activities on the Premises, to the extent commercially available at reasonable prices;

(vi) Subject to the rights of any Lender, the sublease (or a non-disturbance and attornment agreement or other agreement entered into by Port and the subtenant) requires subtenant to pay the sublease rent and other sums due under the sublease directly to Port upon receiving written notice from Port that an Event of Default has occurred and is continuing;

(vii) The sublease requires the subtenant to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease;

(viii) The sublease contains (or incorporates by reference) a provision similar to Section 33.1 requiring subtenant to permit Port and the City to enter its subleased space;

(ix) The sublease requires subtenant to comply with the provisions set forth in Article 38, to the extent applicable; and

(x) The sublease contains a provision that if for any reason whatsoever this Lease is terminated, unless Port has agreed otherwise in a non-disturbance and attornment agreement or other agreement entered into by Port and the subtenant, such termination shall result in the automatic termination of the sublease and any existing sub-subleases for the subleased space.

(b) Required Sublease Information. Within fifteen (15) days of executing any sublease, Tenant must provide Port with all information related to such sublease necessary for Port to comply with San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute).

(c) Other Subleases. For the avoidance of doubt, any subleases comprising more than two hundred (200) square feet or that do not comply with the conditions described in Section 14.2(a) shall require the prior written consent of Port.

14.3. Assignment of Rents.

Tenant hereby assigns to Port all rents and other payments of any kind, due or to become due from any or present or future subtenant or others at the Premises as security for Tenant's obligations hereunder before actual receipt thereof by Tenant; provided, however, the foregoing assignment shall be subject and subordinate to any assignment made to a Lender under Article 34 until such time as Port has terminated this assignment following an Event of Default (subject to Port's agreement to enter into a new lease with Lender and all other provisions of this Lease protecting Lender's interests in this Lease), at which time the rights of Port in all rents and other payments assigned pursuant to this Section 14.3 shall become prior and superior in right. Such subordination shall be self-operative. However, in confirmation thereof, Port shall, upon the request of each Lender, execute a subordination agreement in form and substance reasonably satisfactory to such Lender and to Port. Notwithstanding the foregoing, if this Lease terminates by reason of an Event of Default, any Lender that actually collected any rents or revenues pursuant to any assignment of rents or subleases made in its favor shall promptly remit to Port the amounts so collected (less the actual cost of collection) to the extent necessary to pay Port any Rent, including any and all Additional Rent, through the date of termination of this Lease. Such assignment shall be subject to the right of Tenant to collect such amounts except during the happening of any Event of Default under the provisions of this Lease. Port shall apply any net amount collected by it from such subtenants to the payment of Rent due under this Lease and remit any balance to Tenant.

14.4. Acknowledgement.

Tenant acknowledges and agrees that each of the rights of Port set forth in this Article 14 is a reasonable limitation on Tenant's right to assign or sublet for purposes of California Civil Code Section 1951.4.

15. INDEMNIFICATION OF PORT

15.1. Indemnification of Port.

Tenant shall Indemnify the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any such Indemnified Party in connection with the occurrence or existence of any of the following: (i) any accident, injury to or death of Persons or loss of or damage to property occurring on, under, or about the Premises or any part thereof; (ii) any use, possession, occupation, operation, maintenance, or management of the Premises or any part thereof by Tenant or any of its Agents or Invitees; (iii) any latent, design, construction or structural defect relating to the Initial Improvements and any Subsequent Construction, and any other matters relating to the condition of the Premises caused by Tenant or any of its Agents or Invitees; (iv) any failure on the part of Tenant or its Agents or Invitees, as applicable, to perform or comply with any of the terms of this Lease; (v) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof by

Tenant or any of its Agents or Invitees; and (vi) any civil rights actions or other similar legal actions or suits initiated by any of Tenant's subtenants, Agents or Invitees, in any case to the extent it relates to their use or occupancy of the Premises. Notwithstanding the foregoing, the foregoing Indemnity shall not apply to any and all Losses to the extent arising out of the gross negligence or willful misconduct of any Indemnified Party. Tenant may, and upon the request of such Indemnified Party shall, at Tenant's sole expense, resist and defend any action, suit or proceeding for which it has Indemnified any Indemnified Party under this Section 15.1 or any other Indemnification provision under this Lease, or cause the same to be resisted and defended by counsel designated by Tenant and reasonably approved by such Indemnified Party in writing.

15.2. Immediate Obligation to Defend.

Tenant specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any claim that is actually or potentially within the scope of the Indemnity obligations under Section 15.1 or any other Indemnification provision under this Lease, even if such allegation is or may be groundless, fraudulent or false, and such obligation arises at the time such claim is tendered to Tenant by an Indemnified Party and continues at all times thereafter; provided, however, that in the event of a final judgment determining that all or a portion of the claim fell outside the scope of the indemnity, Port shall reimburse Tenant within thirty (30) days after demand from Tenant for that portion of costs, fees and expenses expended by Tenant hereunder that was determined to be outside the scope of this indemnity.

15.3. Not Limited by Insurance.

The insurance requirements and other provisions of this Lease shall not limit Tenant's Indemnification obligations under Section 15.1 or any other Indemnification provision under this Lease.

15.4. Survival.

Tenant's obligations under this Article 15 and any other Indemnification provision under this Lease shall survive the expiration or sooner termination of this Lease.

15.5. Other Obligations.

Tenant's obligations under this Article 15 and any other Indemnification provision under this Lease are in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities which Tenant may have to Port in this Lease, at common law or otherwise.

15.6. Notice; Defense of Claims.

Port agrees to give prompt notice to Tenant with respect to any action, suit or proceeding filed or claim made against Port (or, upon Port's discovery thereof, against any Indemnified Party that Port believes in good faith is covered under Section 15.1 or any other Indemnification provision under this Lease) no later than the earlier of (a) ten (10) days after service of process as to any filed action, suit or proceeding or (b) fifteen (15) days after receiving notification of the assertion of any claim, in any case that Port has good reason to believe is likely to give rise to a claim for Indemnification under Section 15.1 or any other Indemnification provision under this

Lease. The failure of Port to give such notice within such timeframes shall not affect the rights of Port or obligations of Tenant under this Lease except to the extent that Tenant is prejudiced by such failure. Tenant shall, at its option but subject to reasonable approval by Port, be entitled to control the defense, compromise or settlement of any such matter through counsel of Tenant's choice; provided, that in all cases Port shall be entitled to participate in such defense, compromise or settlement at its own expense. If Tenant fails, however, in Port's reasonable judgment, within a reasonable time following notice from Port alleging such failure, to take reasonable and appropriate action to defend, compromise or settle such suit or claim, Port shall have the right promptly to hire counsel to carry out such defense, compromise or settlement, and the reasonable expense of Port in so doing shall be due and payable to Port upon receipt by Tenant of a properly detailed invoice for such expense.

15.7. Waiver.

As a material part of the consideration for this Lease, Tenant hereby assumes the risk of, and waives, discharges, and releases any and all claims against the Indemnified Parties from, any Losses arising out of this Lease or relating to the Premises, including: (a) damages for death of or injury to any Person, or to property of any kind whatsoever and to whomever belonging; (b) goodwill; (c) business opportunities; (d) any act or omission of persons occupying adjoining premises; (e) theft; (f) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination; (g) inability to use all or any portion of the Premises due to sea level rise or flooding or seismic events; and (h) any other acts, omissions or causes arising at any time and from any cause, in, on, or under the Premises, including all claims arising from the joint, concurrent, active or passive negligence of any of Indemnified Parties. The foregoing waiver, discharge and release shall not apply to Losses arising from or relating to the gross negligence or willful misconduct of any of the Indemnified Parties or constitute a release, acquittal or discharge of any of Port's obligations under this Lease.

Tenant expressly acknowledges and agrees that the amount payable by Tenant hereunder does not take into account any potential liability of the Indemnified Parties for any punitive, indirect or consequential damages (including lost profits). Port would not be willing to enter into this Lease in the absence of a complete waiver of liability for punitive, indirect or consequential damages (including lost profits) due to the acts or omissions of the Indemnified Parties, and Tenant expressly assumes the risk with respect thereto. Accordingly, without limiting any Indemnification obligations of Tenant or other waivers or releases contained in this Lease and as a material part of the consideration of this Lease, Tenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against the Indemnified Parties for punitive, indirect or consequential damages (including lost profits), and covenants not to sue any of the Indemnified Parties or to pay the Attorneys' Fees and Costs of the Indemnified Parties if it does sue for such damages, in connection with this Lease or the uses authorized hereunder, including any interference with uses conducted by Tenant pursuant to this Lease, in any case regardless of the cause, and whether or not due to the negligence of any of Indemnified Parties.

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 waivers and 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 California Civil Code, Section 1542, which reads as follows:

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

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

Tenant's Initials: _____

Tenant agrees that the waivers and releases contained in this Section 15.7 include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims for consequential, incidental or punitive damages. Tenant acknowledges that it has agreed upon this Lease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefits of California Civil Code Section 1542, or any other statute or similar law now or later in effect, in connection with the waivers and releases contained in this Section 15.7. Notwithstanding anything to the contrary contained in this Lease, the foregoing waivers and releases shall survive any expiration or earlier termination of this Lease.

16. INSURANCE

16.1. Property and Liability Coverage.

(a) Required Types and Amounts of Insurance. Except as more specifically provided in this Article 16, Tenant shall, at no cost to Port, obtain, maintain or require to be maintained and cause to be in effect at all times from the Commencement Date to the later of (i) the last day of the Term, or (ii) the last day Tenant (A) is in possession of the Premises or (B) has the right of possession of the Premises (except as otherwise specified in this Section 16.1(a)), the following types and amounts of insurance:

(i) Builders Risk Insurance.

At all times during construction and before completion of any building on the Premises, Tenant shall maintain, or require to be maintained, on a form reasonably approved by Port, builders risk insurance in the amount equal to the 100% replacement cost value of any existing structures being rehabilitated, which replacement cost value shall be deemed to be Five Million Dollars (\$5,000,000), and the 100% replacement cost value of all new construction, including all materials and equipment to be incorporated in the permanent construction located on or about the Premises, and in transit or storage off-site, against all risk or "special form" hazards, and earthquake (subject to the provisions of Section 16.1(b)(iii)(1)) and flood insurance (subject to the provisions of Section 16.1(b)(iv)(1)), including Port as an additional insured and Tenant and Tenant's contractors and subcontractors as named insureds with any deductible not to exceed Two Hundred

Fifty Thousand Dollars (\$250,000) (except as to earthquake insurance and flood insurance for which the deductible shall be in accordance with the requirements of Section 16.1(b)(iii)(1) and Section 16.1(b)(iv)(1)) and further provided that as to both earthquake and flood insurance, separate sublimits of the insurance required under this Section 16.1(a)(i) and the insurance required under Section 16.1(a)(vii) shall be in accordance with the requirements of Section 16.1(b)(iii)(1) and Section 16.1(b)(iv)(1). Such builders risk insurance shall also extend to cover loss of business income for delayed opening/completion as caused by any of the perils or hazards set forth in and required to be insured pursuant to Section 16.1(a)(i), for a delay period of not less than two (2) years with a limit of not less than One Million Dollars (\$1,000,000). If available at commercially reasonable rates, such builders risk insurance shall also extend to cover the peril of terrorism.

(ii) Property Insurance; Earthquake and Flood Insurance.

Upon Completion of each Phase of the Initial Improvements, and upon Completion of any Subsequent Construction, Tenant shall maintain, or require to be maintained, property insurance policies with coverage at least as broad as Insurance Services Office form CP 10 30 06 95 (or its replacement), in an amount not less than 100% of the then-current full replacement cost of the Improvements including any foundations, pilings, excavations and footings, including increased cost of construction and demolition of damaged and undamaged structures due to the enforcement of ordinances or laws, including sub-limits for earthquake, as provided pursuant to Section 16.1(b)(iii)(2), sub-limits for flood as provided pursuant to Section 16.1(b)(iv)(2) (with any deductible not to exceed Two Hundred Fifty Thousand Dollars (\$250,000) except as to earthquake insurance and flood insurance for which any deductible is not subject to such limitation); provided, however, that as to both earthquake insurance and flood insurance, separate sublimits of the insurance required under this Section 16.1(a)(ii) and the insurance required under Section 16.1(a)(vii) may be required in order to comply with the requirements of Section 16.1(b)(iii)(2) and Section 16.1(b)(iv)(2). If available at commercially reasonable rates, such insurance shall extend to cover the peril of terrorism. In addition to the foregoing, Tenant may insure its Personal Property in such amounts as Tenant deems appropriate; and Port shall have no interest in the proceeds of such Personal Property insurance, and the proceeds of such insurance shall not be subject to the provisions of Section 11.7. Notwithstanding the foregoing, if during the Term Tenant decides that such earthquake insurance should be deleted from its policy because it is no longer available at commercially reasonable rates, then Tenant shall request in writing Port's consent to the deletion thereof, including evidence supporting Tenant's determination of commercial unreasonableness. Such evidence may include quotes, declinations, and notices of cancellation or non-renewal from leading insurance companies for the required coverage, percentage of overall operating expenses attributable thereto, and then current industry practice for comparable projects in San Francisco. Port shall approve or disapprove the deletion of earthquake insurance within thirty (30) days after Tenant's request. If Port disapproves such request, Port shall state the basis for its disapproval. If Tenant discontinues such coverage with Port's approval, and Port later determines that due to changes in the industry or other changed circumstances, earthquake insurance has become commercially reasonable and prudent business practice would require it again, then Port shall notify Tenant thereof, and Tenant shall add such coverage to its policy as soon as reasonably practicable thereafter.

(iii) Commercial General Liability Insurance.

Tenant shall maintain, or require to be maintained, “**Commercial General Liability**” insurance with coverage at least as broad as Insurance Services Office form CG 00 01 10 93 (or its replacement) insuring against claims for bodily injury (including death), property damage, personal injury and advertising injury including coverage for premises operations, contractual liability (to the extent possible under the above referenced policy form or under a separate policy form) which includes coverage extending to the indemnity in Section 15.1(i), broad form property damage, explosion, collapse and underground, hazards, independent contractors, products and completed operations, with such insurance to afford protection in an amount not less than One Million Dollars (\$1,000,000) per occurrence and annual aggregate, and deleting exclusions for care, custody and control of real property and, once the dock becomes operational, for non-owned watercrafts. Within thirty (30) days after the Completion of each Phase of the Initial Improvements, or Completion of any Subsequent Construction requiring Port’s approval under Article 9, and annually for ten (10) years thereafter, Tenant, or its successors and assigns, shall provide Port with evidence that Tenant’s Commercial General Liability insurance includes completed operations coverage for the Initial Improvements or Subsequent Construction, as applicable. In addition, if Tenant has (or is required under Laws to have) a liquor license and is selling or distributing alcoholic beverages on the Premises, then Tenant shall maintain or require to be maintained liquor liability coverage with limits not less than One Million Dollars (\$1,000,000) and Tenant shall require any subtenant who has (or is required under Laws to have) a liquor license and who is selling or distributing alcoholic beverages on the Premises, to maintain such coverage.

(iv) Workers’ Compensation Insurance.

During any period in which Tenant has employees as defined in the California Labor Code, Tenant shall maintain or require to be maintained policies of workers’ compensation insurance providing statutory limits, including employer’s liability coverage with limits not less than \$1,000,000 each accident and policy limit by disease (except that such insurance in excess of \$100,000 each accident may be covered by a so-called “umbrella” or “excess coverage” policy) covering liability for all Persons directly employed by Tenant in connection with the use, operation and maintenance of the Premises and the Improvements. In addition, to the extent required by applicable law, Tenant shall maintain or cause to be maintained U.S. Longshore and Harborworker's Act Insurance and Jones Act Insurance with Employer's Liability limit not less than \$5,000,000 for each accident, injury or illness, on employees eligible for each.

(v) Boiler and Machinery Insurance.

If any such exposures are not covered by the insurance required by Section 16.1(a)(ii), Tenant shall maintain, or require to be maintained, boiler and machinery insurance covering damage to or loss or destruction of machinery and equipment located on the Premises or in the Improvements that is used by Tenant for heating, ventilating, air-conditioning, power generation and similar purposes, in an amount not less than one hundred percent (100%) of the actual replacement value of such machinery and equipment.

(vi) Business Automobile Insurance.

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

(vii) Environmental Liability Insurance.

(1) Contractor's Pollution Legal Liability Insurance. Tenant shall cause to be maintained during the period of construction of each Phase of the Initial Improvements and during any periods of Subsequent Construction that could reasonably be anticipated to involve a Release of Hazardous Materials at the Premises, Contractor's Pollution Legal Liability Insurance for any and all losses caused by pollution conditions, both sudden, accidental and gradual, resulting from the contractor's operations, or for which contractor is legally liable, in connection with the construction of such Phase of the Initial Improvements or Subsequent Construction, whether such operations be by the contractor or the contractor's subcontractors, consultants or suppliers. The Policy shall contain minimum liability limits of \$5,000,000 per occurrence and \$5,000,000 in the aggregate with a deductible not to exceed \$250,000. The Policy shall, at a minimum, contain coverage for or be specifically endorsed to include coverage for pollution conditions resulting in, arising from or in connection with: (i) bodily injury (including death), property damage and environmental cleanup costs (on-site and off-site) resulting from construction of such Phase of the Initial Improvements; (ii) the use or operation of motor vehicles (whether owned, non-owned or leased) in connection with construction of such Phase of the Initial Improvements, including transportation of any Hazardous Materials to or from the Premises, including any interim or temporary storage or transfer sites. Such transportation coverage shall also include loading/unloading of materials; (iii) any disposal location or facility, both final and temporary, to which any waste that is generated in connection with the performance of this Lease is delivered; all such disposal locations/facilities, both final and temporary, shall be scheduled to the Policy as Non-Owned Disposal Sites for coverage under the Policy. The Policy shall be written on an occurrence form and be in effect during the construction periods described above, or, if not available on an occurrence form, then on a claims-made form. If the policy is written on a claims-made basis, then the policy shall be maintained for, or contain an extended reporting period of, at least three (3) years. The Policy definition of "Covered Operations" or any other such designation of services or operations performed by the contractor must include all work or services performed by such contractor under or in connection with this Lease.

(viii) Professional Liability.

Tenant shall maintain or require to be maintained, project specific professional liability (errors or omissions) insurance, with limits not less than Five Million Dollars (\$5,000,000) each claim and annual aggregate, with respect to all professional services, including architectural, engineering, geotechnical, and environmental, reasonably necessary or incidental to Tenant's activities under this Lease with respect to the construction of the Initial Improvements and any Subsequent Construction with any deductible not to exceed Fifty Thousand Dollars (\$50,000) each claim. Notwithstanding the foregoing, however, Tenant may elect, instead of obtaining the foregoing coverages in this subsection (viii), to require that any architects, contractors and sub-

contractors, performing work in connection with the Initial Improvements or any Subsequent Construction carry professional liability (Errors & Omissions) insurance in an amount not less than One Million Dollars (\$1,000,000) in the aggregate with any deductible not to exceed Fifty Thousand Dollars (\$50,000), and any operators carry professional liability insurance as required by contract. Such coverage may be provided with a lower limit upon the prior written approval of Port, if requested by Tenant to accommodate the needs and limitations of MBE/WBE contractors used by Tenant. Such insurance shall remain in force during the period when such professional services are performed and for a period of three (3) years after the completion of such professional services.

(ix) Umbrella / Excess Liability Insurance.

Tenant shall maintain, or require to be maintained, excess or umbrella liability insurance in an amount of not less than Ten Million Dollars (\$10,000,000) annual aggregate, the terms of which shall follow the form of the general liability, employers liability, and automobile liability insurances of the Tenant shown above.

(x) Other Insurance.

Tenant shall obtain such other insurance as is reasonably requested by City's Risk Manager to the extent such insurance is customary for a first-class public waterfront park and open space project located on property within Port's jurisdiction.

(b) General Requirements. All insurance provided for pursuant to this Section 16.1:

(i) Shall be carried under a valid and enforceable policy or policies issued by insurers of recognized responsibility that are rated Best A—:VIII or better by the latest edition of Best's Key Rating Guide (or a comparable successor rating) and legally authorized to sell such insurance within the State of California;

(ii) As to property insurance required hereunder, such insurance shall name Tenant as the first named insured, and shall name Port as an insured as its interest may appear, and as to general liability, automobile liability, contractors pollution and umbrella excess liability insurance shall include an endorsement naming as additional insureds the following: "**THE CITY AND COUNTY OF SAN FRANCISCO, THE SAN FRANCISCO PORT COMMISSION, AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS.**"

(iii) As to earthquake insurance only:

(1) during construction of each Phase of the Initial Improvements, such insurance shall be in an amount at least equal to the lesser of (i) the Probable Maximum Loss to such Phase of the Initial Improvements, or (ii) the maximum amount as is available at commercially reasonable rates from recognized carriers (with a deductible of up to but not to exceed ten percent (10%) of the then-current, full replacement cost of the Improvements without sublimits for foundations, pilings, excavations and footings, provided such coverage is available at commercially reasonable rates), except that a greater deductible shall be permitted to the extent that such coverage is not available from recognized insurance carriers or at commercially reasonable rates; "**Probable Maximum Loss**" meaning the probable maximum loss as a result of

an earthquake measuring 8.0 on the Richter Scale, as determined not less frequently than every five (5) years by a consultant chosen and paid for by Tenant who is reasonably satisfactory to Port;

(2) from and after Completion of each Phase of the Initial Improvements, such insurance shall be in an amount at least equal to the lesser of (i) the Probable Maximum Loss to the Improvements, or (ii) the amount as is available at commercially reasonable rates from recognized insurance carriers, in each case, with a deductible of up to but not to exceed an amount that is necessary to make such earthquake insurance available at a commercially reasonable rate;

(iv) As to flood insurance only:

(1) during construction of each Phase of the Initial Improvements, such insurance shall be in an amount, to the extent available at commercially reasonable rates from recognized insurance carriers, equal to the maximum amount of the then-current, full replacement cost of such Phase of the Initial Improvements (including building code upgrade coverage and without any deduction being made for depreciation), with a deductible up to, but not to exceed ten percent (10%), except that a greater deductible shall be permitted to the extent that such coverage is not available from recognized insurance carriers or at commercially reasonable rates.

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

(v) Shall be evaluated by Port and Tenant for adequacy not less frequently than every five (5) years from the date of Completion of the Initial Improvements. Following consultation with Tenant, Port may, upon not less than ninety (90) days prior written notice, require Tenant to increase the insurance limits for all or any of its general liability policies in the reasonable judgment of the City's Risk Manager it is the general commercial practice in San Francisco to carry insurance for facilities of comparable size and use to the Premises in amounts substantially greater than the amounts carried by Tenant with respect to risks comparable to those associated with use of the Premises. If the City's Risk Manager determines that insurance limits required under this Section 16.1 may be decreased in light of such commercial practice and the risks associated with use of the Premises, Port shall notify Tenant of such determination, and Tenant shall have the right to decrease the insurance coverage required under this Lease accordingly. In such event, Tenant shall promptly deliver to Port a certificate evidencing such new insurance amounts.

(vi) Shall provide that no cancellation, material modification or termination of such insurance shall be effective until at least thirty (30) days after mailing or otherwise sending written notice of such cancellation, modification or termination to Port or ten (10) days for nonpayment of premium;

(vii) As to Commercial General Liability and automobile liability insurance, shall provide that it constitutes primary insurance with respect to claims insured by such policy,

and, except with respect to limits, that insurance applies separately to each insured against whom claim is made or suit is brought;

(viii) Shall provide for waivers of any right of subrogation that the insurer of such Party may acquire against each Party with respect to any losses and damages that are of the type covered under the policies required by Sections 16.1(a)(i), (ii) and (v);

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

(x) If any of the insurance required hereunder is provided under a claims-made form of policy, Tenant shall maintain such coverage continuously throughout the Term, and following the expiration or termination of the Term, Tenant shall maintain, or require to be maintained, such coverage without lapse for a period of three (3) years beyond the expiration or termination of this Lease, or, in the case of construction, for three (3) years after Completion of the applicable Phase of the Initial Improvements or Subsequent Construction; and

(xi) Shall only be required to the extent commercially available at reasonable prices.

(c) Certificates of Insurance; Right of Port to Maintain Insurance. Tenant shall furnish Port certificates with respect to the policies required under this Section 16.1 within thirty (30) days after the Commencement Date and, with respect to renewal policies, within thirty (30) days after the policy renewal date of each such policy, and, within sixty (60) days after Port's request, shall also provide Port with copies of each such policy, or shall otherwise make such policy available to Port for its review. If at any time Tenant fails to maintain the insurance required pursuant to this Section 16.1, or fails to deliver certificates as required pursuant to this Section 16.1(c), then, upon thirty (30) days' written notice to Tenant, Port may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to Port. Tenant shall reimburse Port upon receipt of a properly detailed invoice for all amounts so paid by Port, together with all costs and expenses in connection therewith and interest thereon at the Default Rate computed from the date Port makes such payment until paid by Tenant.

(d) Insurance of Others. To the extent Tenant requires liability insurance policies to be maintained by subtenants, contractors, subcontractors or others in connection with their use or occupancy of, or their activities on, the Premises, Tenant shall require that such policies be endorsed to include the CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION as additional insureds as their respective interests may appear. Notwithstanding the foregoing, Tenant shall require all contractors and sub-contractors performing work on the Premises and all operators and subtenants of any portion of the Premises to carry the following coverages: (i) commercial general liability, (ii) workers' compensation in amounts required by law, (iii) employer's liability coverage in an amount not less than \$1,000,000 covering all employees employed at the Premises, (iv) automobile insurance in an amount not less than \$1,000,000 combined single limit covering use of owned, non-owned or hired vehicles utilized in the performance of work at the Premises, provided, however, that such coverage may be provided with a lower limit upon the prior written approval of Port and the City's Risk Manager, if requested by Tenant.

16.2. Port Entitled to Participate.

Except to the extent inconsistent with the terms of Article 34, with respect to property insurance, Port shall be entitled to participate in and consent to any settlement, compromise or agreement with respect to any claim for any loss in excess of Two Million Dollars (\$2,000,000) covered by the insurance policies required to be carried by Tenant hereunder; provided, however, that except as otherwise provided in Section 11.3 hereof, no consent of Port shall be required in connection with any such settlement, compromise or agreement concerning damage to all or any portion of the Improvements if Tenant has agreed in writing to commence and complete Restoration.

16.3. Release and Waiver.

Each Party hereby waives all rights of recovery and causes of action, and releases each other Party from any liability, losses and damages occasioned to the property of each such Party, which losses and damages are of the type covered under the property policies required by Sections 16.1(a)(i), (ii) or (v) to the extent that such loss is reimbursed by an insurer.

17. HAZARDOUS MATERIALS

17.1. Hazardous Materials Compliance.

(a) Compliance with Environmental Laws. Tenant shall comply, and cause (i) its Agents, subtenants and Invitees, and their respective Agents and Invitees, and (ii) the Premises and the Improvements to comply, with all Environmental Laws and best environmental management practices. Without limiting the generality of the foregoing, Tenant shall not, nor shall it permit its Agents, subtenants or Invitees, and their respective Agents and Invitees, to, without the prior written consent of Port, Handle Hazardous Materials on, under or about the Premises, except for (A) standard building materials and equipment that do not contain asbestos or asbestos-containing materials, lead or polychlorinated biphenyl (PCBs), (B) gasoline and other fuel products in operating vehicles and equipment, (C) any Hazardous Materials that do not require a Regulatory Approval for their Handling, or that need not be reported to, a Regulatory Agency, which Hazardous Materials are used in the construction of the Improvements, before any such Handling, (D) janitorial supplies or materials in such amounts as are customarily used for general park maintenance purposes, and (E) Previously Identified Pre-Existing Hazardous Materials that are required by Law or best environmental management practices to be Handled for Investigation or Remediation purposes; provided that such Handling under (A)-(E) is at all times in compliance with all Environmental Laws. Tenant shall be responsible for preparing and obtaining approval of any risk management or site management plans for the Premises, including any such plan required in connection with an environmental covenant. Tenant shall copy Port on all correspondence related to any risk management or site management plans for the Premises and all other correspondence with the San Francisco Department of Public Health, the RWQCB and other Regulatory Agencies regarding the environmental condition of the Premises.

(b) Notice. Except for the Handling of Hazardous Materials as permitted by Section 17.1(a), Tenant and Port shall advise the other in writing promptly (but in any event within five (5) days after) (i) learning or receiving notice of the presence of any Hazardous Materials

other than Previously Identified Pre-Existing Hazardous Materials on, under or about the Premises, (ii) learning or receiving notice of any Investigation or Remediation required of or performed by Tenant or Port in response to any (A) Hazardous Materials on, under or about the Premises or (B) Hazardous Materials Claims, and (iii) such Party's learning or receiving notice of the presence of Hazardous Materials other than Previously Identified Pre-Existing Hazardous Materials on, under or about any property adjoining the Premises including submerged lands. Tenant and Port shall inform the other orally as soon as possible of any emergency regarding a Release or discovery of Hazardous Materials. In addition, Tenant and Port shall promptly provide each other with copies of all written communications with Regulatory Agencies relating to Environmental Laws (other than privileged communication, so long as any non-disclosure of such privileged communication does not otherwise result in any non-compliance by Tenant or Port with the terms and provisions of this Article 17) and all written communication with any Person relating to Hazardous Materials Claims (other than privileged communications; provided, however, such non-disclosure of such privileged communication shall not limit or impair Tenant's or Port's obligation to otherwise comply with each of the terms and provisions of this Lease, including this Article 17). Tenant and Port shall provide each other with copies of any work plans, environmental reports, risk assessments, closure reports, etc. within the scope of this Section 17.1(b).

(c) Port's Approval of Remediation. After notifying Port, and in compliance with all Laws and this Lease, Tenant shall promptly perform whatever Remediation is necessary to cleanup a Release including on adjoining property to Port's reasonable satisfaction, except that Tenant shall not be responsible for (i) the Remediation of Hazardous Materials Released on, under or about the Premises to the extent caused by the act or omission of any Indemnified Party during Tenant's occupancy of the Premises or (ii) the Remediation of Pre-Existing Hazardous Materials, unless (A) Tenant, its Agents or Invitees disturbs or Exacerbates such Pre-Existing Hazardous Materials or (B) to the extent that the Remediation of such Pre-Existing Hazardous Materials is required by an applicable Regulatory Agency including any Remediation that would not have been required but for Tenant's use or planned use of the Premises. If Tenant fails to comply with this provision after notice and opportunity to cure in accordance with Section 20.1(i), Port may perform the Remediation at Tenant's expense and Tenant shall upon demand reimburse Port for Port's reasonable and necessary expenses. Notwithstanding the foregoing, except as required by Law or to respond to an emergency, Tenant shall not perform any Remediation in response to the presence, Handling, transportation or Release of any Hazardous Materials on, under or about the Premises unless Tenant shall have first submitted to Port for Port's approval a written Hazardous Materials Remediation plan and the name of the proposed contractor that will perform the work. Port shall approve or disapprove of such Hazardous Materials Remediation plan promptly, but in any event within thirty (30) days, after receipt thereof. If Port disapproves of any such Hazardous Materials Remediation plan, Port shall specify in writing the reasons for its disapproval. Any such Remediation undertaken by Tenant shall be done in a manner so as to minimize any impairment to the Premises to the extent reasonably possible. In the event Tenant undertakes any Remediation with respect to any Hazardous Materials on, under or about the Premises, Tenant shall conduct and complete such Remediation (x) in compliance with all applicable Environmental Laws, (y) to the reasonable satisfaction of Port (except in the case of a Remediation under subsection (c)(ii)(B) above), and (z) in accordance with the orders and directives of all Regulatory Agencies, including the RWQCB and the San Francisco Department of Public Health.

(d) Pesticide Prohibition. 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 or contract with any Person to provide pest abatement or control services to the Premises without first receiving Port’s written approval of an IPM plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the Term, (ii) describes the steps Tenant will take to meet the City’s IPM policy described in Section 300 of the 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 Port. Tenant shall comply, and shall require all of Tenant’s contractors to comply, with the IPM plan approved by Port 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 Port, 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 Port all pesticide use at the Premises by Tenant’s staff or contractors.

If Tenant or Tenant’s contractor will apply pesticides to outdoor areas at the Premises, 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 (“**CDPR**”) and any such pesticide application shall be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. 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>.

17.2. Hazardous Materials Indemnity.

(a) Indemnity. In addition to the Indemnification set forth in Article 15 and subject to all the provisions of Article 15, Tenant shall Indemnify the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any such Indemnified Party in connection with, arising out of, in response to, or in any manner relating to (i) Tenant’s, its Agents’, subtenants’ or Invitees’, and their respective Agents’ and Invitees’, violation of any Environmental Law on or relative to the Premises, or (ii) any Release or threatened Release of a Hazardous Material, or any condition of pollution, contamination or Hazardous Material-related nuisance on, under or from the Premises occurring during the Term, except to the extent such violation, Release, threatened Release, condition, contamination or nuisance was caused, contributed to or Exacerbated by any Indemnified Party. Tenant’s obligations under this Section 17.2(a) include: (A) actual costs incurred in connection with any Investigation or Remediation requested by Port or required by any applicable Regulatory Agency to restore the affected area to its condition before the Release; (B) actual damages for diminution in the value of the Premises; (C) actual damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises; (D) actual damages arising from any adverse impact on marketing the Premises; (E) sums actually paid in settlement of Hazardous Materials Claims, including fines and penalties; (F) actual natural

resource damages; and (G) Attorneys' Fees and Costs, consultant fees, expert fees, court costs, and all other actual litigation, administrative or other judicial or quasi-judicial proceeding expenses. If Port actually incurs any damage and/or pays any costs within the scope of this Section 17.2(a), Tenant must reimburse Port for Port's costs, plus interest at the Prime Rate from the date Port incurs each cost until paid, within thirty (30) days after receipt of Port's payment demand and reasonable supporting evidence of the cost or damage actually incurred.

(b) The term "**Hazardous Materials**" means any material, waste, chemical, compound, substance, mixture, or byproduct that is identified, defined, designated, listed, restricted or otherwise regulated under Environmental Laws as a "hazardous constituent", "hazardous substance", "hazardous waste constituent", "infectious waste", "medical waste", "biohazardous waste", "extremely hazardous waste", "pollutant", "toxic pollutant", or "contaminant", or any other formulation intended to classify substances by reason of properties that are deleterious to the environment, natural resources, wildlife or human health or safety, including ignitability, infectiousness, corrosiveness, radioactivity, carcinogenicity, toxicity and reproductive toxicity. Hazardous Materials include any form of natural gas, petroleum products or any fraction thereof, asbestos, asbestos-containing materials, polychlorinated biphenyls ("**PCBs**"), PCB-containing materials, and any substance that, due to its characteristics or interaction with one or more other materials, wastes, chemicals, compounds, substances, mixtures or byproducts, damages or threatens to damage the environment, natural resources, wildlife or human health or safety.

(c) The term "**Environmental Laws**" means all present and future federal, State and local laws, statutes, rules, regulations, ordinances, standards, directives, and conditions of approval, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (commonly known as "CERCLA" or the "Superfund" law), all administrative or judicial orders or decrees and all permits, license approvals, deed restrictions, deed notices, risk management plans or certification reports required in connection with the approvals of any Regulatory Agency in connection with the Project or the Permitted Uses under this Lease or other entitlements, or rules of common law pertaining to Hazardous Materials, the protection of the environment, natural resources, wildlife, human health or safety, or employee or community right-to-know requirements applicable to the Permitted Uses under this Lease.

(d) The term "**Exacerbate**" 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.

(e) The term "**Pre-Existing Hazardous Materials**" means the presence, Release or threatened Release of Hazardous Materials on, under or about the Premises or adjoining property before Tenant's occupancy of the Premises. For purposes of clarity, Pre-Existing Hazardous Materials include those Hazardous Materials on adjoining properties that migrate onto, under or about the Premises after the Commencement Date.

(f) The term "**Previously Identified Pre-Existing Hazardous Materials**" means Pre-Existing Hazardous Materials identified in the reports listed in Exhibit J.

(g) The term “**Release**” means any accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the air, land, surface water, groundwater or environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Material).

17.3. Environmental Oversight Deposit.

(a) On or before the later of the Commencement Date and five (5) Business Days following the Effective Date, Tenant must deliver to Port the amount specified in the Basic Lease Information (the “**Environmental Oversight Deposit**”), in cash, as security for Port’s recovery of costs of inspection, monitoring, enforcement, and administration during Tenant’s operations under this Lease; provided, however, that the Environmental Oversight Deposit shall not 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.

(b) Subject to Section 17.3(c), Port may use, apply, or retain the Environmental Oversight Deposit in whole or in part to reimburse Port for costs incurred if an environmental Regulatory Agency delivers a notice of violation or order regarding a Hazardous Material condition (“**Environmental Notice**”) to Tenant and Tenant has not begun to cure or comply with the Environmental Notice or is not working actively to cure the Environmental Notice within fourteen (14) days after its delivery. Under these circumstances, Port’s costs may include staff time corresponding with and responding to Regulatory Agencies, attorneys’ fees, and collection and laboratory analysis of environmental samples. For the avoidance of doubt, if Port delivers to Tenant a notice of default regarding Tenant’s breach of its obligations under this Lease, such notice shall not be deemed an Environmental Notice for purposes of this Section 17.3(b).

(c) If an Environmental Notice is delivered to Tenant, and Tenant has cured or complied with the Environmental Notice within fourteen (14) days after its delivery, Port may apply a maximum of \$500 from the Environmental Oversight Deposit for each Environmental Notice delivered to Tenant to reimburse Port for its administrative costs.

(d) Within thirty (30) days following Port’s delivery to Tenant of an invoice for the amount of the Environmental Oversight Deposit expended or applied by Port in accordance with this Section 17 and any reasonable supporting documentation requested by Tenant, Tenant must pay to Port such amount.

(e) Provided that no Environmental Notices are then outstanding, Port shall return the balance of the Environmental Oversight Deposit, if any, to Tenant within thirty (30) days following the expiration or earlier termination of this Lease. Port’s obligations with respect to the Environmental Oversight Deposit are those of a debtor and not a trustee, and Port may commingle the Environmental Oversight Deposit or use it in connection with its business.

17.4. 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 described in the reports listed in Exhibit J, copies of which have been delivered to or made available to Tenant, are present on or near the Premises. By execution of this Lease, Tenant

acknowledges that the notice set forth in this Section 17.4 satisfies the requirements of California Health and Safety Code Section 25359.7 and related Laws. Tenant must disclose the information contained in this Section 17.4 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.

18. DELAY DUE TO FORCE MAJEURE

For all purposes of this Lease, a Party whose performance of its obligations hereunder is hindered or affected by events of Force Majeure shall not be considered in breach of or in default in its obligations hereunder to the extent of any delay resulting therefrom, provided, however, that the provisions of this Article 18 shall not apply to Tenant's obligation to pay Rent. A Party seeking an extension of time pursuant to the provisions of this Article 18 shall give notice to the other Party describing with reasonable particularity (to the extent known) the facts and circumstances constituting Force Majeure within a reasonable time (but not more than thirty (30) days unless the other Party's rights are not prejudiced by such delinquent notice) after knowledge of the beginning of such facts or circumstances. For the avoidance of doubt, this Article 18 shall not limit any provision of this Agreement that expressly provides for extensions for Excusable Delay.

19. PORT'S RIGHT TO PERFORM TENANT'S COVENANTS

19.1. Port May Perform in Emergency.

Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to Port for any Event of Default, if Tenant fails to perform any maintenance or repairs required to be performed by Tenant hereunder within the time provided for such performance, which failure gives rise to an emergency that creates an imminent danger to public health or safety, as reasonably determined by Port, Port may at its sole option, but shall not be obligated to, perform such maintenance or repairs for and on behalf of Tenant, provided that, if there is time, Port first gives Tenant such notice and opportunity to take corrective action as is reasonable under the circumstances. Nothing in this Section 19.1 shall be deemed to limit Port's ability to act in its legislative or regulatory capacity, including the exercise of its police powers, nor to waive any claim on the part of Tenant that any such action on the part of Port constitutes a Condemnation or an impairment of Tenant's contract with Port.

19.2. Port May Perform Following Tenant's Failure to Perform.

Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to Port for any Event of Default, if at any time Tenant fails to pay any sum required to be paid by Tenant pursuant to this Lease to any Person other than Port (other than any Imposition, with respect to which the provisions of Section 4.3 shall apply), or if Tenant fails to perform any obligation on Tenant's part to be performed under this Lease, which failure continues without cure following written notice from Port for a period of thirty (30) days, and is not the subject of a contest under Article 5, then, Port may, at its sole option, but shall not be obligated to, upon ten (10) days' prior notice to Tenant, pay such sum or perform such obligation for and on behalf of Tenant. Notwithstanding the foregoing, however, if within such period Tenant gives notice to Port that such failure is due to delay caused by Force Majeure, or is the subject of a

contest under Article 5, or that cure of such failure cannot reasonably be completed within such period, then Port shall not pay such sum or perform such obligation during the continuation of such contest or such Force Majeure delay or extended cure period, as the case may be, for so long thereafter as Tenant continues diligently to prosecute such contest or cure or the resolution of such event of Force Majeure.

19.3. Tenant's Obligation to Reimburse Port.

If pursuant to the provisions of Sections 16.1(c), 19.1, or 19.2, Port pays any sum or performs any obligation required to be paid or performed by Tenant hereunder, Tenant shall reimburse Port upon receipt of a properly detailed invoice, as Additional Rent, the sum so paid, or the reasonable expense incurred by Port in performing such obligation and, if such payment is not made within such period, interest thereon at the Default Rate computed from the date Port makes such payment or incurs such expense until paid by Tenant. Port's rights under this Article 19 shall be in addition to its rights under any other provision of this Lease or under applicable laws.

20. EVENTS OF DEFAULT

20.1. Events of Default.

The occurrence of any one or more of the following events, which remain uncured after the passage of time set forth in this Section 20.1, shall constitute an "**Event of Default**" under the terms of this Lease:

(a) Tenant fails to pay any Rent to Port when due, which failure continues for ten (10) days following written notice from Port (it being understood and agreed that the notice required to be given by Port under this Section 20.1(a) shall also constitute the notice required under Section 1161 of the California Code of Civil Procedures or its successor, and shall satisfy the requirements that notice be given pursuant to such section);

(b) Tenant files a petition for relief, or an order for relief is entered against Tenant, in any case under applicable bankruptcy or insolvency Law, or any comparable law that is in effect as of the date of determination, whether for liquidation or reorganization, which proceedings if filed against Tenant are not dismissed or stayed within one hundred twenty (120) days;

(c) A writ of execution is levied on the Leasehold Estate that is not released within one hundred twenty (120) days, or a receiver, trustee or custodian is appointed to take custody of all or any material part of the property of Tenant, which appointment is not dismissed within one hundred twenty (120) days;

(d) Tenant makes a general assignment for the benefit of its creditors;

(e) Tenant abandons the Premises, within the meaning of California Civil Code Section 1951.2 (or its successor), which abandonment is not cured within fifteen (15) days after notice of belief of abandonment from Port;

(f) Tenant fails to maintain any insurance required to be maintained by Tenant under this Lease, which failure continues without cure for more than five (5) Business Days following

written notice from Port, unless such cure cannot be reasonably completed within such five (5) Business Day period and Tenant commences such cure within such five (5) Business Day period and thereafter prosecutes such cure diligently to completion within a reasonable time thereafter;

(g) Tenant fails to Restore any Improvements it is required or has elected to Restore following any damage or destruction in accordance with and within the time frame set forth in Article 11 and such failure continues without cure for more than thirty (30) days following written notice from Port, unless such cure cannot be reasonably completed within such thirty (30) day period and Tenant commences such cure within such thirty (30) day period and thereafter prosecutes such cure diligently to completion within a reasonable time thereafter;

(h) Tenant violates any other covenant or fails to perform any other obligation to be performed by Tenant under this Lease (including any Mitigation and Improvement Measures that Tenant is required to comply with) at the time such performance is due and such violation or failure continues without cure for more than thirty (30) days following written notice from Port specifying the nature of such violation or failure, unless such cure cannot be reasonably completed within such thirty (30) day period and Tenant commences such cure within such thirty (30) day period and thereafter prosecutes such cure diligently to completion within a reasonable time thereafter; or

(i) Tenant suffers or permits a Transfer or sublease to occur in violation of this Lease that is not cured within thirty (30) days following written notice from Port by an effective rescission of the Transfer or sublease or through Port's consent to the Transfer or sublease, provided, however, that if the Transfer or sublease is the result of a willful, knowing and deliberate action on the part of Tenant to make a Transfer or sublease with the intent of violating Section 14.1, the thirty (30) day cure period shall not apply.

20.2. Special Provisions Concerning Lenders and Events of Default.

Notwithstanding anything to the contrary in this Lease, the exercise by a Lender of any of its remedies under its Mortgage shall not, in and of itself, constitute a default (or Event of Default) under this Lease.

21. REMEDIES

21.1. Port's Remedies Generally.

Upon the occurrence and during the continuance of an Event of Default, Port shall have all rights and remedies provided in this Lease or available at law or equity. All of Port's rights and remedies shall be cumulative, and except as may be otherwise provided by applicable law, the exercise of any one or more rights shall not preclude the exercise of any others.

21.2. Right to Keep Lease in Effect.

(a) Continuation of Lease. Upon the occurrence and during the continuance of an Event of Default, Port may continue this Lease in full force and effect, as permitted by California Civil Code Section 1951.4 (or any successor provisions). Specifically, Port has the remedy

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

(b) No Termination. No act by Port allowed by this Section 21.2, nor any appointment of a receiver upon Port's initiative to protect its interest under this Lease, nor any withholding of consent to an assignment or termination of an assignment in accordance herewith, shall terminate this Lease, unless and until Port notifies Tenant in writing that Port elects to terminate this Lease.

(c) Application of Proceeds of Reletting. If Port elects to relet the Premises as provided hereinabove in Section 21.2(a), the rent that Port receives from reletting shall be applied to the payment of:

(i) First, all costs incurred by Port in enforcing this Lease, whether or not any action or proceeding is commenced, including Attorneys' Fees and Costs, brokers' fees or commissions, the costs of removing and storing the Personal Property of Tenant, costs incurred by Port in connection with reletting the Premises, or any portion thereof, and altering, installing, modifying and constructing tenant improvements required for a new tenant, and the costs of repairing, securing, servicing, maintaining and preserving the Premises or the Improvements, or any portion thereof;

(ii) Second, the satisfaction of all obligations of Tenant hereunder (other than the payment of Rent), including the payment of all Impositions or other items of Additional Rent owed from Tenant to Port, in addition to or other than Rent due from Tenant;

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

(iv) After deducting the payments above in this Section 21.2(c), any sum remaining from the rent Port receives from reletting shall be held by Port and applied to monthly installments of Rent as such amounts become due under this Lease. In no event shall Tenant be

entitled to any excess rent received by Port. If, on a date Rent or other amount is due under this Lease, the rent received as of such date from the reletting is less than the Rent or other amount due on that date, or if any costs, including those for maintenance that Port incurred in reletting, remain after applying the rent received from the reletting as provided in Section 21.2(c)(ii), Tenant shall pay to Port, upon demand, in addition to the remaining Rent or other amounts due, all such costs.⁵

(d) Payment of Rent. If Port elects to relet the Premises as provided hereinabove in Section 21.2(a), Tenant shall pay to Port the Rent due under this Lease on the dates the Rent is due, less the rent Port has received from any reletting that is applied thereto as provided in Section 21.2(c).

21.3. Right to Terminate Lease.

(a) Damages. Port may terminate this Lease at any time after the occurrence and during the continuance of an Event of Default by giving written notice to Tenant of such termination. Termination of this Lease shall thereafter occur on the date set forth in such notice. Acts of maintenance or preservation, and any appointment of a receiver upon Port's initiative to protect its interest hereunder shall not in any such instance constitute a termination of Tenant's right to possession. No act by Port other than giving notice of termination to Tenant in writing shall terminate this Lease under this Section 21.3(a). On termination of this Lease pursuant to this Section 21.3(a), Port shall have the right to recover from Tenant all sums allowed under California Civil Code Section 1951.2, including the following:

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

(ii) The worth at the time of the award of the amount by which the unpaid Rent which would have been earned after the date of termination of this Lease until the time of the award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided;

(iii) The worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided (for the avoidance of doubt, subject to subdivision (c) of California Civil Code Section 1951.2);

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

(v) **“The worth at the time of the award”**, as used in Section 21.3(a)(i) and (ii) shall be computed by allowing interest at a rate per annum equal to the Default Rate. **“The worth at the time of the award”**, as used in Section 21.3(a)(iii), shall be computed by discounting

⁵ NTD: Port, not sure that this is right in the circumstances.

such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

(b) Interest. Rent not paid when due shall bear interest from the date due until paid at the Default Rate as provided in Section 2.4.

(c) Waiver of Rights to Recover Possession. In the event Port terminates Tenant's right to possession of the Premises pursuant to this Section 21.3, Tenant hereby waives any rights to recover or regain possession of the Premises under any rights of redemption to which it may be entitled by or under any present or future Law, including California Code of Civil Procedure Sections 1174 and 1179 or any successor provisions.

21.4. Right to Cure Tenant's Default.

If Port elects to relet the Premises as provided hereinabove in Section 21.2(a), Port, at any time after the occurrence and during the continuance of an Event of Default, may, at Port's sole option, cure the Event of Default at Tenant's cost. If Port at any time after the occurrence and during the continuance of an Event of Default undertakes any act to cure or attempt to cure such Event of Default that requires the payment of any sums, or in connection therewith Port otherwise incurs any costs, damages, or liabilities (including Attorneys' Fees and Costs), 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 payable on demand, together with interest thereon at the Default Rate computed from the date Port makes such payment until paid by Tenant.

22. EQUITABLE RELIEF

22.1. Port's Equitable Relief.

In addition to the other remedies provided in this Lease, Port shall be entitled at any time after the occurrence and during the continuance of an Event of Default to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such Event of Default. In addition, upon the occurrence and during the continuance of an Event of Default, Port shall be entitled to any other equitable relief that may be appropriate to the circumstances of such Event of Default.

22.2. Tenant's Equitable Relief.

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

23. NO WAIVER

23.1. No Waiver by Port or Tenant.

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

23.2. No Accord or Satisfaction.

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

24. LIMITATIONS ON LIABILITY

24.1. No Recourse Against Port Beyond Value of Property.

Tenant agrees that Tenant shall have no recourse with respect to, and Port will not be liable for, any obligation of Port under this Lease, or for any claim based upon this Lease, except to the extent of the fair market value of Port's fee interest in the Premises (as encumbered by this Lease). By Tenant's execution and delivery hereof and as part of the consideration for Port's obligations hereunder, Tenant expressly waives all such liability.

24.2. Nonliability of Port's Commissioners, Members, Agents, Officers and Employees.

No commissioner, member, agent, officer or employee of Port or City shall be personally liable to Tenant, or any successor, for any default by Port under this Lease, and Tenant agrees that it shall have no recourse with respect to any obligation of Port under this Lease, or for any amount that may become due Tenant or any successor or for any obligation or claim based upon this Lease, against any such Person.

24.3. Nonliability of Tenant's Members, Officers, Partners, Shareholders, Directors, Agents, Officers and Employees.

No direct or indirect member, officer, partner, shareholder, director, agent, or employee of Tenant shall be personally liable to Port, or any successor, for any default by Tenant under this Lease, and Port agrees that it shall have no recourse with respect to any obligation of Tenant under this Lease, or for any amount that may become due Port or any successor or for any obligation or claim based upon this Lease, against any such Person.

24.4. Waiver of Indirect or Consequential Damages.

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

25. ESTOPPEL CERTIFICATES BY TENANT

Tenant shall execute, acknowledge and deliver to Port (or at Port's request, to a prospective purchaser or mortgagee of Port's interest in the Premises), within fifteen (15) days after a request from Port, a certificate stating to the best of Tenant's actual knowledge after diligent inquiry (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications or, if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which any Rent and other sums payable hereunder have been paid, (c) that no notice has been received by Tenant of any default hereunder that has not been cured, except as to defaults specified in such certificate, and (d) any other matter actually known to Tenant, directly related to this Lease and reasonably requested by Port. In addition, if requested, Tenant shall attach to such certificate a copy of this Lease and any amendments thereto, and include in such certificate a statement by Tenant that, to the best of its knowledge, such attachment is a true, correct and complete copy of this Lease, including all modifications thereto. Any such certificate may be relied upon by Port, any successor agency, and any prospective purchaser or mortgagee of the Premises or any part of Port's interest therein. Tenant shall also use commercially reasonable efforts (including inserting a provision similar to this Section 25 into each sublease) to cause subtenants under subleases to execute, acknowledge and deliver to Port, within twenty (20) days after request, an estoppel certificate covering the matters described in clauses (a), (b), (c) and (d) above with respect to such sublease but Tenant shall not be in default hereunder for failure of such subtenants to comply with such provisions, nor shall Tenant be obligated to take any action against such subtenants for failure to so comply.

26. ESTOPPEL CERTIFICATES BY PORT

Port shall execute, acknowledge and deliver to Tenant (or at Tenant's request, to any Lender, prospective Lender, transferee or prospective transferee of Tenant's interest under this Lease or any subtenant), within fifteen (15) days after request from Tenant, a certificate stating to the best of Port's actual knowledge after diligent inquiry (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications or, if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which any Rent and other sums payable hereunder have been paid,

(c) whether or not, to the knowledge of Port, there are then existing any defaults under this Lease (and if so, specifying the same) and (d) any other matter actually known to Port, directly related to this Lease and reasonably requested by the requesting party. In addition, if requested, Port shall attach to such certificate a copy of this Lease and any amendments thereto, and include in such certificate a statement by Port that, to the best of its knowledge, such attachment is a true, correct and complete copy of this Lease, including all modifications thereto. Any such certificate may be relied upon by Tenant, any Lender, prospective Lender, transferee or prospective transferee of Tenant's interest under this Lease or subtenant.

27. APPROVALS BY PORT

27.1. Approvals by Port.

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

27.2. Fees for Review.

Tenant shall upon receipt of an invoice therefor pay Port, as Additional Rent, Port's reasonable costs, including Attorneys' Fees and Costs (and including fees and reasonable costs of the City Attorney) incurred in connection with the review, investigation, processing, documentation and/or approval of any proposed Transfer, Mortgage, estoppel certificate, non-disturbance and attornment agreement and Subsequent Construction, excluding any such costs incurred by Port in its regulatory capacity, which costs shall be paid separately by Tenant to the extent required by the applicable regulatory requirements. Tenant shall pay such reasonable costs regardless of whether or not Port consents to such proposal, except only in any instance where Port has wrongfully withheld, delayed or conditioned its consent in violation of this Lease.

28. NO MERGER OF TITLE

28.1. No Merger of Title.

There shall be no merger of the Leasehold Estate with the fee estate in the Premises by reason of the fact that the same Person may own or hold (a) the Leasehold Estate or any interest in such Leasehold Estate, and (b) any interest in such fee estate. No such merger shall occur unless and until all Persons having any interest in the Leasehold Estate and the fee estate in the Premises join in and record a written instrument effecting such merger.

29. QUIET ENJOYMENT

29.1. Quiet Enjoyment.

Subject to the terms and conditions of this Lease and applicable Laws, Port agrees that Tenant, upon paying the Rent and observing and keeping all of the covenants under this Lease on its part to be kept, shall lawfully and quietly hold, occupy and enjoy the Premises during the Term without hindrance or molestation of anyone claiming by, through or under Port.

30. SURRENDER OF PREMISES

30.1. End of Lease Term.

(a) Conditions of Premises. Upon the expiration or other termination of the Term, Tenant shall quit and surrender to Port the Premises in good order and condition, clean, free of debris, waste and Hazardous Materials (other than any Pre-Existing Hazardous Materials), and free of all liens and encumbrances not permitted hereby, reasonable wear and tear excepted to the extent the same is consistent with maintenance of the Premises in the condition required hereunder. The Premises shall be surrendered with all Improvements, repairs, alterations, additions, substitutions and replacements thereto.

(b) Personal Property. On or before expiration or termination of this Lease, Tenant shall have the right to remove all Personal Property. At Port's request, Tenant shall remove, at no cost to Port, any Personal Property belonging to Tenant that then remains on the Premises. If the removal of such trade fixtures or Personal Property causes damage to the Premises, Tenant shall repair such damage, at no cost to Port. Any Personal Property not removed by Tenant as required herein shall be deemed abandoned and may be stored, removed, and disposed of by Port at Tenant's sole cost and expense, and Tenant waives all claims against Port for any Losses resulting from Port's retention, removal or disposition of any trade fixtures or Personal Property remaining on the date of expiration or termination; provided, however, that Tenant shall be liable to Port for all costs incurred in storing, removing and disposing of such abandoned property or repairing any damage to the Premises resulting from such removal.

(c) 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 effectuate the termination of the Leasehold Estate and to effectuate such transfer or vesting of title to the Premises, the Improvements and Personal Property that Port agrees are to remain within the Premises, which quitclaim or other instrument shall be duly executed and, if requested by Port, acknowledged and in form suitable for recordation in the Official Records. Port may record such quitclaim or other instrument at any time on or after the termination of this Lease, without the need for any approval or further act of Tenant.

31. HOLD OVER

31.1. Hold Over.

Any holding over by Tenant after the expiration or termination of this Lease shall not constitute a renewal hereof or give Tenant any rights hereunder or in the Premises, except with the written consent of Port. In any such event, at Port's option, Tenant shall be (a) a tenant at sufferance, or (b) a month-to-month tenant at the Minimum Rent in effect at the expiration of the Term Indexed from the date of hold-over. Either Party may terminate such tenancy on thirty (30) days written notice, and Port may condition or amend the terms and requirements of the tenancy on thirty (30) days written notice.

32. NOTICES

32.1. Notices.

All notices, demands, consents, and requests that may or are to be given by any Party to the other shall be in writing, except as otherwise provided herein. All notices, demands, consents and requests to be provided hereunder shall be deemed to have been properly given on the date of receipt if served personally on a day that is a Business Day (or on the next Business Day if served personally on a day that is not a Business Day), or, if mailed, on the date that is three (3) days after the date when deposited with the U.S. Postal Service for delivery by United States registered or certified mail, postage prepaid, in either case, addressed to Tenant's Address for Notices or Port's Address for Notices, whichever is applicable, or at such other place or places in the United States as each such Party may from time to time designate by written notice to the other in accordance with the provisions hereof. For convenience of the Parties, copies of notices may also be given by email to the email addresses provided from time to time; however, neither Party may give official or binding notice by email.

32.2. Form and Effect of Notice.

Every notice given to a Party or other Person under this Article 32 must state (or shall be accompanied by a cover letter that states):

- (a) the Section of this Lease pursuant to which the notice is given and the action or response required, if any;
- (b) if applicable, the period of time within which the recipient of the notice must respond thereto; and
- (c) if applicable, that the failure to object to the notice within a stated time period shall be deemed to be the equivalent of the recipient's approval of or consent to the subject matter of the notice.

In no event shall a recipient's approval of or consent to the subject matter of a notice be deemed to have been given by its failure to object thereto if such notice (or the accompanying cover letter) does not comply with the requirements of this Section 32.2.

33. INSPECTION OF PREMISES BY PORT

33.1. Entry.

Tenant shall permit Port and its Agents to enter the Premises during regular business hours upon reasonable prior notice (and at any time in the event of an emergency that poses an imminent danger to public health or safety) for the purpose of (i) inspecting the same for compliance with any of the provisions of this Lease, (ii) performing any work therein that Port may have a right to perform, (iii) serving, posting, or keeping posted any notices required or allowed under the provisions of this Lease, or (iv) inspecting, sampling, testing, surveying, and monitoring the Premises or the Improvements or any portion thereof, including the grounds and subsurface areas, as Port reasonably deems necessary or appropriate for evaluation of Hazardous Materials, or other physical, geotechnical, or environmental conditions. Port shall also have the right to enter all spaces of the Premises that are open to the public at any time, and without notice, consistent with the rules and regulations established for members of the public generally. Nothing herein shall imply any duty upon the part of Port to perform any work that under any provision of this Lease Tenant may be required to perform, nor to place upon Port any obligation, or liability, for the care, supervision or repair of the Premises. If Port enters the Premises as permitted under this Article 33, Port shall not be liable for inconvenience, loss of business or other damage to Tenant by reason of such entry, 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. Port shall use reasonable diligence to minimize the interference any such work may cause with the activities of Tenant and its Invitees. Notwithstanding the foregoing, if Port's entry onto the Premises under this Article 33 or otherwise causes damage the Premises, Port shall, at its own cost and expense, as soon as reasonably practicable, repair such damage and restore the Premises to substantially its condition prior to the occurrence of such damage.

33.2. Notice, Right to Accompany.

Port agrees to give Tenant reasonable prior notice of Port's entering on the Premises except in an emergency for the purposes set forth in Section 33.1. Such notice shall be not less than twenty-four (24) hours prior notice. Tenant shall have the right to have a representative of Tenant accompany Port or its Agents on any entry into the Premises. Notwithstanding the foregoing, no notice shall be required for Port's entry onto public areas of the Premises.

34. MORTGAGES

34.1. No Mortgage Except as Set Forth Herein.

(a) Restrictions on Financing. Except as expressly permitted in this Article 34, Tenant shall not: (i) engage in any financing or other transaction creating any mortgage, deed of trust or similar security instrument upon the Leasehold Estate or Tenant's interest in the Improvements under this Lease; or (ii) place or suffer to be placed upon the Leasehold Estate or Tenant's interest in the Improvements hereunder any lien or other encumbrances other than as permitted by Article 13.

(b) No Subordination of Fee Interest or Rent. Under no circumstance whatsoever shall Tenant place or suffer to be placed any lien or encumbrance on Port's fee interest in the Premises

in connection with any financing permitted hereunder, or otherwise. Port shall not subordinate its interest in the Premises, nor its right to receive Rent, to any Lender.

(c) Violation of Covenant. Any mortgage, deed of trust, encumbrance or lien not permitted by this Article 34 shall be deemed to be a material violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

34.2. Leasehold Liens.

(a) Tenant's Right to Mortgage Leasehold. At any time and from time to time during the Term, Tenant shall have the right to encumber the Leasehold Estate by way of Mortgage.

(b) Leasehold Mortgages Subject to this Lease. With the exception of the rights expressly granted to Lenders in this Lease, the execution and delivery of a Mortgage shall not give or be deemed to give a Lender any greater rights than those granted to Tenant hereunder. No default by Tenant under this Lease shall invalidate or defeat the lien of any Lender.

(c) Limitation of Number of Leasehold Lenders Entitled to Protection Provisions. Notwithstanding anything to the contrary in this Lease, any rights given hereunder to Lenders shall only apply to the most senior Lender (the "**Senior Lender**"), unless such Senior Lender elects not to exercise its rights in which event such rights shall apply to the next most senior Lender. A Senior Lender's failure to exercise its rights shall not extend (i) any cure period, (ii) period to enter into a new Lease, or (iii) Tenant's or any Lender's rights under this Article 34. In the absence of an order of a court of competent jurisdiction that is served on Port, Port may rely on a title report prepared by a reputable title company licensed to do business in the State of California and having an office in the City, setting forth the order of priorities of the liens of Mortgages on real property, as conclusive evidence of priority.

34.3. Notice of Liens.

Tenant shall notify Port promptly of any lien or encumbrance other than liens permitted hereunder of which Tenant has knowledge and that has been recorded against or attached to the Improvements or the Leasehold Estate whether by act of Tenant or otherwise.

34.4. Purpose of Mortgage.

(a) Purpose. A Mortgage may be made only for the purposes of financing of construction or ownership of the Initial Improvements, any Subsequent Construction, any permanent take-out financing, or refinancing (permissible refinancing to include increasing the loan amount so long as the debt coverage ratio projected at the time of the Mortgage does not exceed 1.2:1, and the proceeds are used for matters directly related to the Premises and not for other properties). With respect to any issuance of corporate debt or other securitized financings, Tenant shall not be permitted to create any structure that would create an obligation or security of Port.

(b) Statement. Port agrees within thirty (30) days after request by Tenant to give to any holder or proposed holder of a leasehold mortgage, deed of trust, or other security instrument

a statement in recordable form as to whether such mortgage, deed of trust, or other security instrument is permitted hereunder to secure all of the advances and indebtedness stated by the terms of the applicable financing documents. Except as set forth in such statement, such a statement shall estop Port from asserting, against either Tenant or such prospective Lender, that such mortgage, deed of trust, or other security instrument (if done in the way described in the statement) is not permitted hereunder, but shall create no liability on Port, and shall conclusively establish that such mortgage, deed of trust or other security instrument is permitted hereunder and does not constitute a default by Tenant. In making a request for such statement, Tenant shall furnish to Port true, accurate and complete copies of such financing documents upon request. In no event, however, shall any failure by Tenant or other party to comply with the terms of any Mortgage, including the use of any proceeds of any debt, the repayment of which is secured by a Mortgage, be deemed to invalidate the lien of a Mortgage.

34.5. Interest Covered by Mortgage.

A Mortgage may attach to any or all of the following interests in the Premises: (i) the Leasehold Estate and Tenant's interest in the Improvements or some portion thereof granted hereunder, (ii) any Personal Property, (iii) products and proceeds of the foregoing, and (iv) any other rights and interests of Tenant arising under this Lease. As provided in Section 34.1(b), no Mortgage may encumber Port's interest in or under this Lease or Port's fee simple interest in the Premises or Port's personal and other property in, on or around the Premises.

34.6. Institutional Lender; Other Permitted Lenders.

A Mortgage may be given only to (i) a Bona Fide Institutional Lender or (ii) any other lender that has been approved by Port.⁶

34.7. Rights Subject to Lease.

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

34.8. Lender's Obligations with Respect to the Property.

(a) Rights and Obligations upon Lender Acquisition. Except as set forth in this Article 34, no Lender shall have any obligations or other liabilities under this Lease unless and until it acquires title by any method to the Leasehold Estate (referred to as "**Foreclosed Property**"). Except as otherwise provided herein (including Sections 34.8(b) through (d)), a Lender (or its designee, successor or assign) or other winning bidder at a foreclosure sale (collectively, a "**Successor Owner**") that acquires title to any Foreclosed Property (a "**Lender Acquisition**") shall take title subject to all of the terms and conditions of this Lease to the extent

⁶ NTD: Port, there are provisions regarding Non-Affiliate Lenders. Is the implication of this provision that loans may not be given by Affiliates that are not Bona Fide Institutional Lenders without the consent of the Port? No.

applicable to the Foreclosed Property, including any claims for payment or performance of obligations that are due as a condition to enjoying the benefits under this Lease from and after the Lender Acquisition. Upon completion of a Lender Acquisition, Port shall recognize the Successor Owner as Tenant under this Lease. Such recognition shall be effective and self-operative without the execution of any further instruments; provided, upon request, at no cost to Port, Port shall execute a written agreement recognizing Successor Owner. A Successor Owner, upon a Lender Acquisition, shall be required promptly to cure all monetary defaults and all other defaults then reasonably susceptible of being cured by such Successor Owner to the extent not cured prior to completion of the Lender Acquisition. The foregoing obligation includes any obligation to Restore, except as set forth in Section 34.8(b).

(b) No Obligation to Restore. Subject to Sections 34.8(c) and (d), Lender, including any Lender who obtains title to Foreclosed Property through a Lender Acquisition, shall not be obligated by the provisions of this Lease to Restore any damage or destruction to the Improvements beyond the extent necessary to preserve or protect the Improvements already made, to remove any debris and to perform other reasonable measures to protect the public; provided, however, any other Person who thereafter obtains title to the Leasehold Estate, or any interest therein from or through such Lender (or its designee), or any other Successor Owner (other than such Lender) shall be obligated to Restore any damage or destruction to the Improvements in accordance with this Lease, except that any time period for such Restoration shall be reset as if the applicable casualty or condemnation occurred as of the date of the Lender Acquisition.

(c) Obligation to Sell If Not Restore. In the event that Lender acquires the Foreclosed Property through a Lender Acquisition and chooses not to complete or Restore the Improvements, it shall notify Port in writing of its election within ninety (90) days following the Lender Acquisition and shall sell its interest with reasonable diligence to a purchaser that shall be obligated to Restore the Improvements, but in any event Lender shall use good faith efforts to cause such sale to occur within six months following Lender's written notice to Port of its election not to Restore (the "**Sale Period**").

(d) Lender Agreement to Complete or Restore. If Lender fails to sell its interest in the Leasehold Estate within the Sale Period, such failure shall not constitute a default hereunder but Lender shall be obligated to Restore the Improvements to the extent this Lease obligates Tenant to so Restore. In the event Lender agrees, or is deemed to have agreed, to Restore the Improvements, all such work shall be performed in accordance with all the requirements set forth in this Lease, and Lender must submit evidence reasonably satisfactory to Port that it has the qualifications and financial responsibility necessary to perform such obligations.

34.9. Required Provisions of any Mortgage.

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

34.10. Notices to Lender.

(a) Copies of Notices. Port shall give a copy of each notice Port gives to Tenant from time to time of the occurrence of a default or an Event of Default, or of Port's consent to a Transfer to any Lender that has given to Port written notice substantially in the form provided in Section 34.10(b). Copies of such notices shall be given to Lender at the same time as notices are given to Tenant by Port, addressed to such Lender at the address last furnished to Port. Port shall acknowledge in writing its receipt of the name and address of a Lender so delivered to Port. Port's failure to give such notice to a Lender shall not be deemed to constitute a default by Port under this Lease, but any delay or failure by Port to give notice to any Lender that has previously requested notice shall extend, by the number of days until notice is given, the time allowed for Lender to cure.

(b) Notice From Lender to Port. The Lender under any Mortgage shall be entitled to receive notices from time to time given to Tenant by Port under this Lease in accordance with Section 34.10(a) provided such Lender has delivered a notice to Port in substantially the following form:

“The undersigned does hereby certify that it is a Lender, as such term is defined in that certain Ground Lease (No. L- _____) originally entered into by and between the City and County of San Francisco, acting by and through its Port Commission, as landlord (“Port”), and California Barrel Company LLC, a Delaware limited liability company, as tenant (as amended, the “Lease”), with respect to the portion of the Premises attached hereto as Exhibit A and made a part hereof by this reference. The undersigned hereby requests that copies of any and all notices of default from time to time given under the Lease to Tenant (as defined in the Lease) by Port be sent to the undersigned at the following address: _____.”

34.11. Lender's Right to Cure.

If Tenant, or Tenant's successors or assigns, mortgage this Lease in compliance with the provisions of this Article 34, then, so long as any such Mortgage remains unsatisfied of record, the following provisions shall apply:

(a) Cure Periods. Each Lender shall have the right, but not the obligation, at any time before termination of this Lease and without payment of any penalty, to pay the Rent due, to effect any insurance, to pay taxes or assessments, to make any repairs or improvements, to do any other act or thing required of Tenant, and to do any act or thing that may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of this Lease; provided, however, that no such action shall constitute an assumption by such Lender of the obligations of Tenant under this Lease. Each Lender and its agents and contractors shall have full access to the Premises for purposes of accomplishing any of the foregoing. Any of the foregoing done by any Lender shall be as effective to prevent a termination of this Lease as the same would have been if done by Tenant. In the case of any notice of default given by Port to Tenant, the Lender shall have the same concurrent cure periods as are given Tenant under this Lease for remedying a default or causing it to be remedied, plus, in each case, an additional period of thirty (30) days after the later to occur of (i) the expiration of such cure period, or (ii) the date that Port has served such notice of default upon Lender, and Port shall accept such performance by or at the instance of the Lender as if the same had been made by

Tenant. If such default cannot reasonably be cured or remedied within such additional thirty (30) day period, or if such default cannot be reasonably commenced or cured by Lender within such additional thirty (30) day period without obtaining possession of the Premises, such cure period shall be extended so long as the Lender commences the cure or remedy within such period, and prosecutes the completion thereof with diligence and dispatch, subject to Excusable Delay to the extent applicable, or if such default cannot be reasonably commenced within such thirty (30) day period so long as Lender is pursuing diligently obtaining possession (if possession is required to commence) and thereafter commences the cure promptly upon obtaining possession.

(b) Foreclosure. Notwithstanding anything to the contrary in this Lease, upon the occurrence of an Event of Default, other than an Event of Default due to a default in the payment of money or other default reasonably susceptible of being cured before Lender obtaining possession, Port shall take no action to effect a termination of this Lease if, within thirty (30) days after notice of such Event of Default is given to each Lender, a Lender has (x) obtained possession of the Premises (including possession by a receiver if Lender deems it advisable), or (y) notified Port of its intention to institute foreclosure proceedings (or to commence actions to obtain possession of the Premises through appointment of a receiver or otherwise) or otherwise acquire Tenant's interest under this Lease, and thereafter promptly commences and prosecutes such proceedings with diligence and dispatch subject to normal and customary postponements and compliance with any judicial orders relating to the timing of or the right to conduct such proceedings and Excusable Delay to the extent applicable. The period from the date Lender so notifies Port until a Lender acquires and succeeds to the interest of Tenant under this Lease or some other party acquires such interest through Foreclosure is herein called the "**Foreclosure Period**". A Lender, upon acquiring Tenant's interest under this Lease, shall be required promptly to cure all monetary defaults and all other defaults then reasonably susceptible of being cured by such Lender to the extent not cured before Foreclosure. The foregoing provisions of this Section 34.11(b) are subject to the following: (i) no Lender shall be obligated to continue possession or to continue Foreclosure after the defaults or Events of Default hereunder referred to have been cured (and Port shall accept such cure or performance of such obligation by any party, including Tenant); (ii) nothing herein contained shall preclude Port, subject to the provisions of this Section 34.11, from exercising any rights or remedies under this Lease (other than a termination of this Lease to the extent otherwise permitted hereunder) with respect to any other Event of Default by Tenant during the pendency of such foreclosure proceedings; and (iii) such Lender shall agree with Port in writing to comply during the Foreclosure Period with such of the terms, conditions and covenants of this Lease as are reasonably susceptible of being complied with by such Lender (except to the extent related to Hazardous Materials or Restoration), including the payment of all sums due and owing hereunder (except for monetary obligations related to Hazardous Materials or Restoration) and the use restrictions set forth in Section 3.1 but excluding the operating covenants in Section 7.1. Notwithstanding anything to the contrary in this Lease, including an agreement by Lender given under clause (iii) of the preceding sentence, Lender shall have the right at any time to notify Port that it has relinquished possession of the Premises or that it will not institute Foreclosure or, if such Foreclosure has commenced, that it has discontinued them, and, in such event, the Lender shall have no further liability under such agreement from and after the date it delivers such notice to Port, and, thereupon, Port shall be entitled to seek the termination of this Lease and/or any other available remedy as provided in this Lease unless such Event of Default has been cured. Upon any such termination, the provisions of Section 34.11(d) shall apply. If Lender is prohibited by any process or injunction issued by any court having jurisdiction of any

bankruptcy or insolvency proceedings involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition, provided that Lender shall (1) have fully cured any Event of Default due to a default in the payment of money, except for monetary obligations related to Restoration or Hazardous Materials, (2) continue to pay currently such monetary obligations as and when the same become due, and (3) perform all other obligations of Tenant under this Lease to the extent that they are susceptible of being performed by Lender.

(c) Construction.

(i) Subject to Section 34.8(b), if a default of Tenant occurs following any damage or destruction but before Restoration of the Improvements, Lender, either before or after foreclosure or action in lieu thereof, shall not be obligated to Restore the Improvements beyond the extent necessary to preserve or protect the Improvements or construction already made, unless such Lender expressly assumes Tenant's obligations to Port by written agreement reasonably satisfactory to Port, to Restore, in the manner provided in this Lease, the Improvements on the Premises or the part thereof to which the lien or title of such Lender relates, and submitted evidence satisfactory to Port that it has the qualifications and financial responsibility necessary to perform such obligation.

(ii) Upon assuming Tenant's obligations to Restore in accordance with Section 34.11(c)(i), Lender or any transferee of Lender shall not be required to adhere to the existing construction schedule, but instead all dates set forth in this Lease for such Restoration or otherwise agreed to shall be extended for the period of delay from the date on which Tenant stopped work on the Restoration to the date of such assumption plus an additional one hundred twenty (120) days.

(d) New Lease. In the event of the termination of this Lease before the expiration of the Term, including the termination of this Lease by Port on account of an Event of Default or the rejection of this Lease by a trustee of Tenant in bankruptcy or by Tenant as a debtor-in-possession, except (i) by Total Condemnation, or (ii) subject to Section 11.5 and subject to Section 34.11(h), as the result of damage or destruction as provided in Article 11, Port shall serve upon the Lender written notice that this Lease has been terminated, together with a statement of any and all sums that would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Port. The Lender shall thereupon have the option to obtain a new lease in accordance with and upon the following terms and conditions:

(i) Upon the written request of the Lender, within thirty (30) days after service of such notice that this Lease has been terminated, Port shall enter into a new lease of the Premises with the most senior Lender giving notice within such period or its designee; and

(ii) Such new lease shall be entered into at the reasonable cost of the Lender, shall be effective as of the date of termination of this Lease, and shall be for the remainder of the Term and at the Rent and upon all the agreements, terms, covenants and conditions hereof, including any applicable rights of renewal and in substantially the same form as this Lease (except for any requirements or conditions which Tenant has satisfied before the termination). Such new

lease shall have the same priority as this Lease, including priority over any mortgage or other lien, charge or encumbrance on the title to the Premises. Such new lease shall require the Lender to perform any unfulfilled monetary obligation of Tenant under this Lease that would, at the time of the execution of the new lease, be due under this Lease if this Lease had not been terminated and to perform as soon as reasonably practicable any unfulfilled non-monetary obligation which is reasonably susceptible of being performed by such Lender other than obligations of Tenant with respect to construction of the Initial Improvements, which obligations shall be performed by Lender in accordance with Section 34.11(c). Upon the execution of such new lease, the Lender shall pay any and all sums that would at the time of the execution thereof be due under this Lease but for such termination, and shall pay all expenses, including Attorneys' Fees and Costs incurred by Port in connection with such defaults and termination, the recovery of possession of the Premises, and the preparation, execution and delivery of such new lease. The provisions of this Section 34.11(d) shall survive any termination of this Lease (except as otherwise expressly set out in the first sentence of this Section 34.11(d)), and shall constitute a separate agreement by Port for the benefit of and enforceable by the Lender.

(iii) Simultaneously with the execution and delivery of the new lease, Port shall confirm and acknowledge that Lender has title to the Improvements for the term of the new lease by such means as is customary or may be reasonably required by a reputable title insurance company to insure the Leasehold Estate; provided, however, that Port shall have no responsibility for exceptions to title or title defects that affected title to the Improvements on or after the Commencement Date except to the extent created by the acts or omissions of City or Port.

(e) Nominee. Any rights of a Lender under this Section 34.11 may be exercised by or through its nominee or designee (other than Tenant) which is an Affiliate of Lender; provided, that a Lender may acquire title to the Lease through a wholly owned (directly or indirectly) subsidiary of Lender.

(f) Limited to Permitted Lenders. Notwithstanding anything to the contrary in this Lease, the provisions of this Section 34.11 shall inure only to the benefit of the holders of the Mortgages which are permitted hereunder.

(g) Consent of Lender. No modification, termination or cancellation of this Lease shall be effective against a Lender unless a copy of the proposed modification, termination or cancellation has been delivered to the Lender and such Lender has approved the change in writing. No merger of this Lease and the fee estate in the Premises shall occur on account of the acquisition by the same or related parties of the Leasehold Estate and the fee estate in the Premises without the prior written consent of Lender.

(h) Limitation on Liability of Lender. Notwithstanding anything to the contrary in this Lease, no Lender, or its designee or nominee, shall become liable under the provisions of this Lease, unless and until such time as it becomes the owner of the Leasehold Estate, and then only for so long as it remains the owner of the Leasehold Estate and only with respect to the obligations arising during such period of ownership.

(i) Limitation on Obligation to Cure. Notwithstanding anything to the contrary in this Lease, a Lender, and its designee or nominee (other than Tenant), shall have no obligation to cure

(i) any Event of Default by Tenant under this Lease occurring pursuant to Section 20.1(b), (c), (d), (e), or (f), or (ii) any other non-monetary Event of Default by Tenant under this Lease that is not reasonably susceptible of being cured; provided, however, such provisions of this Lease shall apply to and remain effective on a prospective basis notwithstanding Lender's inability to cure such previous Events of Default. The default listed in Section 20.1(i) shall be deemed a default "**not reasonably susceptible of being complied with**" or "**not reasonably susceptible of being cured**" for purposes of Sections 34.11(b) and (c).⁷

(j) Cooperation. Port, through the Port Director, and Tenant shall cooperate in including in this Lease by suitable written amendment or agreement from time to time any provision that may be reasonably requested by the Lender to implement the provisions and intent of this Article 34, provided, however, that any such amendment or agreement shall not adversely affect in any material respect any of Port's rights and remedies under this Lease, and Port's obligation is conditioned upon receipt of Attorneys' Fees and Costs incurred in connection with the review and negotiation of any such amendment or agreement.

34.12. Assignment by Lender.

Foreclosure of any Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Mortgage, or any conveyance of the Leasehold Estate from Tenant to any Lender or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Port or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance Port shall recognize the Lender or other transferee in connection therewith as the Tenant hereunder. The right of such transferee or the right of the transferee of such Lender (but not the right of the Lender) thereafter to assign or transfer this Lease or such new lease shall be subject to the restrictions of Article 14. In the event Lender subsequently Transfers its interest under this Lease after acquiring the same by foreclosure or deed in lieu of foreclosure or subsequently assigns or transfers its interest under any new lease obtained pursuant to Section 34.11(d), and in connection with any such Transfer, Lender takes back a mortgage or deed of trust encumbering such leasehold interest to secure a portion of the purchase price given to Lender for such Transfer, then such mortgage or deed of trust shall be considered a permitted Mortgage, and Lender shall be entitled to receive the benefit and enforce the provisions of this Article 34 and any other provisions of this Lease intended for the benefit of a permitted Lender who holds a permitted Mortgage.

34.13. Transfer of Mortgage.

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

34.14. Appointment of Receiver.

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

35. NO JOINT VENTURE

Nothing contained in this Lease (for the avoidance of doubt, including any obligation to pay Percentage Rent under Section 2.8, which shall be deemed strictly a rental payment) shall be deemed or construed as creating a partnership or joint venture between Port and Tenant or between Port and any other Person, or cause Port to be responsible in any way for the debts or obligations of Tenant. The subject of this Lease is a lease with neither Party acting as the agent of the other Party in any respect.

36. ECONOMIC ACCESS

36.1. Workforce Agreement.

Tenant shall comply with the Workforce Agreement to the extent applicable to the Premises.

36.2. Southern Waterfront Community Benefits and Beautification Policy.

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. Port agrees that the performance of Tenant's obligations hereunder will provide community benefits and beautification measures in consideration for the use of the Premises sufficient to satisfy the requirements of such policy. Without expanding or otherwise modifying the scope of Tenant's obligations hereunder, 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 City's Contract Monitoring Division as "Local Business Enterprises" under the City's Local Business Enterprise and Non-Discrimination Ordinance (San Francisco 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 reasonable request.

37. REPRESENTATIONS AND WARRANTIES

Tenant represents and warrants to Port as follows as of the Effective Date:

(a) Valid Existence; Good Standing. Tenant is a limited liability company duly organized and validly existing under the laws of the State of Delaware. Tenant has the requisite power and authority to own its property and conduct its business as presently conducted. Tenant is in good standing in the State of California.

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

(c) No Limitation on Ability to Perform. Neither Tenant's articles of organization or operating agreement, nor any applicable Law, prohibits Tenant's entry into this Lease or its performance hereunder. No consent, authorization or approval of, and no notice to or filing with, any governmental authority, regulatory body or other Person is required for the due execution and delivery of this Lease by Tenant and Tenant's performance hereunder, except for consents, authorizations and approvals which have already been obtained, notices which have already been given and filings which have already been made. Except as may otherwise have been disclosed to Port in writing, there are no undischarged judgments pending against Tenant, and Tenant has not received notice of the filing of any pending suit or proceedings against Tenant before any court, governmental agency, or arbitrator, which might materially adversely affect the enforceability of this Lease or the business, operations, assets or condition of Tenant.

(d) Valid Execution. The execution and delivery of this Lease and the performance by Tenant hereunder have been duly and validly authorized. This Lease is a legal, valid and binding obligation of Tenant.

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

(f) Financial Matters. Except to the extent disclosed to Port in writing, (i) Tenant is not in default under, and has not received notice asserting that it is in default under, any agreement for borrowed money, (ii) Tenant has not filed a petition for relief under any chapter of the U.S. Bankruptcy Code, (iii) there has been no event that has materially adversely affected Tenant's ability to meet its Lease obligations hereunder, and (iv) to Tenant's knowledge, no involuntary petition naming Tenant as debtor has been filed under any chapter of the U.S. Bankruptcy Code.

(g) Public Trust Easement Parcel. To the current actual knowledge of Tenant, Tenant is the sole owner of the Public Trust Easement Parcel, and no other person has any right or option to acquire all or any portion of the Public Trust Easement Parcel.

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

38. SPECIAL PROVISIONS

38.1. Non-Discrimination.

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

(b) Subleases and Other Subcontracts. Tenant shall include in all subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such subtenant or other subcontractor in substantially the form of Section 38.1(a). In addition, Tenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subtenants and other subcontractors to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) Non-Discrimination in Benefits. Tenant does not as of the Effective Date and shall not during the Term, in any of its operations in San Francisco or with respect to its operations under this Lease elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) Condition to Lease. As a condition to this Lease, Tenant shall execute the "**Chapter 12B & 12C Declaration: Nondiscrimination in Contracts and Benefits**" (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division, Equal Benefits Unit.

(e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section 38.1 by reference and made a part of this Lease as though fully set forth herein. Tenant shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the San Francisco Administrative Code, including the remedies provided in such Chapters. Without

limiting the foregoing, Tenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

38.2. Mitigation and Improvement Measures.

In order to mitigate the significant environmental impacts of this Lease and operation of the Premises, Tenant agrees that the operation of the Project shall be in accordance with the Mitigation and Improvement Measures. As appropriate, Tenant shall incorporate the Mitigation and Improvement Measures into any contract for the operation of the Improvements.

38.3. MacBride Principles - Northern Ireland.

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

38.4. Tropical Hardwood and Virgin Redwood Ban; Preservative-Treated Wood Containing Arsenic.

The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code. Tenant agrees that, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Tenant shall not use or incorporate any tropical hardwoods, tropical hardwood wood products, or virgin redwood or virgin redwood wood products in the construction of the Improvements or provide any items to the construction of the Improvements, or otherwise in the performance of this Lease, that are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. If Tenant fails to comply with any of Environment Code Chapter 8, Tenant shall be liable for liquidated damages for each violation in any amount equal to the contractor's net profit on the contract, or 5% of the total amount of the contract dollars, whichever is greater. 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 the Environment.

38.5. Drug-Free Workplace.

Tenant acknowledges that under the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession, or use of a controlled substance under federal Laws is prohibited on City premises. Any violation of this prohibition by Tenant or its Agents shall be a material breach of this Lease.

38.6. Prohibition of Tobacco Sales and Advertising.

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

38.7. Prohibition of Alcoholic Beverage Advertising.

No advertising of alcoholic beverages is allowed on the Premises. For purposes of this Section 38.7, “alcoholic beverage” is defined as set forth in California Business and Professions Code Section 23004, and does 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 alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product.

38.8. Waiver of Relocation Assistance Rights.

Tenant acknowledges that it shall not be a displaced Person at the time this Lease is terminated or expires by its own terms, and Tenant fully RELEASES AND DISCHARGES forever any and all claims against, and covenants not to sue, Port, City, or their respective Agents under any Laws for relocation benefits or assistance from Port, City or their respective Agents for relocation assistance in connection therewith, including under federal and state relocation assistance Laws (including California Government Code Section 7260 *et seq.*), except as otherwise specifically provided in this Lease with respect to a Condemnation.

38.9. Intentionally Omitted.

38.10. Green Building Standards Code.

Port has adopted the “Green Building Standards Code” as part of the Port of San Francisco Building Code. Tenant shall comply with the requirements of such Green Building Standards Code for the Initial Improvements and all Subsequent Construction.

38.11. Transportation Demand Management Program.

The Board of Supervisors has designated a Transportation Management Agency (“TMA”) whose charge is to reduce the number of private automobile trips to the Premises and to assist in bringing about an overall reduction in automobile dependency through education, assistance, and incentives. The TMA from time to time, may establish transportation demand management programs and institute congestion pricing and other charges, as it determines appropriate within its authority. Tenant shall comply with all applicable programs and measures

imposed by the TMA, and shall include in all subleases a requirement that the applicable subtenant complies with this Section 38.11.

38.12. Sunshine Ordinance.

Tenant understands and agrees that under City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the California Public Records Act (California Government Code Section 250 *et seq.*), this Lease and any and all records, information and materials submitted to Port hereunder may be public records subject to public disclosure upon request. Tenant may mark or designate as confidential, or otherwise request to be kept confidential, materials that Tenant submits to Port that Tenant in good faith believes are or contain trade secrets or proprietary information protected from disclosure under the Sunshine Ordinance and other Laws, and Port shall attempt to maintain the confidentiality of such materials to the extent permitted by Law. When a Port official or employee receives a request for any such materials, Port may request further evidence or explanation from Tenant. Notwithstanding the foregoing, to the extent that Port determines that the information in such materials does not constitute a trade secret or proprietary or other information protected from disclosure, Port shall notify Tenant of that conclusion and that such information will be released by a specified date in order to provide Tenant an opportunity to obtain a court order prohibiting disclosure.

38.13. Conflicts of Interest.

Through its execution of this Lease, Tenant acknowledges that it is familiar with the provisions of Section 15.103 of City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the California Government Code, and certifies that it does not know of any facts that constitute a violation of such provisions and agrees that it will promptly thereafter notify the City if it becomes aware of any such fact during the Term.

38.14. Charter Provisions.

This Lease is governed by and subject to the provisions of City's Charter.

38.15. Requiring Health Benefits for Covered Employees.

(a) Unless exempt, Tenant shall comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance ("HCAO"), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as they may be amended from time to time. The provisions of Chapter 12Q are incorporated into this Lease by reference and made a part of this Lease as though fully set forth. The text of the HCAO is available on the web at <http://www.sfgov.org/olse/hcao>. Capitalized terms used in this Section 38.15 and not defined in this Lease have the meanings assigned to those terms in Chapter 12Q.

(b) For each Covered Employee, Tenant shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Tenant chooses to offer the health plan option, the health plan must meet the minimum standards set forth by the San Francisco Health Commission.

(c) Notwithstanding the above, if the Tenant is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with Section 38.15(a).

(d) Tenant's failure to comply with the HCAO shall constitute a material breach of this Lease. City may notify Tenant if a breach has occurred. If, within thirty (30) days after receiving City's written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure the breach or, if the breach cannot reasonably be cured within the thirty (30) days period, and Tenant fails to commence efforts to cure within that period, or fails diligently to pursue the cure to completion, then City shall have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

(e) Any Subcontract entered into by Tenant shall require the Subcontractor to comply with the requirements of the HCAO and contain contractual obligations substantially the same as those set forth in this Section 38.15. Tenant shall notify City's Purchasing Department when it enters into a Subcontract and shall certify to the Purchasing Department that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Tenant shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, City may pursue the remedies set forth in this Section 38.15 against Tenant based on the Subcontractor's failure to comply, provided that City has first provided Tenant with notice and an opportunity to cure the violation.

(f) Tenant may not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City regarding Tenant's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

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

(h) Tenant shall keep itself informed of the current requirements of the HCAO.

(i) Tenant shall provide reports to City in accordance with any reporting standards promulgated by City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(j) Tenant shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least five (5) Business Days to respond.

(k) City may conduct random audits of Tenant to ascertain its compliance with HCAO. Tenant shall cooperate with City when it conducts the audits.

(l) If Tenant is exempt from the HCAO when this Lease is executed because its amount is less than Twenty-Five Thousand Dollars (\$25,000), but Tenant later enters into an agreement or agreements that cause Tenant's aggregate amount of all agreements with City to reach Seventy-

Five Thousand Dollars (\$75,000), then all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Tenant and City's Office of Contract Administration to be equal to or greater than Seventy-Five Thousand Dollars (\$75,000) in the fiscal year.

38.16. Notification of Prohibition on Contributions.

For the purposes of this Section 38.16, a “**City Contractor**” is a party that contracts with, or seeks to contract with, the City for the sale or leasing of any land or building to or from the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves. 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 a City Contractor from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) 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 that contract or twelve (12) months after the date that 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 \$100,000 or more. Tenant further acknowledges that (i) the prohibition on contributions applies to Tenant, each member of Tenant's board of directors, Tenant's chief executive officer, chief financial officer and chief operating officer, any person with an ownership interest of more than ten percent (10%) in Tenant, any subcontractor listed in the contract, and any committee that is sponsored or controlled by Tenant, and (ii) within thirty (30) days of the submission of a proposal for the contract, the City department seeking to enter into the contract must notify the Ethics Commission of the parties and any subcontractor to the contract. Additionally, Tenant certifies it has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 of the San Francisco Campaign and Governmental Conduct Code by the time it submitted a proposal for the contract to the City, and has provided the names of the persons required to be informed to the City department seeking to enter into that contract within thirty (30) days of submitting its contract proposal to the City department receiving that submittal, and acknowledges the City department receiving that submittal was required to notify the Ethics Commission of those persons.

38.17. Food Service and Packaging Waste Reduction Ordinance.

Tenant shall comply with and is bound by all of the applicable provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated into this Lease by reference and made a part of this Lease as though fully set forth. This Section 38.17 is a material term of this Lease.

38.18. Port's Zero Waste Events and Activities Policy.

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

38.19. San Francisco Packaged Water Ordinance.

Tenant shall comply with San Francisco Environment Code Chapter 24 (“**Chapter 24**”). Tenant may not sell, provide, or otherwise distribute Packaged Water, as defined in Chapter 24 (including bottled water), in the performance of this Lease or on City property unless Tenant obtains a waiver from City’s Department of the Environment. If Tenant violates this requirement, City may exercise all remedies in this Lease and the **Director** of City’s Department of the Environment may impose administrative fines as set forth in Chapter 24.

38.20. Criminal History in Hiring and Employment Decisions.

(a) Unless exempt, Tenant shall comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions), as amended from time to time (“**Chapter 12T**”), which are incorporated into this Lease as if fully set forth, 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 require all subtenants to comply with those provisions. Tenant’s failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

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

(d) Tenant and subtenants may 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 Section 38.19(c). Tenant and subtenants may not require that disclosure or make any 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 shall 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 OLSE (as defined in the DA), 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 on any failure to comply with the requirements of Chapter 12T, City shall have the right to pursue any rights or remedies available under Chapter 12T or this Lease, including 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, or termination of this Lease in whole or in part.

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

(i) Capitalized terms used in this Section 38.20 and not defined in this Lease have the meanings assigned to those terms in Chapter 12T.

38.21. Vending Machines; Nutritional Standards.

Tenant may not install or permit any vending machine on the Premises without the prior written consent of Port. Any permitted vending machine shall 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 shall 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 38.21 shall be 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 located on the Premises is encouraged to ensure that at least 25% of Meals (as defined in San Francisco Administrative Code Section 4.9-1(b)) offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code Section 4.9-1(e), as may be amended.

38.22. Tenant's Compliance with City Business and Tax and Regulations Code.

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

38.23. FEMA Disclosure.

Tenant acknowledges receipt of the FEMA disclosure notice attached as Exhibit L to this Lease.

39. GENERAL

39.1. Time of Performance.

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

(b) Weekend or Holiday. A performance date that falls on a day other than a Business Day is deemed extended to the next Business Day.

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

(d) Time of the Essence. Time is of the essence with respect to each provision of this Lease, including the provisions for the exercise of any option on the part of Tenant hereunder and the provisions for the payment of Rent and any other sums due hereunder, subject to the provisions of this Lease relating to Excusable Delay.

39.2. Interpretation of Agreement.

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

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

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

(d) No Presumption Against Drafter. This Lease has been negotiated at arm’s length and between Persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, this Lease shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Lease (including California Civil Code Section 1654).

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

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

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

(h) Legal References. Wherever reference is made to a specific code or section of a specific Law, the reference shall be deemed to include any amendment, restatement or replacement.

39.3. Successors and Assigns.

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

39.4. No Third Party Beneficiaries.

This Lease is for the exclusive benefit of the Parties and not for the benefit of any other Person and shall not be deemed to have conferred any rights, express or implied, upon any other Person, except as provided in Article 34 and elsewhere herein with regard to Lenders.

39.5. Real Estate Commissions.

Neither Party shall be liable for any real estate commissions, brokerage fees or finder’s fees which may arise from this Lease. Tenant and Port each represents that it engaged no broker, agent or finder in connection with this transaction. In the event any broker, agent or finder makes a claim, the Party through whom such claim is made agrees to Indemnify the other Party from any Losses arising out of such claim.

39.6. Counterparts.

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

39.7. Entire Agreement.

This Lease (including the Exhibits) and the DA (including the Exhibits, and for so long as the DA is in effect), constitute the entire agreement between the Parties with respect to the subject matter set forth therein, and supersede all negotiations or previous agreements between the Parties with respect to all or any part of the terms and conditions mentioned herein or incidental hereto. No parol evidence of any prior or other agreement shall be permitted to contradict or vary the terms of this Lease.

39.8. Amendment.

Neither this Lease nor any of the terms hereof may be terminated, amended or modified except by a written instrument executed by the Parties.

39.9. Governing Law; Selection of Forum.

This Lease shall be governed by, and interpreted in accordance with, the laws of the State of California. As part of the consideration for the Parties entering into this Lease, Tenant agrees that all actions or proceedings arising directly or indirectly under this Lease may be litigated in courts having situs within the State of California, and the Parties consent to the jurisdiction of any such local, state or federal court.

39.10. Recordation.

This Lease shall not be recorded by either Party. The Parties agree to execute and record in the Official Records a Memorandum of Lease in the form attached hereto as Exhibit M. Promptly upon Port's request following the expiration of the Term or any other termination of this Lease, Port may record a quitclaim or other instrument for the purpose of evidencing in the public records the termination of Tenant's interest under this Lease, as more particularly described in Section 30.1(c).

39.11. Extensions by Port.

Upon the request of Tenant, Port may, by written instrument, extend the time for Tenant's performance of any term, covenant or condition of this Lease or permit the curing of any default upon such terms and conditions as it determines appropriate, including the time within which Tenant must agree to such terms and/or conditions, provided, however, that any such extension or permissive curing of any particular default shall not operate to release any of Tenant's obligations nor constitute a waiver of Port's rights with respect to any other term, covenant or condition of this Lease or any other default in, or breach of, this Lease or otherwise effect the time of the essence provisions with respect to the extended date or other dates for performance hereunder.

39.12. Further Assurances.

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

39.13. Attorneys' Fees.

If either Party fails to perform any of its respective obligations under this Lease or if any dispute arises between the Parties concerning the meaning or interpretation of any provision of this Lease, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other Party on account of such default and/or in enforcing or establishing its rights hereunder, including Attorneys' Fees and Costs. Any such Attorneys' Fees and Costs incurred by either Party in enforcing a judgment in its favor under this Lease shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be severable from the other provisions of this Lease and to survive and not be merged into any such judgment. For purposes of this Lease, the reasonable fees of attorneys of City's Office of City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City in law firms with approximately the same number of attorneys as employed by the City Attorney's Office. If Tenant utilizes services of in-house counsel, then, for purposes of this Lease, the reasonable fees of such in-house counsel shall be based on fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the in-house counsel's services were rendered who practice in the City in full service law firms.

39.14. Effective Date.

This Lease shall become effective on the Effective Date. The Parties acknowledge and agree that the Effective Date is the date on which the Parties duly executed and delivered this Lease following approval by the City's Port Commission, Board of Supervisors and Mayor, in their respective sole and absolute discretion.

39.15. Severability.

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

40. DEFINITION OF CERTAIN TERMS

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

"Adequate Security" means any security provided by Tenant in accordance with this Lease that (i) secures the faithful performance of Tenant's obligation hereunder to Complete a Phase of the Initial Improvements by the date that is five (5) years following the date on which Tenant Commences such Phase, subject to Excusable Delay and, without duplication, any other extension of time permitted under the DA, (ii) is issued by a Person approved by Port, (iii) provides that the maximum liability of the obligor thereunder shall be equal to the Secured Amount, plus the costs of enforcing such Adequate Security, and (iv) is a Guaranty or, with the approval of Port,

another form of security that provides reasonable assurances regarding the obligation secured thereby (which may include bonds, letters of credit, certificates of deposit or any other form).

“Adjusted Gross Revenues” means, with respect to each Lease Year, the Gross Revenues less Budgeted Operating Expenses, Operating Reserves and Capital Reserves for such Lease Year.

“Administrative Delay” means that (i) a governmental entity (for the avoidance of doubt, including Port) fails to act on Tenant’s request or application within a reasonable period of time under its standard practices or as otherwise specified in the DA (or, in the case of Port, this Lease) or (ii) an appeal body or court determines that a governmental entity’s act or failure to act on a request or application was improper following a challenge by Tenant, in each case, except to the extent caused by Tenant’s failure to submit timely all required and requested information supporting a request or application.

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

“Agents” when used with respect to a Person means the members, officers, directors, commissioners, employees, agents and contractors of such Person, and their respective heirs, legal representatives, successors and assigns.

“Anniversary Date” is defined in Section 2.2.

“Annual Base Rent” is defined in the Basic Lease Information.

“Annual Statement” is defined in Section 2.8(b).

“Approved Operating Standards and Reporting Requirements” means, to the extent applicable to the Premises, Exhibit L-2 to the DA, as may be amended from time to time in accordance with the DA (and, to the extent applicable to the Premises, with Port’s reasonable approval). Exhibit L-2 to the DA as of the Effective Date are set forth on Exhibit N.⁸

“as-built plans and specifications” is defined in Section 9.6.

“Attorneys’ Fees and Costs” means reasonable attorneys’ fees, costs, expenses and disbursements, including expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and other reasonable costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, including such fees and costs associated with execution upon any judgment or order, and costs on appeal.

“Audit Period” is defined in Section 2.8(d).

⁸ Subject to further Port and City review.

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

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

“**BCDC Permit**” is defined in the Basic Lease Information.

“**Bona Fide Institutional Lenders**”: means (i) a savings bank, a savings and loan association, a commercial bank or trust company or branch thereof, an insurance company, a governmental agency, a real estate investment trust, a religious, educational or charitable institution, an employees’ welfare, benefit, pension or retirement fund or system (including a fund or system acting through a manager or fund vehicle), an investment banking, merchant banking or brokerage firm, or any other Person or group of Persons that, at the time a Mortgage is recorded in favor of such Person or Persons, has (or is Specially Controlled by a Person having) assets of at least \$500 million in the aggregate (or the equivalent in foreign currency), and in the case of any Person or group of Persons none of whom is a savings bank, a savings and loan association, a commercial bank or trust company, an insurance company, a governmental agency, or a real estate investment trust, is regularly engaged in the financial services business, (ii) any special account, managed fund, department, agency or Special Affiliate of any of the foregoing, or (iii) any person acting in a fiduciary capacity for any of the foregoing, provided, that the applicable loan is consummated on terms competitive in the marketplace at the time a Mortgage is recorded in favor of such Person. For purposes hereof, (1) acting in a “**fiduciary capacity**” shall be deemed to include acting as a trustee, agent, or in a similar capacity under a mortgage, loan agreement, indenture or other loan document, (2) a lender, even if not a Bona Fide Institutional Lender, shall be deemed to be a Bona Fide Institutional Lender if promptly after the applicable loan is consummated the note(s) or other evidence of indebtedness or the collateral securing the same are assigned to one or more Persons then qualifying as a Bona Fide Institutional Lender, and (3) “**Special Affiliate**” means any Person directly or indirectly Specially Controlling, Specially Controlled by, or under common Special Control, through one or more other persons, with the Person in question.

“**Books and Records**” means all of Tenant's books, records, and accounting reports or statements relating to the costs and revenues of its business conducted at the Premises under this Lease, including cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules and any other similar bookkeeping documents Tenant utilizes in its business operations conducted at the Premises.

“**Budgeted Operating Expenses**” means all costs, fees, charges, liabilities, obligations and expenses of managing, maintaining, repairing, marketing, promoting and operating the Premises, in each case, determined in accordance with GAAP, including employee remuneration, bonuses, social charges, payroll taxes, retirement and severance costs, health insurance, labor union dues and funding and other similar benefits, the cost of any audit, consumable supplies, equipment, utilities and insurance, taxes, governmental fees and assessments, license and permit fees, water and sewer charges, inspection fees and any other charges payable by or assessed against Tenant by any governmental authority, bad or uncollected debt, any administrative and general expense, the costs of advertising, marketing and managing reservation systems, the cost and

expense of any non-capital repairs and maintenance including, deferred maintenance, in each case, excluding any items funded from the Operating Reserves or the Capital Reserves.

“**Burton Act**” is defined in Recital A.

“**Business Day**” means a day other than a Saturday, Sunday or holiday recognized by the City.

“**Capital Items**” mean replacements, repairs, and/or improvements to the rip rap, pier structure and other Improvements within the Premises that would be deemed capital assets under GAAP.

“**Capital Reserves**” means funds in a bank account or, if Tenant is a Management Association, other accounts or investments permitted under applicable law, in any case where all funds will be used solely to replace, repair, and improve Capital Items and related matters.

“**CASp**” is defined in Section 1.1(b).

“**Casualty Notice**” is defined in Section 11.4(a)(i).

“**CDPR**” is defined in Section 17.1(d).

“**Chapter 12T**” is defined in Section 38.20(a).

“**Chapter 24**” is defined in Section 38.19.

“**City**” means the City and County of San Francisco, a municipal corporation, or the territorial limits of the foregoing.

“**City Contractor**” is defined in Section 38.16.

“**City Sub-Area**” is defined in Recital E.

“**Commence**” and any reasonable variation thereof means, with respect to each Phase of the Initial Improvements, the start of physical construction of such Phase, excluding testing or any pre-construction activities.

“**Commencement Date**” is defined in the Basic Lease Information.

“**Commercial General Liability**” is defined in Section 16.1(a)(iii).

“**Common Control**” means that two Persons are both Controlled by the same other Person.

“**Completion**” and any reasonable variation thereof means that the applicable Phase or other portion of the Initial Improvements or Subsequent Construction has been substantially completed in accordance with the City-approved plans and specifications therefor and the governmental entities with jurisdiction have issued all final approvals required for the contemplated use thereof.

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

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

“**Contingent Services Special Tax**” is defined in the Financing Plan attached as Exhibit C to the DA.

“**Control**” means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the day to day management, policies or activities of such Person, whether through ownership of voting securities, by contract or otherwise (excluding limited partner or non-managing member approval rights). “**Controlled**” and “**Controlling**” shall have correlative meanings.

“**Craig Lane REA**” is defined in Recital K.

“**DA**” is defined in Recital H.

“**Default Rate**” is defined in Section 2.4.

“**Design for Development**” means, as of the date of determination, the Design for Development to the extent applicable to the Premises. Tenant shall not approve any material changes to the Design for Development under the DA with respect to the Premises without the approval of Port. The Design for Development as of the Effective Date is attached hereto as Exhibit O.

“**Disabled Access Laws**” means all Laws related to access for persons with disabilities, including the Americans with Disabilities Act, 42 U.S.C. Section 12101 *et seq.* and disabled access laws under the Port of San Francisco Building Code.

“**Dredging Work**” is defined in Section 7.3.

“**Effective Date**” is defined in the Basic Lease Information.

“**Environmental Delay**” means that (i) Port or the City is required to conduct additional environmental review or prepare additional environmental documents after the Planning Commission of the City and County of San Francisco has certified the FEIR (as defined in the DA) and City staff has filed a notice of determination, (ii) a third party files an action challenging the certification or sufficiency of the FEIR or any other additional environmental review, even if development activities are not stayed, enjoined or otherwise prohibited, (iii) there is an unanticipated need to investigate, remediate or otherwise correct previously unknown

environmental or geotechnical conditions on or affecting any portion of the Premises, but only if the conditions were not reasonably discoverable in the course of Tenant's due diligence before the Effective Date, or (iv) there is an unanticipated need to comply with any Mitigation and Improvement Measures for conditions on or affecting any portion of the Premises, but only if the conditions were not reasonably discoverable in the course of Tenant's due diligence before the Effective Date and by their nature require delay or work stoppage for investigation, remediation or related activities, as long as Tenant is proceeding in a diligent manner to resolve the unforeseen issues.

“Environmental Laws” is defined in Section 17.2(c).

“Environmental Oversight Deposit” is defined in Section 17.3(a).

“Event of Default” is defined in Section 20.1.

“Exacerbate” is defined in Section 17.2(d).

“Excusable Delay” means Force Majeure, Administrative Delay and Environmental Delay, whichever is applicable.

“Exercise Date” is defined in Section 2.9(c).

“Exhibit” is defined in Section 39.2(a).

“Expiration Date” is defined in the Basic Lease Information.

“Facilities Condition Report” is defined in Section 7.2(a).

“FCR Date” means the tenth (10th) Anniversary Date and every ten (10) years thereafter until and including the sixtieth (60th) Anniversary Date.

“Force Majeure” means events which result in delays in a Party's performance of its obligations hereunder due to causes beyond such Party's control, including, but not restricted to: (i) domestic or international events disrupting civil activities, such as war, acts of terrorism, insurrection, acts of the public enemy, and riots; (ii) acts of nature, including floods, earthquakes, unusually severe weather, and resulting fires and casualties; (iii) epidemics and other public health crises affecting the workforce by actions such as quarantine restrictions; and (iv) inability to secure necessary labor, materials, or tools (but only if the Party claiming delay has taken reasonable action to obtain them on a timely basis) due to any of the above events, freight embargoes, lack of transportation, or failure or delay in delivery of utilities serving the Premises. Force Majeure does not include failure to obtain financing or have adequate funds. The delay caused by Force Majeure includes not only the period of time during which performance of an act is hindered, but also such additional time thereafter as may reasonably be required to make repairs, to Restore if appropriate, and to complete performance of the hindered act.

“Foreclosed Property” is defined in Section 34.8(a).

“Foreclosure” means a foreclosure of a Mortgage or other proceedings in the nature of foreclosure (whether conducted pursuant to court order or pursuant to a power of sale contained in the Mortgage), deed or voluntary assignment or other conveyance in lieu thereof.

“Foreclosure Period” is defined in Section 34.11(b).

“GAAP” means generally accepted accounting principles.

“Gross Revenues” means, subject only to the exceptions stated below, all sales, payments, revenues, income, fees, rentals, receipts, proceeds and amounts of any kind whatsoever, whether for cash, credit or barter, from any business, use or occupation, or any combination thereof, operating on the Premises under this Lease (but not including with respect to the dock), including the total value, based on price, for any tickets, cover charges, merchandise or other items sold, the proceeds of any event, including any special or fundraising event, catering or food delivery business conducted by, from or at the Premises (irrespective of where the orders therefor originated or are accepted and irrespective of where the food or beverages are consumed) and the proceeds of sponsorships, in any case to the extent received by Tenant. Notwithstanding the foregoing, Gross Revenues shall exclude gratuities, service charges, taxes, interest earned on funds held in the Operating Reserves or the Capital Reserves (if any), condemnation or expropriation awards, insurance proceeds and similar extraordinary capital receipts, recoveries in legal actions for tortious conduct (other than the portion of such awards or receipts representing compensation for loss of Gross Revenues) or awards for punitive damages, proceeds from the sale of surplus or obsolete furniture, fixtures and equipment, rebates, discounts or credits of a similar nature, any actual uncollected or uncollectible amounts, receipts from vending and coin operated machines to the extent such receipts are paid over to Persons owning such machines, Management Association fees and assessments, costs and expenses reimbursable to Tenant or any of its Affiliates by the owners, lessees, guests and occupants of the property within the Project Site under the CC&Rs, and regular, special and reimbursement assessments and all other assessments and similar fees from owners of property within the Project Site.

“Guaranty” means a guaranty, in a form substantially similar to the form attached hereto as Exhibit P or as otherwise approved by Port, issued by a Person that meets the Net Worth Requirement or, if Tenant meets the Net Worth Requirement, a binding commitment from Tenant to Complete the applicable Phase of the Initial Improvements.

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

“Hazardous Materials” is defined in Section 17.2(b).

“Hazardous Materials Claims” means any and all enforcement, Investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed under any Environmental Laws, together with any and all Losses made or threatened by any third party against City, including Port, their Agents, or Tenant or the Premises or any Improvements, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including Losses

based in common law. Hazardous Materials Claims include Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or any Improvements, the loss or restriction of the use or any amenity of the Premises or any Improvements, and attorneys' fees and consultants' fees and experts' fees and costs.

“**HCAO**” is defined in Section 38.15(a).

“**Impositions**” means all taxes (including possessory interest, real property, personal property, and special taxes), Mello-Roos Taxes, assessments, liens, levies, charges or expenses of every description, levied, assessed, confirmed or imposed on the Premises, any of the Improvements or Personal Property located on the Premises, the Leasehold Estate, any subleasehold estate, or any use or occupancy of the Premises hereunder. Impositions shall include all such taxes, assessments, fees and other charges whether general or special, ordinary or extraordinary, foreseen or unforeseen, or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing of every character.

“**Improvements**” means all buildings, structures, fixtures and other improvements erected, built, placed, installed, constructed, renovated, or rehabilitated, located upon or within the Premises on or after the Commencement Date, including the Initial Improvements.

“**Indemnified Parties**” means City, including all of its boards, commissions, departments, agencies and other subdivisions, including Port; and all of the Agents of City, including Port.

“**Indemnify**” (and any reasonable variation thereof) means indemnify, protect and hold harmless.

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

“**Indexed**” means the product of the number to be Indexed multiplied by the percentage increase, if any, in the Index from the first day of the month in which the Commencement Date occurred to the first day of the most recent month for which the Index is available as of the date of determination.

“**Initial Improvements**” is defined in the Basic Lease Information.

“**Initial Improvements Deadline**” is defined in Section 1.3.

“**Investigate**” or “**Investigation**” when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion of the site or the Improvements or which have been, are being, or threaten to be Released into the environment.

Investigation shall include preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.

“**Invitees**” when used with respect to a Person means the customers, patrons, invitees, guests, members, licensees, assignees and subtenants of such Person and the customers, patrons, invitees, guests, members, licensees, assignees and sub-tenants of subtenants of such Person.

“**IPM**” is defined in Section 17.1(d).

“**IPM Ordinance**” is defined in Section 17.1(d).

“**Land**” is defined in the Basic Lease Information.

“**Late Charge**” is defined in Section 2.5.

“**Law**” or “**Laws**” means, as of the date of determination, laws, ordinances, rules, regulations, permits, authorizations, orders and requirements, to the extent applicable to the Parties or to the Premises or any portion thereof, whether or not in the contemplation of the Parties as of the Effective Date, including all consents or approvals (including Regulatory Approvals) required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, boards of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of, or which may affect or be applicable to, the Premises or any part thereof, including any subsurface area, the use thereof and of the Improvements thereon. For the avoidance of doubt, during the term of the DA, local Laws will not include those local Laws that are not applicable to the Project in accordance with the DA.

“**Lease**” is defined in the preamble, as the same may be amended from time to time in accordance herewith.

“**Leasehold Estate**” means the leasehold estate created by this Lease.

“**Lease Year**” means the twelve (12) month period commencing upon the Effective Date and each consecutive twelve (12) month period thereafter during the Term.

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

“**Lender Acquisition**” is defined in Section 34.8(a).

“**Loss**” or “**Losses**” when used with reference to any Indemnity means any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, (including Attorneys’ Fees and Costs and

consultants' fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise.

"Maintenance Notice" is defined in Section 8.2.

"Major Damage or Destruction" means damage to or destruction of all or any portion of the Premises, including the Improvements thereon, to the extent that the hard costs of Restoration exceed sixty percent (60%) of the hard costs to replace such Improvements in their entirety. The calculation of such percentage shall be based upon replacement costs and requirements of applicable Laws in effect as of the date of the event causing such Major Damage or Destruction.

"Management Association" means a residential, commercial or other management association that, as of the date of determination, (i) has the authority to perform Tenant's obligations under this Lease and levy fees or otherwise generate sufficient revenue to perform Tenant's obligations to maintain, repair and operate the Premises hereunder and (ii) is duly organized and validly existing under the laws of the state of its formation and is in good standing in the State of California.

"Material Change to Guarantor" means, with respect to any Person that has provided a Guaranty hereunder, that (i) such Person files a petition for bankruptcy or makes a general assignment for the benefit of its creditors, (ii) a receiver is appointed on account of such Person's insolvency, (iii) a writ of execution or a writ attachment or any similar process is issued or levied against any bank accounts of such Person or against any substantial portion of any other property or assets of such Person, unless such writ of execution or writ of attachment is dismissed within thirty (30) days, (iv) a final non-appealable judgment is entered against such Person in an amount in excess of ten percent (10%) of such Person's Net Worth and such Person does not satisfy or bond the judgment within twenty (20) days or (v) without the consent of such Person, an application for relief is filed against such Person under any federal or state bankruptcy law, unless the application is dismissed within ninety (90) days.

"Memorandum of Lease" means the Memorandum of this Lease, between Port and Tenant, recorded in the Official Records, in the form of Exhibit M attached hereto.

"Minimum Rent" is defined in Section 2.2.

"Mitigation and Improvement Measures" means all of the measures relating to the Project described in Exhibit Q.

"MLLW" means Mean Lower Low Water, as defined by the National Oceanic and Atmospheric Administration.

"Mortgage" means a mortgage, deed of trust, assignment of rents, fixture filing, security agreement or similar security instrument or assignment of the Leasehold Estate that is recorded in the Official Records.

"Net Awards and Payments" is defined in Section 12.4.

“**Net Worth**” means, with respect to a Person, such Person’s net worth calculated using GAAP (or, if such Person is a corporation, such Person’s shareholders’ equity calculated in accordance with GAAP).

“**Net Worth Requirement**” means that Tenant or the Guarantor, whichever is applicable, has a Net Worth that is greater than the Secured Amount and in no event less than Fifty Million Dollars (\$50,000,000) (such \$50,000,000 amount to be increased, automatically, by ten percent (10%) on each five (5) year anniversary of the Commencement Date).

“**Non-Affiliate Lender**” means a Lender that (A) is not an Affiliate of Tenant or (B) is a Bona Fide Institutional Lender (for the avoidance of doubt, even if an Affiliate of Tenant).

“**Non-Affiliate Mortgage**” means a Mortgage that is held by a Non-Affiliate Lender.

“**Nutritional Standards Requirements**” is defined in Section 38.21.

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

“**Operating Reserves**” means, with respect to each Lease Year, [___] percent ([_]%) of the Budgeted Operating Expenses for such Lease Year.

“**Operations Plan**” means the Operations Plan attached hereto as Exhibit R, as may be amended from time to time with Port’s reasonable approval.

“**Option Notice**” is defined in Section 2.9(a).

“**Option Period**” is defined in Section 2.9(a).

“**Partial Condemnation**” is defined in Section 12.3(b).

“**Partial Termination Date**” is defined in Section 1.3.

“**Party**” means Port or Tenant, as a party to this Lease; “**Parties**” means both Port and Tenant, as parties to this Lease.

“**PCBs**” is defined in Section 17.2(b).

“**Percentage Rent**” is defined in Section 2.8(a).

“**Permitted Uses**” is defined in the Basic Lease Information and includes such other uses as are permitted or required hereunder.

“**Person**” means any individual, partnership, corporation (including any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or any other entity or association, the United States, or a federal, state or political subdivision thereof.

“**Personal Property**” means all fixtures, furniture, furnishings, equipment, machinery, supplies, software and other tangible personal property that is incident to the ownership,

development or operation of the Improvements and/or the Premises, whether now or hereafter located in, upon or about the Premises, belonging to Tenant or any of its subtenants and/or in which Tenant or any of its subtenants has or may hereafter acquire an ownership interest, together with all present and future attachments, accessions, replacements, substitutions and additions thereto or therefor.

“**Phase**” means each phase of the Initial Improvements described in the Phasing Plan (as defined in the DA). As of the Effective Date, Tenant contemplates constructing the Initial Improvements in two (2) Phases, referred to in the Phasing Plan attached to the DA as of the Effective Date as “Phase 1” and “Phase 3”. For the avoidance of doubt, such phasing is subject to revision pursuant to the DA.

“**Pier 70 Agreements**” is defined in Recital D.

“**Pier 70 Master Developer**” is defined in Recital D.

“**Port**” is defined in the Basic Lease Information.

“**Port 23rd St. Property**” is defined in Recital D.

“**Port Approval Items**” is defined in Section 9.3(a).

“**Port Bay Property**” is defined in Recital D.

“**Port Craig Lane Property**” is defined in Recital D.

“**Port Commission**” means the San Francisco Port Commission, or any successor governing body of Port designated by or under law as of the date of determination.

“**Port Director**” means the Executive Director of the Port of San Francisco, as appointed as of the date of determination.

“**Port Open Space**” is defined in Recital D.

“**Port Representative**” is defined in Section 2.8(e).

“**Port Sub-Area**” is defined in Recital D.

“**Port’s Address for Notices**” is defined in the Basic Lease Information.

“**Pre-Existing Hazardous Materials**” is defined in Section 17.2(e).

“**Premises**” is defined in the Basic Lease Information.

“**Previously-Identified Pre-Existing Hazardous Materials**” is defined in Section 17.2(f).

“Prime Rate” means the base rate on corporate loans posted by at least 75% of the nation’s 30 largest banks, as published by the Wall Street Journal, or if the Wall Street Journal has ceased to publish the Prime Rate, then such other equivalent recognized source.

“Probable Maximum Loss” is defined in Section 16.1(b)(iii)(1).

“Project” is defined in Recital F, as more completely described in the DA.

“Project Approvals” is defined in the Basic Lease Information, together with any Later Approvals (as defined in the DA) to the extent applicable to the Premises as of the date of determination.

“Project Site” is defined in Recital E, together with any additional property that is part of the Project Site (or removed from the Project Site) under and as defined in the DA as of the date of determination.

“Property Matters” is defined in Section 1.1(e).

“Public Trust” is defined in Recital B.

“Public Trust Easement Parcel” is defined in Recital J.

“Public Trust Option” is defined in Section 2.9(a).

“Regulatory Agency” means any governmental agency that has jurisdiction over the Premises or other applicable matter, including the City (and Port acting in its regulatory capacity), RWQCB, and the Army Corps of Engineers. Notwithstanding the foregoing, Port shall not be a Regulatory Agency as such term is used in Article 17.

“Regulatory Approval” means any authorization, approval or permit required or issued by any Regulatory Agency with respect to the applicable matter.

“Release” is defined in Section 17.2(g).

“Remediate” or **“Remediation”** when used with reference to Hazardous Materials means any activities undertaken to clean up, remove, transport, dispose, contain, treat, stabilize, monitor or otherwise control Hazardous Materials located in, on, under or about the Premises or which have been, are being, or threaten to be Released into the environment. Remediation includes those actions included within the definition of **“remedy”** or **“remedial action”** in California Health and Safety Code Section 25322 and **“remove”** or **“removal”** in California Health and Safety Code Section 25323.

“Rent” means the sum of Minimum Rent (including all adjustments) and Additional Rent. For purposes of this Lease, Rent includes all unpaid sums that are payable as Rent, but that are unpaid when earned and/or accrue for payment at a later time in accordance with the provisions of this Lease.

“**Restoration**” means the restoration, replacement, or rebuilding of the Improvements (or the relevant portion thereof) in accordance with all Laws then applicable; provided that Tenant shall not be required to Restore the Improvements to the identical size or configuration as existed before the event giving rise to the Restoration so long as the Improvements, as Restored, are consistent with those in a first-class public waterfront park and open space project located on property within Port’s jurisdiction and in compliance with all applicable Laws. In connection with any Restoration, the Improvements may be redesigned, made larger or smaller, reconfigured, or otherwise modified, provided that the Improvements as so redesigned comply with applicable requirements of the Public Trust, and are consistent with a first-class public waterfront park and open space project located on property within Port’s jurisdiction and in compliance with all applicable Laws and afford similar public benefit as the Initial Improvements (or applicable portions thereof). “**Restore**” and “**Restored**” shall have correlative meanings.

“**RMMP**” is defined in Section 7.3.

“**Rules and Regulations**” is defined in Section 7.1(b).

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

“**Sale Period**” is defined in Section 34.8(c).

“**Scope of Development**” is attached hereto as Exhibit S.

“**Secured Amount**” means, with respect to Adequate Security, the estimated cost of Completion of the Phase of the Initial Improvements that such Adequate Security is provided to secure, as such cost is determined by Tenant and approved by Port with reference to the applicable construction contracts entered into by or on behalf of Tenant.

“**Security Deposit**” is defined in the Basic Lease Information.

“**Senior Lender**” is defined in Section 34.2(c).

“**SFRPD**” means the City’s Recreation and Parks Department.

“**Sign**” is defined in Section 3.2.

“**Significant Change**” means a change of Control of Tenant. For the avoidance of doubt, if Tenant is a Management Association, no change of the members or board members or other leadership of such Management Association shall constitute or be deemed a Significant Change.

“**Single Point of Entry for Subsurface Mineral Rights**” is defined in the Basic Lease Information.

“**Special Control**” means the power to direct the affairs or management of another Person, whether by contract, operation of Law or otherwise. “**Specially Controlling**” and “**Specially Controlled**” shall have correlative meanings.

“**State**” is defined in Section 1.1(d).

“**Subsequent Construction**” means all repairs to and reconstruction, replacement, addition, expansion, Restoration, alteration or modification of any Improvements, or any construction of additional Improvements, following Completion of the applicable Phase of the Initial Improvements pursuant to this Lease.

“**Substantial Condemnation**” means a Condemnation of (i) the Premises or any portion thereof that renders the Premises untenable, unsuitable or economically infeasible for the Permitted Uses, or (ii) the Leasehold Estate.

“**Successor Owner**” is defined in Section 34.8(a).

“**SWPPP**” is defined in Section 7.5(a).

“**Tenant**” is defined in the Basic Lease Information or its permitted successors and assigns.

“**Tenant’s Address for Notices**” is defined in the Basic Lease Information.

“**Tenant’s Craig Lane Property**” is defined in Recital K.

“**Tenant’s Property**” is defined in Recital C.

“**Term**” is defined in Section 1.2.

“**Termination Date**” is defined in Section 1.3.

“**Threshold Amount**” means One Million Dollars (\$1,000,000), which amount shall be increased by an additional Five Hundred Thousand Dollars (\$500,000) on the tenth (10th) Anniversary Date and every ten (10) years thereafter.

“**TMA**” is defined in Section 38.11.

“**Total Condemnation**” is defined in Section 12.2.

“**Transfer**” is defined in Section 14.1(a).

“**Uninsured Casualty**” means any of the following: (i) a casualty event occurring at any time during the Term for which the costs of Restoration (including the cost of any required code upgrades) are not insured or insurable under the policies of insurance that Tenant is required to carry under this Lease and such costs exceed the Threshold Amount, or (ii) a casualty event occurring at any time during the Term that is covered under Tenant’s policies of insurance that Tenant is required to carry under this Lease but where the cost of Restoration (including the cost of any required code upgrades) will exceed the sum of (A) the net proceeds of any insurance payable, (B) the amount of any applicable policy deductibles, and (C) the Threshold Amount. For purposes of clause (ii)(A) and (B), if Tenant failed to maintain the applicable insurance policies and coverages required by this Lease, then clause(ii)(A) and (B) shall be calculated based on the

amounts that would have been payable but for Tenant's failure to maintain the insurance policies and coverages required by this Lease.

“Waterfront Park” is defined in Recital G.

“Work” is defined in Section 9.5(e).

“Workforce Agreement” means the Workforce Agreement attached hereto as Exhibit T, as the same may be amended from time to time (i) during the term of the DA, in accordance with the DA, and (ii) after the expiration or termination of the DA, with Port approval.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS LEASE, TENANT ACKNOWLEDGES AND AGREES THAT NO CITY OFFICER OR EMPLOYEE HAS AUTHORITY TO COMMIT PORT TO THIS LEASE UNLESS AND UNTIL THE PORT COMMISSION AND CITY'S BOARD OF SUPERVISORS HAS DULY ADOPTED A RESOLUTION APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY PORT OBLIGATIONS OR LIABILITIES UNDER THIS LEASE ARE CONTINGENT ON ADOPTION OF A RESOLUTION, AND THIS LEASE SHALL BE NULL AND VOID IF THE PORT COMMISSION, CITY'S MAYOR AND THE BOARD OF SUPERVISORS DO NOT APPROVE THIS LEASE, IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THIS LEASE BY ANY CITY DEPARTMENT, COMMISSION, OR AGENCY SHALL NOT BE DEEMED TO IMPLY THAT A BOARD OF SUPERVISORS RESOLUTION SHALL BE ENACTED, AND NO APPROVAL SHALL CREATE ANY BINDING PORT OBLIGATIONS.⁹

⁹ NTD: To be removed at lease execution.

IN WITNESS WHEREOF, the Parties have executed this Lease as of the Effective Date.

TENANT:

CALIFORNIA BARREL COMPANY LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

PORT:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through its
Port Commission

By: _____
Name: Elaine Forbes
Title: Executive Director

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

By: _____
Name: _____
Deputy City Attorney

Port Board of Directors Resolution No. _____
Board of Supervisors Resolution No. _____
(File No. _____)

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