

File No. 210813

Committee Item No. 3

Board Item No. 16

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date September 8, 2021

Board of Supervisors Meeting

Date September 14, 2021

Cmte Board

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

OTHER (Use back side if additional space is needed)

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>Port Commission Resolution No. 20-14</u>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>New Lease</u>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<u>Department Presentation - September 8, 2021</u>
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Completed by: Linda Wong

Date August 11, 2021

Completed by: Linda Wong

Date September 10, 2021

FILE NO. 210813

RESOLUTION NO.

1 [Lease Agreement - Pilara Family Foundation - Pier 24 Annex - Minimum Base Rent of
2 \$92,857.40 Per Month]

3 **Resolution authorizing a new lease between the Port of San Francisco and the Pilara**
4 **Family Foundation for the premises located at Pier 24 Annex on The Embarcadero for a**
5 **term of approximately three years and ten months to commence following Board**
6 **approval at a monthly rent of \$92,857.40 with a monthly rent credit of \$87,122.09 in**
7 **respect of previously completed capital improvements to the property.**

8
9 WHEREAS, California Statutes of 1968, Chapter 1333 (the "Burton Act") and Charter,
10 Sections 4.114 and B3.581 empower the San Francisco Port Commission ("Port
11 Commission") with the power and duty to use, conduct, operate, maintain, manage, regulate,
12 and control the Port area of the City and County of San Francisco; and

13 WHEREAS, The Port entered into Lease No. L-14414 in June 2007 with the Pilara
14 Family Foundation, a nonprofit corporation ("PFF") for 27,311 square feet of Pier 24 Annex
15 (the "Original Lease"); and

16 WHEREAS, The Original Lease, as subsequently amended, was for a term of ten
17 years with monthly rent and an amortized rent credit in the amount of \$3.0 million for base
18 building core and shell improvements only; and

19 WHEREAS, The Port reviewed and validated \$8.5 million in base building core and
20 shell improvements performed by PFF, leaving \$5.5 million in unamortized capital
21 improvements; and

22 WHEREAS, The Original Lease expired on November 30, 2017, and the rent credit
23 was exhausted; the Original Lease has been on holdover status since its expiration; and

24 WHEREAS, The parties engaged in several rounds of negotiations but were unable to
25 resolve their disputes regarding Port's claims for rent due and PFF's claims for rent credits

1 due and after two years of such discussions, Port staff issued a 30-day notice of termination
2 on December 22, 2019; and

3 WHEREAS, After the issuance of that notice, the parties revisited their final offers and
4 reached agreement on a draft Settlement Agreement (the "Settlement Agreement") which
5 requires the parties to enter into a new lease for the premises (the "New Lease"); and

6 WHEREAS, Under the proposed Settlement Agreement, among other things, (i) Port's
7 claims for rent due and PFF's claims for rent credits due under the Original Lease will be
8 resolved; (ii) Port and PFF will terminate the Original Lease and enter into a New Lease for
9 the Pier 24 Annex for a term equivalent to the time needed to apply the unamortized rent
10 credits (currently calculated at approximately three years and ten months depending on the
11 actual date of execution of the New Lease); (iii) the New Lease will allow storage, curation
12 and display of a photographic collection and require PFF to continue to provide free public
13 access to view the collection and will allow for rent credits of up to \$5.5 million; and (iv) the
14 parties will release each other from potential claims in connection with the Settlement
15 Agreement; and

16 WHEREAS, The New Lease is on the Port's standard form lease, provides the
17 following key terms: monthly rent equal to the current parameter rental rate of \$3.40/sf per
18 month adopted by the Port Commission (with no indexing increases); PFF to take rent credits
19 of \$3.19/sf per month, leaving a payment of \$5,735.31; PFF must continue the public-oriented
20 operations at the Premises with free entry and report on visits; no transfers without Port's
21 consent in its sole discretion; no holdover rights; and elective termination rights for PFF with
22 one year's prior written notice, and a termination right for PFF with 90 days written notice in
23 the event that maintenance and repair obligations exceed what is reasonable in light of the
24 remaining term of the New Lease; and includes the Port's standard provisions regarding as-is
25

1 conditions, the Seawall project, Port participation in sale of the lease, hazardous materials,
2 indemnity, insurance, and all required City provisions; and

3 WHEREAS, On March 10, 2020, the Port Commission, by Resolution No. 20-14,
4 approved the terms of the Settlement Agreement and the New Lease and, subject to Board of
5 Supervisors approval of the New Lease, authorized the Executive Director of the Port to
6 execute both documents; and

7 WHEREAS, Beginning on March 16, 2020, the City's Health Officer and Mayor issued
8 a series of public health orders in response to the Covid-19 pandemic that prohibited and/or
9 restricted PFF from allowing free public access to view the collection as required under the
10 terms of the New Lease; and

11 WHEREAS, In response to the public health orders, PFF and the Port agreed to
12 postpone the introduction of a Board of Supervisors resolution approving the New Lease until
13 such time as PFF would be able to allow free public access as required under the New Lease;
14 and

15 WHEREAS, PFF resumed offering free public access to view the collection beginning
16 July 1, 2021; and

17 WHEREAS, A copy of the New Lease is on file with the Clerk of the Board of
18 Supervisors in File No. 210813; and

19 WHEREAS, The permitted uses under the New Lease are a continuation of existing
20 and related uses and are not a project under California Environmental Quality Act; and

21 WHEREAS, San Francisco Charter, Section 9.118, requires Board of Supervisors'
22 approval of a real property lease with a term of 10 or more years, or having anticipated
23 revenue to the City of \$1,000,000 or more when the lease is executed; now, therefore, be it

24 RESOLVED, That the Board of Supervisors approves the New Lease and authorizes
25 the Port Executive Director or her designee to execute the New Lease as approved by the

1 City Attorney and in substantially the form on file with the Clerk of the Board of Supervisors;
2 and, be it

3 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
4 Director to enter into any additions, amendments or other modifications to the New Lease that
5 the Executive Director, in consultation with the City Attorney, determines, when taken as a
6 whole, to be in the best interest of the Port, do not materially increase the obligations or
7 liabilities of the City or the Port, and are necessary or advisable to complete the transactions
8 which this Resolution contemplates and effectuate the purpose and intent of this Resolution,
9 such determination to be conclusively evidenced by the execution and delivery by the
10 Executive Director of such documents and, be it;

11 FURTHER RESOLVED; That within thirty (30) days of the New Lease being fully
12 executed by all parties, the Port shall provide copies of the New Lease to the Clerk of the
13 Board for inclusion into the official file.

14 .

FORM OF LEASE



**CITY AND COUNTY OF SAN FRANCISCO
LONDON N. BREED, MAYOR**

LEASE NO. L-16653

BY AND BETWEEN

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

AND

**PILARA FAMILY FOUNDATION, A NEVADA
NON-PROFIT CORPORATION**

PIER 24 ANNEX

**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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**LEASE AGREEMENT
BASIC LEASE INFORMATION**

<i>Lease Date:</i>	February 1, 2020
<i>Lease Number:</i>	L-16653
<i>Landlord or Port:</i>	CITY AND COUNTY OF SAN FRANCISCO , a municipal corporation, operating by and through the SAN FRANCISCO PORT COMMISSION
<i>Landlord's Address:</i>	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Deputy Director, Real Estate and Development Telephone: (415) 274-0400 Facsimile: (415) 274-0494
<i>Tenant:</i>	Pilara Family Foundation, a Nevada non-profit corporation
<i>Tenant's Main Contact Person and Mailing Address:</i>	Christopher McCall Pier 24, The Embarcadero San Francisco, CA 94105 Telephone: (415) 512-7424 Cell: (415) 309-1101 Facsimile: (415) 512-7456 Email: chris@pier24.org
<i>Tenant's Billing Contact and Address:</i>	Christopher McCall Pier 24, The Embarcadero San Francisco, CA 94105 Telephone: (415) 512-7424 Cell: (415) 309-1101 Facsimile: (415) 512-7456 Email: chris@pier24.org
<i>Tenant's Emergency Contact and Address:</i>	Christopher McCall Pier 24, The Embarcadero San Francisco, CA 94105 Telephone: (415) 512-7424 Cell: (415) 309-1101 Facsimile: (415) 512-7456 Email: chris@pier24.org
<i>Tenant's Insurance Contact and Address (not broker):</i>	Christopher McCall Pier 24, The Embarcadero San Francisco, CA 94105

	<p>Telephone: (415) 512-7424 Cell: (415) 309-1101 Facsimile: (415) 512-7456 Email: chris@pier24.org</p>
<i>Tenant's Parking Contact and Address:</i>	<p>Christopher McCall Pier 24, The Embarcadero San Francisco, CA 94105</p> <p>Telephone: (415) 512-7424 Cell: (415) 309-1101 Facsimile: (415) 512-7456 Email: chris@pier24.org</p>
<i>Contact Information for Tenant's Agent for Service of Process (including address) :</i>	<p>Christopher McCall Pier 24, The Embarcadero San Francisco, CA 94105</p> <p>Telephone: (415) 512-7424 Cell: (415) 309-1101 Facsimile: (415) 512-7456 Email: chris@pier24.org</p>
<i>Background:</i>	The parties enter this Lease as a condition of that certain Settlement Agreement dated February 1, 2020 for reference purposes (the " Settlement Agreement ").
<i>Premises:</i>	<p>Pier 24 Annex.</p> <p>For purposes of this Lease, the Premises shall not include load bearing structural elements that are at or below the top surface of the pier deck (including, not limited to the substructure, slab/deck, beams and piles or the Seawall). Notwithstanding the previous sentence, the Parties agree that Tenant has certain obligations regarding certain load bearing structural elements that are at or below the top surface of the pier deck as set forth in this Lease.</p>
<i>Facility:</i>	<p>Pier 24 Annex San Francisco, California 94105</p>
<i>Premises Rentable Square Footage:</i>	Approximately 27,311 rentable square feet of pier shed space
<i>Effective Date:</i>	[the date fully executed by the Parties]
<i>Commencement Date:</i>	[the first day of the first calendar month following the effective date].
<i>Rent Commencement Date:</i>	Commencement Date
<i>Expiration Date:</i>	[the date on which the balance of the rent credit is exhausted calculated per the Settlement Agreement]

<i>Permitted Use:</i>	The Premises shall be used solely for storage, curation and display of a photographic collection; visits by researchers and Invitees; and visits by the general public at no charge, and for no other purpose. The Permitted Use includes hosting events, including events by other non-profits and community events (such as a polling place), all free of charge (other than insurance requirements for such events where necessary).
<i>Additional Prohibited Uses:</i>	<p>In addition to, and without limiting, the Prohibited Uses specified in Section 8.2 below, Tenant shall be prohibited from using the Premises for any of the following activities:</p> <p>(a) Public Assembly;</p> <p>(b) Exceeding the legal occupancy limit of 93 people at any time under the existing occupancy classification of the Premises (S-2) (the “Legal Occupancy Limit”);</p> <p>(c) Sale of tickets, products or any retail uses; provided however, that Tenant may sell materials integral to the collection, such as collection guidebooks, that support and enhance the public’s experience of the photography collection but the sale price of any such products must not exceed the cost to Tenant to produce such product.</p> <p>Port shall have all remedies set forth in this Lease, and at law or equity in the event Tenant performs any of the Prohibited Uses.</p>
<i>Required Use:</i>	<p>Tenant acknowledges and agrees that the Required Use is material consideration for Port to enter this Lease and Port would not enter this Lease absent Tenant’s covenant to perform the Required Use. Subject to the Legal Occupancy Limit (defined above), Tenant shall provide and facilitate maximum free public access for the general public, consistent with its past practices. Tenant shall maintain and operate the Premises in a first class manner consistent with standards for the maintenance and operation of visitor-serving amenities that located on Port property.</p> <p>Tenant shall ensure that the Premises is used continuously during the Term for the Required Use and shall not allow any portion of the Premises to remain unused except for any reasonably necessary time period when the Premises is not tenantable due to fire or other casualty, as may be necessary in connection with performing maintenance or repairs, or while conducting periodic installations of the photography collection.</p> <p>Tenant shall use a free on-line reservation system similar to the system in place on the Effective Date of the Settlement Agreement to allow the public to easily schedule visits. No later than the date that is six (6) months from the Commencement Date and on every annual anniversary of such</p>

	<p>date, Tenant shall submit to Port in a form acceptable to Port a report which includes at least the following:</p> <ul style="list-style-type: none"> (i) the number of days per month the collection is open during the reporting period; (ii) the number and type of visitors for each month of the reporting period (e.g., students; scholars/researchers; Tenant's Board members/guests/supporters of the non-profit; general public; others/specify); and (iii) the number and nature of special events for each month of the reporting period; and (iv) information about sales and receipts for any products sold from the Premises in sufficient detail for Port to determine compliance with the terms of this Lease. <p>At Port's request, Tenant will meet and confer with Port regarding measures that would increase the public's enjoyment of the Premises and the collection and/or provide other public benefits.</p>
<i>Application of Rent Credit:</i>	<p>Pursuant to the Settlement Agreement and the conditions described in this Lease, Tenant is entitled to a rent credit in the amounts specified below.</p> <p>As a material condition to the application of the rent credit, (i) Tenant must comply with the Required Uses and (ii) Pilara Family Foundation must remain the tenant under this Lease and must maintain its nonprofit status and annually certify to such status in writing and from time to time at Port's request. The rent credit provided by this Lease is personal, non-assignable and non-transferable. Accordingly, and notwithstanding Port's consent to a Transfer of this Lease, the only entity entitled to the rent credit is the Pilara Family Foundation.</p> <p>Any unapplied or unused portion of the rent credit shall remain the property of Port, and Tenant shall have no interest in such funds. Other than as explicitly provided in this Lease, Port shall have no obligation to provide and Tenant understands and agrees that it will not receive or seek rent credits, tenant improvement allowance or any other form of reimbursement or other compensation or consideration in connection with this Lease or additional term for the purpose of amortizing such amounts.</p> <p>Notwithstanding anything to the contrary contained in the Settlement Agreement or this Lease, in no event shall Tenant be entitled to apply any rent credit in the event Tenant is in default, or if an event has occurred which, with the passage of time or the giving of notice, or both, would constitute a default. Upon the occurrence of a Tenant Event of Default, Tenant's right to apply any rent credit shall cease and shall not be reinstated until the Tenant Event of Default is cured. If a</p>

	Tenant Event of Default occurs on a day other than the first day of the calendar month or a Tenant Event of Default is cured on a day other than the last day of the calendar month, any rent credit shall be apportioned based on a thirty (30) day month. In no event shall the cessation in the application of the rent credit extend the Term.			
Monthly Rent and Rent Credits				
Months	Monthly Base Rate per square foot	Total Monthly Base Rent	Monthly Rent Credit per square foot	Total Monthly Rent Due
1-Expiration Date	\$ 3.40	\$92,857.40	\$3.19	\$5,735.31
<i>Security Deposit:</i>	Sixty-four thousand four hundred fifty four dollars and forty-four cents (\$64,454.44)			
<i>Maintenance and Repair:</i>	As further described in Section 11, Tenant, as its sole cost and expense, shall be solely responsible for repair and maintenance of the interior and exterior of the building including all Improvements, roof, mechanical systems, fire suppression system, man and rolling doors, windows and glazing, telecommunications systems, Utilities, and HVAC systems. In addition, Tenant, at its sole cost and expense, shall be solely responsible for the maintenance and repair of any piles, supporting beams and other substructure that were included in the Initial Tenant Improvements under the Prior Lease. Notwithstanding anything to the contrary herein, Tenant’s responsibility for such repair and maintenance is subject to Tenant’s right to terminate this Lease pursuant to Section 4.3. On each Anniversary Date and within six (6) months before the expiration or earlier termination of this Lease, Tenant must provide an annual substructure inspection report (“ Substructure Report ”) to Port.			
<i>Utilities; Services:</i>	Tenant's sole responsibility, as further described in Section 12 below. Tenant acknowledges that Port will not provide security in, on or about the Premises.			
<i>Transfers Prohibited:</i>	This Lease is personal to Tenant and Transfers are prohibited without Port’s prior written consent in its sole discretion.			
<i>License for Adjacent Areas:</i>	<u>License</u> . In connection with this Lease, Port hereby grants permission to Tenant to carry out the following activities: (1) maintain a ramp providing secondary ingress to the Premises on approximately 313 rentable square feet on The Embarcadero; and (2) as required by BCDC permit #MO7-21, as amended, maintain public access and disability access on approximately			

	<p>947 rentable square feet in the area between Pier 24 and Pier 26</p> <p>in the location shown on <i>Exhibit B</i> together with any and all Improvements and Alterations (“License Area”). This license (the "License") is a revocable, personal, non-assignable (except in connection with a permitted Transfer pursuant to this Lease), non-exclusive, and non-possessory privilege to enter and use the License Area on a temporary basis that commences on the Commencement Date and expires on the Expiration Date unless sooner terminated pursuant to the terms of this Lease.</p> <p>The License Area shall be used solely for purposes of compliance with the Port Building Code, BCDC permit and public access. Tenant shall not use and shall prevent the License Area from being used in a manner that unreasonably interferes with or impedes the use of The Embarcadero sidewalk by the Port, the public or Port tenants or licensees. Tenant shall be responsible for the security of and orderly conduct within the License Area and shall prevent loitering in the License Areas by persons other than Tenant’s Invitees. Tenant shall actively manage the License Area to ensure compliance with the terms and conditions pertaining to its use. Tenant shall be responsible for any destruction, damage or theft of or to the Improvements in the License Area.</p> <p>Except as provided herein, the rights by License described above are for the same purposes and are subject to all of the terms and conditions of this Lease as if the License Area is the Premises, but Tenant agrees and acknowledges that Port may, in its sole and absolute discretion, upon not less than thirty (30) days’ prior written notice to Tenant, revoke or terminate the License at any time prior to the Expiration Date, without cause and without obligation to pay any consideration to Tenant. The parties agree that provisions regarding the nature of the License are material and that the Port would not have granted the Lease absent such provisions.</p> <p>Port has no obligation, responsibility or liability to provide any services in on or to the License Area or to maintain or repair the License Area.</p> <p><u>License Fee.</u> From and after the Commencement Date, Licensee shall pay, as Additional Rent, a monthly License Fee (“License Fee”) of One Hundred Forty dollars and eighty-five cents (\$140.85). On each Anniversary Date, the License Fee shall increase by three percent (3%).</p>
<i>Development Project:</i>	<p>San Francisco Fire Department Projects at Pier 26 and Fireboat Station #35 at Pier 22½; MTA Embarcadero Enhancement Project; The Seawall Earthquake Safety Program; Piers 30-32 and Seawall Lot 330 Development; SBH North Guest Dock and baffle wall repair project</p>

<i>Extension Option:</i>	<p>Provided that Tenant is in good standing, Port will consider a proposal by Tenant, made before the first anniversary of the Commencement Date of this Lease, to extend the Term of the Lease on terms and conditions consistent with City and Port policies and practices and which are mutually beneficial to the Parties. The Port's review of such a proposal will be predicated in significant part on the proposed improvements to Port property. Accordingly, any such proposal must be accompanied by a facilities condition report (the "Facilities Condition Report") prepared by a qualified team of construction professionals including a structural and mechanical engineer acceptable to both Parties. The Facilities Condition Report must, at a minimum, describe the condition and integrity of the Facility and improvements, the Seawall, substructure, and all plumbing, electrical, fire protection, life safety, security and other mechanical, electrical, and communications systems serving the Premises; and the repair and investment needs and schedule and the estimated costs for such needs. Tenant's proposal must address all necessary repair and investment needs described in the submitted Facilities Condition Report anticipated over the proposed extension term and must also include a feasibility study of seismic upgrades that would eliminate the current occupancy limitation and/or allow for public assembly. Any extension will be subject to approval by the Commission and the City's Board of Supervisors in the sole discretion of each.</p>
<i>Prior Lease and Prior License:</i>	<p>The parties agree that, as of the Commencement Date, Lease No. L-14414 dated as of June 21, 2007 for reference purposes (the "Prior Lease") and License 14527 dated as of August 1, 2009 for references purposes ("Prior License"), between Tenant and Port is hereby terminated as of the Commencement Date; provided, however, that except, as provided in the Settlement Agreement, the parties shall continue to be liable for any obligations under the Prior Lease and Prior License which have accrued prior to the date of termination and any obligations which by their terms survive the termination or expiration of the Prior Lease and Prior License.</p>
<i>Lease Prepared By:</i>	<p>Michael J. Martin, Deputy Director, Real Estate and Development</p>

LEASE AGREEMENT

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

1. DEMISE.

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

2. DEFINITIONS.

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

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

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

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

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

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

"**Anniversary Date**" means the first and each subsequent anniversary of the Commencement Date.

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

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

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

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

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

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

"CMD" means the Contract Monitoring Division of the City's General Services Agency.

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

"Changes" is defined in Section 10.2 below.

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

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

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

"Commission" means the San Francisco Port Commission.

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

"Concession" is defined in Section 29.16 below.

"Conduct Code" is defined in Section 27.13 below.

"Control" means the direct or indirect ownership of: (a) fifty percent (50%) or more of each class of equity interests in the entity; or (b) fifty percent (50%) or more of each class of interests that have the right to nominate, vote for, or otherwise select the members of the governing body that directs or causes the direction of substantially all of the management and policies of the entity or otherwise has the right to direct or cause the direction of substantially all of the management and policies of the entity.

"Core Benefits" is defined in Section 27.1(c) below.

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

"Costs of Sale" means the following costs, but only to the extent Tenant actually incurred them in connection with a Sale: (a) reasonable (as determined by the Port in its reasonable discretion) brokerage commissions; (b) customary closing fees and costs, including title insurance premiums, survey fees, escrow fees, recording charges, and transfer taxes; (c) reasonable attorneys' fees; and (d) new tenant improvements to be made solely in connection with the Sale and performed in compliance with Section 20.3(b). Costs of Sale exclude rents,

taxes, or other income or expense items customarily prorated in connection with sales of real property.

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

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

"Encroachment Area" is defined in Section 3.3 below.

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

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

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

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

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

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

"Excess Rent" means Sublease rent and any other sums paid or payable to Tenant under a Sublease, excluding the value of goodwill, in excess of Tenant's concurrent Rent obligation for the Sublease premises. Excess Rent will be calculated based on the Monthly Base Rent prior to application of any rent credit.

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

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

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

"Facilities Condition Report" is defined in the Basic Lease Information.

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

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

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

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

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

"Hard costs" is defined in Section 11.3 below.

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

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

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

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

"HRER" is defined in Section 13.2(d) below.

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

"Improvement Costs" is defined in Section 4.2 below.

"Improvements Pertaining to the Realty" means machinery or equipment installed for use on the property that cannot be removed without a substantial economic loss or without

substantial damage to the property on which it is installed, regardless of the method of installation. In determining whether particular property can be removed "without a substantial economic loss," the value of the machinery or equipment in place and considered as part of the realty should be compared with its value if it were removed and sold.

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

"**Indemnify**" means to indemnify, protect, defend, and hold harmless forever.

"**Indemnification**" and "**Indemnity**" have correlating meanings.

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

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

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

"**Late Charge**" means a fee of fifty dollars (\$50.00).

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

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

"**Net Sale Proceeds**" means Gross Sale Proceeds less Costs of Sale and goodwill.

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

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

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

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

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

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

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

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

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

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

"Port Work" is defined in Section 13.9 below.

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

"preservative-treated wood containing arsenic" is defined in Section 27.12 below.

"Prevailing party" is defined in Section 23.1 below.

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

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

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

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

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

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

"Rent" means the Base Rent, Additional Rent and all other sums payable by Tenant to Port hereunder, including, without limitation, any Late Charge and any interest assessed pursuant to Section 5.

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

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

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

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

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

"**saltwater immersion**" is defined in Section 27.12 below.

"**Seawall**" is defined in Section 3.7.

"**Secretary's Standards**" is defined in Section 13.2(d) below.

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

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

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

"**Substructure Report**" is defined in the Basic Lease Information.

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

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

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

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

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

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

"**Transfer**" means any of the following events or proposed events, whether voluntary, involuntary, or by operation of Law: (a) any sale, assignment, encumbrance, sublease, or other transfer any of Tenant's interest in this Lease or in the Premises; (b) any Person other than Tenant occupies or claims a right of possession to any part of the Premises; (c) if Tenant is a corporation, limited liability company, partnership or similar entity and is not traded on a nationally recognized security exchange, any change in Control of Tenant (including without limitation a dissolution, merger, consolidation, transfer or sale); or (d) any interest of any subtenant, assignee, or other Transferee of Tenant's interest in the Lease or premises is sold, assigned, encumbered, or otherwise Transferred. The foregoing notwithstanding, "Transfer" shall not include partnerships with other museums and/or nonprofits on exhibitions and programming that do not include a leasehold interest.

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

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

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

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

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

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

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

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

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

3. PREMISES; AS-IS CONDITION.

3.1. Premises.

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

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

3.2. Accessibility Inspection Disclosure.

California law requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("CASp") to determine whether the property meets all applicable construction-related accessibility requirements. The

law does not require landlords to have the inspections performed. Tenant is hereby advised that the Premises has not been inspected by a CASp and Port shall have no liability or responsibility to make any repairs or modifications to the Premises in order to comply with accessibility standards. The following disclosure is required by law:

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

3.3. San Francisco Disability Access Disclosures. Tenant is hereby advised that the Premises may not currently meet all applicable construction-related accessibility standards, including standards for public restrooms and ground floor entrances and exits. Tenant understands and agrees that Tenant may be subject to legal and financial liabilities if the Premises does not comply with applicable federal and state disability access Laws. As further set forth in Section 9 (Compliance with Laws), 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 ADA and any other federal or state disability access Laws. Tenant shall notify Port if it is making any Alterations or Improvements to the Premises that might impact accessibility standards required under federal and state disability access Laws.

3.4. No Right to Encroach.

(a) If Tenant (including, its Agents, Invitees, successors and assigns) uses or occupies space outside the Premises without the prior written consent of Port (the "**Encroachment Area**"), then upon written notice from Port ("**Notice to Vacate**"), Tenant shall immediately vacate such Encroachment Area and pay as Additional Rent for each day Tenant used, occupied, uses or occupies such Encroachment Area, an amount equal to the rentable square footage of the Encroachment Area, multiplied by the higher of the (i) highest rental rate then approved by the San Francisco Port Commission for the Premises or the Facility, or (ii) then current fair market rent for such Encroachment Area, as reasonably determined by Port (the "**Encroachment Area Charge**"). If Tenant uses or occupies such Encroachment Area for a fractional month, then the Encroachment Area Charge for such period shall be prorated based on a thirty (30) day month. In no event shall acceptance by Port of the Encroachment Area Charge be deemed a consent by Port to the use or occupancy of the Encroachment Area by Tenant, its Agents, Invitees, successors or assigns, or a waiver (or be deemed as a waiver) by Port of any and all other rights and remedies of Port under this Lease (including Tenant's obligation to Indemnify Port as set forth in Section 3.4(c), at law or in equity.

(b) In addition, Tenant shall pay to Port, as Additional Rent, an amount equaling Two Hundred Dollars (\$200.00) upon delivery of the initial Notice to Vacate plus the actual cost associated with a survey of the Encroachment Area. In the event Port determines during subsequent inspection(s) that Tenant has failed to vacate the Encroachment Area, then Tenant shall pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300.00) for each additional Notice to Vacate, if applicable, delivered by Port to Tenant following each inspection. The parties agree that the charges associated with each inspection of the Encroachment Area, delivery of each Notice to Vacate and survey of the Encroachment Area represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the Premises, issuance of each Notice to Vacate and survey of the Encroachment Area. Tenant's failure to comply with the applicable Notice to

Vacate and Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this Lease, at law or in equity.

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

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

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

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

3.7. Unique Nature of Premises. Tenant acknowledges that: (a) the Facility is located along the waterfront in a building on a pier and/or wharf, supported by a partially-submerged substructure in a marine environment, which was originally built approximately 100 years ago; and/or the Facility is located along the waterfront adjacent to, on top of, and bayward of the Seawall that is in need of repair and presents increased risk of damage to property and injury or death to persons from seismic events, as further described in Section 3.8; (b) Port's regular maintenance may involve activities, such as pile driving, that create noise and other effects not normally encountered in locations elsewhere in San Francisco due to the unique nature of the Premises; (c) there is a risk that all or a portion of the Premises will be inundated with water due to floods or sea level rise; (d) there is a risk that sea level rise will increase the cost of substructure repairs and/or prevent or limit the ability to make repairs to the Substructure; and/or (e) Port cannot guarantee that piers, decks, wharves, and aprons will be suitable for leased occupancy during the entire Term of this Lease.

3.8. Seawall. The City is engaged in an effort to prepare for a major earthquake and to create more resilient City infrastructure. As part of this effort, the Port is developing a plan to strengthen the Northern Waterfront Seawall which stretches from Fisherman's Wharf to Mission Creek ("Seawall") to maintain viability of Port's operations, increase protection of Port and City assets, and enhance life safety in the face of degradation, flooding, earthquakes, climate change,

and security hazards. The Seawall was constructed over 100 years ago within the Bay and supports reclaimed land, or fill, and as a result is more vulnerable to seismic risk. Earthquake performance of reclaimed land is an issue for coastal communities worldwide. The *Seawall Earthquake Vulnerability Study of the Northern Waterfront Seawall*, San Francisco, California July 2016 and information about Port and City's resiliency goals and plans and improvements can be found on the Port's website at: <https://www.sfportresilience.com>. Tenant agrees that its waiver of Claims set forth in Section 19 below (Indemnity and Exculpation) is given with full knowledge of the direct or indirect, known or unknown, and foreseeable or unforeseeable losses and claims (including the potential additional risks of injury or death to persons or damage to property) due to the Seawall's condition or the proximity of the Premises to the Bay and the Seawall.

3.9. As-Is Condition. Tenant acknowledges and agrees that Tenant is familiar with the Premises, the Premises is being leased and accepted in their "as-is" condition, without any improvements or alterations by Port, without representation or warranty of any kind, and subject to all applicable Laws governing their use, occupancy and possession. Tenant represents and warrants to Port that Tenant has received and reviewed the disclosures regarding the Seawall in Section 3.8 including *The Seawall Earthquake Vulnerability Study of the Northern Waterfront Seawall*, San Francisco, California July 2016 and information on the Port's website; the FEMA disclosure notice attached as **Schedule 3** and a copy of the report(s), if any, relating to the substructure and/or structure of the Facility, as further described in **Schedule 2** attached hereto. Tenant further represents and warrants to Port that Tenant has investigated and inspected, either independently or through agents of Tenant's own choosing, the condition of the Premises and the suitability of the Premises for Tenant's business and intended use. Tenant acknowledges and agrees that neither Port nor any of its agents have made, and Port hereby disclaims, any representations or warranties, express or implied, concerning the rentable area of the Premises, the physical or environmental condition of the Premises or the Facility (including, but not limited to the substructure and/or the Seawall), the present or future suitability of the Premises for Tenant's business, or any other matter whatsoever relating to the Premises, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

3.10. Reserved Rights Regarding Seawall. Port has the right to use the Premises on an extended basis without charge, and Tenant shall cooperate by providing access and other reasonably requested assistance at no cost to Port and permit Port and its Agents to enter the Premises upon reasonable prior notice (except in the event of an emergency which poses an imminent danger to public health or safety as determined by Port in its sole discretion) for the purpose of inspecting, repairing and rebuilding the Seawall as Port reasonably deems necessary. Nothing herein shall imply any duty upon the part of Port to perform any work which under any provision of this Lease Tenant may be required to perform or place upon Port any obligation, or liability, for the care, supervision or repair of the Premises or Seawall. If Port elects to perform work on the Seawall within the Premises pursuant to this Section, Port shall not be liable for inconvenience, disturbance, loss of business, nuisance or other damage to Tenant by reason of the performance of such work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, provided Port uses commercially reasonable efforts to conduct the activities in a manner that, to the extent reasonably practicable, will minimize inconvenience or disturbance to the activities of Tenant, its Subtenants (if any), and their respective Invitees. In no event will inconvenience or disturbance caused by Port's activities under this Section constitute an actual or constructive eviction of Tenant, entitle Tenant to any abatement or diminution of Rent, or otherwise relieve Tenant from any of its obligations under this Lease. Tenant hereby waives any and all Claims against Port, City and their Agents arising out of any inconvenience or disturbance occasioned by Port's activities under this Section. If use of the Premises is required by Port or its Agents under this Section, then the Parties will coordinate their use of the Premises and use their good faith efforts to minimize adverse impacts to each of their respective needs. Port will have the absolute right to use the Premises without charge in the event of an emergency involving the Seawall.

3.11. Release and Waiver. As part of its agreement to accept the Premises in their “As Is With All Faults” condition, Tenant, on behalf of itself and its successors and assigns, will be deemed to waive any right to recover from, and forever release, acquit and discharge, Port and the other Indemnified Parties of and from any and all Claims, whether direct or indirect, known or unknown, foreseen or unforeseen, that Tenant may now have or that may arise on account of or in any way be connected with (i) the physical, geotechnical or environmental condition in, on, under, above, or about the Facility and the Seawall, including any Hazardous Materials in, on, under, above or about the Facility (including soil and groundwater conditions), (ii) the suitability of the Facility and/or the Premises for the development of the Improvements, the Permitted Uses, (iii) any Laws applicable thereto, including Environmental Laws, (iv) damages by death of or injury to any Person, or to property of any kind whatsoever and to whomever belonging, and (v) goodwill, or business opportunities arising at any time and from any cause in, on, around, under, and pertaining to the Facility and/or the Premises, including all claims arising from the joint, concurrent, active or passive negligence of any of Indemnified Parties, but excluding any intentionally harmful acts committed solely by Port or City.

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

4. TERM OF LEASE; TERMINATION.

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

4.2. Port's Termination Rights.

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

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

(b) Within sixty (60) days after Tenant's surrender under this Section 4.2, Port agrees to pay Tenant a portion of those expenses which are documented by Tenant as having been incurred by Tenant prior to the delivery of Port's termination notice during the Term in making alterations, additions and improvements to the Premises which were approved in advance and in writing by Port and which were not previously reimbursed to Tenant through rent credits, rent abatement or other form of compensation ("**Improvement Costs**"). Such Improvement Costs shall be determined by the value attributable to any alterations, additions and improvements made during the Term in any Port building permits for such work obtained by Tenant and which are approved in advance in writing by a Port Property Manager to the extent supported by reasonable evidence of such expenditures provided by Tenant. If no building permits are required for such work, value shall only be attributed to such alterations, additions or improvements if the value is approved in writing by a Port Property Manager prior to the commencement of the work and if the cost is supported by reasonable evidence of such expenditures provided by Tenant. The portion of the Improvement Costs paid by Port shall be a fraction, of which the numerator shall be the number of months remaining in the initial term of the Lease after Tenant surrenders the Premises, and the denominator shall be the number of months in the initial Term of this Lease, or for work undertaken following the Commencement Date, the number of months beginning at the second month following the Port's approval of the improvements and ending at the Expiration Date of the initial Term of this Lease. In no event shall Port be responsible for paying any moving or relocation expense or other expense incurred by Tenant due to any termination under this Section.

4.3. Tenant Termination Rights.

(a) Notwithstanding anything herein to the contrary, Tenant has the sole and absolute right to terminate this Lease if, in Tenant's sole and absolute discretion, the cost of maintenance or repair of the Premises, Improvements, or Alterations, or any combination thereof, required under this Lease is unreasonable given the length of the then remaining Term. Tenant may exercise this right upon ninety (90) days' prior written notice, and, without limitation, may terminate this Lease as provided herein rather than perform any maintenance or repairs required hereunder; provided however, that any such termination shall not affect Tenant's obligation to repair any damage caused by Tenant, its Agents or Invitees or Tenant's Indemnification and waiver of claims provisions in Section 19 (Indemnity and Exculpation). Tenant shall surrender possession of the Premises by the end of the 90-day period.

(b) Notwithstanding anything herein to the contrary, Tenant has the sole and absolute right to terminate this Lease at any time after submittal of a Substructure Report as required in the Basic Lease Information, by providing no less than twelve (12) months' prior written notice to Port; provided however, that any such termination shall not affect Tenant's obligation to repair any damage caused by Tenant, its Agents or Invitees or Tenant's Indemnification and waiver of claims provisions in Section 19 (Indemnity and Exculpation). Tenant shall surrender possession of the Premises by the end of the 12-month period.

4.4. No Rent Credits. Tenant agrees and acknowledges that any right or claim that Tenant may have to any rent credit that has not yet been actually applied ("**unused rent credit**") shall expire upon expiration or earlier termination of this Lease by either Tenant or Port and Port shall have no liability or obligation to pay or credit the Tenant all or any portion of the unused rent credit.

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

5. RENT.

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

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

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

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

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

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

Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation, provided that such waiver shall not affect or impair any right or remedy expressly provided Tenant under this Lease.

5.6. Additional Charges. Without limiting Port's other rights and remedies set forth in this Lease, at law or in equity, in the event Tenant fails to submit to the appropriate party, on a timely basis, the items identified in Sections: 12.1 (Utilities), 15.3 (Tenant's Environmental Condition Notification Requirements), 15.8 (Storm Water Pollution Prevention), 27.1(d) (CMD Form), and 31 (Estoppel Certificate) or to provide evidence of the required insurance coverage described in Section 16 below, then upon written notice from Port of such failure, Tenant shall pay, as Additional Rent, an amount equaling One Hundred Dollars (\$100.00). In the event Tenant fails to provide the necessary document within the time period set forth in the initial notice and Port delivers to Tenant additional written notice requesting such document, then Tenant shall pay to Port, as Additional Rent, an amount equaling One Hundred Fifty Dollars (\$150.00) for each additional written notice Port delivers to Tenant requesting such document. The parties agree that the charges set forth in this Section 5.6 represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Tenant's failure to provide the documents identified in this Section 5.6 and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this Lease, at law or in equity. By signing this Lease, each party specifically confirms the accuracy of the statements made in this Section 5.6 and the reasonableness of the amount of the charges described in this Section 5.6.

6. TAXES AND ASSESSMENTS.

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

6.2. Possessory Interest Tax. Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest. Tenant further recognizes and understands that any sublease or assignment permitted under this Lease and any exercise of any option to renew or other extension of this Lease may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Tenant agrees to pay taxes of any kind, including, but not limited to, possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Tenant's usage of the Premises that may be imposed upon Tenant by Law, all of which shall be paid when the same

become due and payable and before delinquency. Tenant agrees not to allow or suffer a lien for any such taxes to be imposed upon the Premises or upon any equipment or property located thereon without promptly discharging the same, provided that Tenant, if so desiring, may have reasonable opportunity to contest the validity of the same. San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute) require that certain information relating to the creation, renewal, extension, assignment, sublease, or other transfer of this Lease be reported to the County Assessor within sixty (60) days after any such transaction. Accordingly, Tenant must provide a copy of this Lease to the County Assessor not later than sixty (60) days after the Commencement Date, and any failure of Tenant to timely provide a copy of this Lease to the County Assessor will be a default under this Lease. Tenant will also timely provide any information that Port or City may request to ensure compliance with this or any other reporting requirement.

7. SECURITY DEPOSIT.

Tenant shall pay to Port upon execution of this Lease, in addition to the advance payment of the first month's Base Rent, an amount in cash, equal to the Security Deposit amount specified in the Basic Lease Information, as security for the faithful performance by Tenant of all terms, covenants and conditions of this Lease.

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

Tenant hereby waives the provisions of California Civil Code Section 1950.7 and/or any successor statute, it being expressly agreed that Port may apply all or any portion of the Security Deposit in payment of any and all sums reasonably necessary to compensate Port for any other loss or damage, foreseeable or unforeseeable, caused by the act or omission of Tenant or any Agent or Invitee of Tenant, and that following a default by Tenant, all or any portion of the Security Deposit may be retained by Port following a termination of this Lease and applied to future damages, including damages for future Rent, pending determination of the same. Subject to the Port's rights under this Section 7, thereafter the Security Deposit (or the balance thereof) shall be returned promptly to Tenant.

8. USE OF THE PREMISES.

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

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

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

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

(c) any activity or object which will exceed load restrictions, if any, or cause damage to the Premises;

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

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

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

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

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

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

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

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

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

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

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

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

9. COMPLIANCE WITH LAWS AND REGULATIONS.

Tenant, at Tenant's sole cost and expense, promptly shall comply with all Laws relating to or affecting the condition, use or occupancy of the Premises and shall comply with all Laws relating to Tenant's specific use of the Facility and all Rules and Regulations, if any, in effect either at the time of execution of this Lease or which may hereafter be in effect at any time

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

The parties acknowledge and agree that Tenant's obligation to comply with all Laws as provided herein is a material part of the bargained for consideration under this Lease. Tenant's obligation under this Section 9 shall include, without limitation, the responsibility of Tenant to make substantial or structural repairs and Alterations to the Premises, regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or Port, the degree to which the curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Laws involved, and whether the Laws involved are related to Tenant's particular use of the Premises (but subject to Tenant's termination rights in Section 4.3 above). Any Alteration or Improvements made by or on behalf of Tenant pursuant to the provisions of this Section 9 shall comply with the provisions of Section 13 below. Except as otherwise expressly set forth in this Lease, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant of its obligations hereunder, nor give Tenant any right to terminate this Lease in whole or in part or to seek redress against Port, except to the extent Tenant may have remedies against Port pursuant to this Lease or applicable Law. Except as otherwise expressly set forth in this Lease, Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel Port to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

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

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

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

Tenant shall be solely responsible for obtaining any Regulatory Approvals for the Premises, and Tenant shall not seek any Regulatory Approval without first obtaining the prior written approval of Port. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne solely and exclusively by Tenant. Tenant shall be solely responsible for complying with any and all conditions imposed by Regulatory Agencies as part of a Regulatory Approval with respect to the Premises; provided, however, Tenant shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a

permit or other entitlement from any Regulatory Agency (other than Port), if the Port is required to be a co-permittee under such permit or other entitlement, or if the conditions or restrictions it would impose on the project could affect use or occupancy of the Facility or Port's interest therein or would create obligations on the part of Port (whether on or off of the Premises) to perform or observe, unless in each instance Port has previously approved such conditions in writing, in Port's sole and absolute discretion.

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

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

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

11. MAINTENANCE AND REPAIRS.

11.1. *Tenant Maintenance and Repair Obligations.* Unless otherwise set forth in the Basic Lease Information, Tenant shall at all times during the Term, starting on the Commencement Date, including any period of early entry under this Lease, or occupancy or use of the Premises by Tenant under another lease or license with Port for the same Premises, and at its sole cost and expense, maintain, repair and replace in good and working order, condition and repair the Premises and all Improvements and Alterations thereon, including, but not limited to, glazing, but subject to Tenant's right to terminate this Lease pursuant to Section 4.3 above. Port shall not be obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the Premises nor to any Improvements or Alterations now or hereafter located thereon. Tenant hereby waives all rights to make repairs at Port's expense under Sections 1932(1), 1941 and 1942 of the California Civil Code or under any similar Law now or hereafter in effect.

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

In the event that damage or deterioration to the Premises or any portion thereof which is Tenant's obligation to maintain results in the same not meeting the standard of maintenance required by Port for such uses as Tenant is making of the Premises, then Tenant shall have the independent responsibility for, and shall promptly undertake, maintenance or repair of the Premises and complete the same with due diligence, but subject to Tenant's right to terminate this Lease pursuant to Section 4.3.

Notwithstanding anything to the contrary in this Lease, in the event that Tenant, its Agents or Invitees cause any damage to the Premises or any other property within Port's jurisdiction, Tenant shall be responsible for repairs regardless of whether Tenant exercises its right to terminate this Lease pursuant to Section 4.3 and Port may repair the same at Tenant's sole cost and expense and Tenant shall promptly reimburse Port therefor in accordance with Section 11.3 below.

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

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

In addition, upon delivery of the initial notice relating to Tenant's failure to maintain the Premises in accordance with Section 11 ("**Maintenance Notice**"), but subject to Tenant's right to terminate the Lease pursuant to Section 4.3 above, Tenant shall pay, as Additional Rent, an amount equaling Two Hundred Dollars (\$200.00). In the event Port determines during subsequent inspection(s) that Tenant has failed to maintain the Premises in accordance with Section 11, then Tenant shall pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300) for each additional Maintenance Notice, if applicable, delivered by Port to Tenant following each inspection. By signing this Lease, each party specifically agrees that the charges associated with each inspection of the Premises and delivery of each Maintenance Notice represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the Premises and issuance of each Maintenance Notice. Tenant's failure to comply with the applicable Maintenance Notice and Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this Lease, at law or in equity. The amounts set forth in this Section shall be due within three (3) business days following delivery of the applicable Maintenance Notice.

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

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

obligation to make repairs to the Premises pursuant to Section 17 in the event of any damage or destruction of the Premises.

12. UTILITIES AND SERVICES.

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

Tenant shall be obligated, at its sole cost and expense, to repair and maintain in good operating condition all utilities serving the Premises (whether within or outside the Premises and regardless of who installed same). The obligation to repair and maintain includes the obligation to routinely inspect and assess such Utilities using qualified licensed professionals and to report the results of such inspections to Port. Tenant shall coordinate with Port and impacted Port tenants, if necessary, with respect to maintenance and repair of any off-Premises utility infrastructure, including providing advance notice of maintenance and repair requirements.

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

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

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

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

12.2. Services. Tenant shall make arrangements and shall pay all charges for all services to be furnished on, in or to the Premises or to be used by Tenant, including, without limitation, security, garbage and trash collection, janitorial service and extermination service.

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

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

13. IMPROVEMENTS AND ALTERATIONS.

13.1. Port Consent Required.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13.8. *Improvements on Roof.* Tenant shall not install any equipment on the roof or any other part of the Facility outside of the Premises without Port's prior written consent. If Port consents, then Tenant shall have a non-exclusive revocable license on and over the roof and/or other areas of the Facility necessary to install, maintain and repair the equipment in a location mutually agreeable to Port and Tenant, subject to and consistent with all necessary Regulatory Approvals, including a building or encroachment permit issued by Port. Port makes no representation with respect to Tenant's ability to obtain such Regulatory Approvals. Tenant's use of any licensed areas shall be subject to all the terms and conditions of this Lease and Tenant shall have the obligations and liabilities as if the licensed areas are included in the Premises under this Section, and Sections 3.9, 9-11, 13, 15, 16, 19 and 25 of this Lease. The license granted to Tenant hereunder is for the sole purpose of constructing, maintaining, restoring, replacing and operating Tenant's approved equipment, including any necessary conduits, only in connection with Tenant's Permitted Uses under this Lease and Tenant shall not have the right to install any other equipment outside of the Premises, including without limitation a telecommunications (cell) site or any other equipment that can be used for any commercial purpose. The license granted hereby includes the right of ingress and egress through the Facility during non-business hours for access to or from the roof of the Premises and Tenant's equipment, provided that Tenant must notify the Port's Property Manager at least 24 hours in advance of any such access and shall comply with all reasonable requirements of such designated person with respect to Tenant's requested access. In the event of an emergency, Tenant shall have the right to enter the licensed areas provided it makes good faith efforts to notify Port in advance of such entry.

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

14. LIENS.

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

Without limiting the foregoing, Tenant shall not create, permit or suffer any liens or encumbrances affecting any portion of the Premises, the Facility or Port's interest therein or under this Lease, but subject to Tenant's right to reasonably contest the validity of any such lien or encumbrance.

15. HAZARDOUS MATERIALS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15.4. Requirement to Remediate.

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

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

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

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

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

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

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

15.6. Notification of Asbestos. Port hereby notifies Tenant, in accordance with the OSHA Asbestos Rule (1995), 59 Fed. Reg. 40964, 29 CFR §§ 1910.1001, 1926.1101 (as

amended, clarified and corrected) (OSHA Asbestos Rule); California Health and Safety Code §§ 25915-259.7 and Cal-OSHA General Industry Safety Order for Asbestos, 8 CCR § 5208, of the presence of asbestos-containing materials ("ACMs") and/or presumed asbestos-containing materials ("PACMs") (as such terms are defined in Cal-OSHA General Industry Safety Order for Asbestos), in the locations identified in the summary/table, if any, set forth in **Schedule 1** attached hereto.

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

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

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

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

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

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

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

15.8. Storm Water Pollution Prevention.

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

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

15.9. Presence of Hazardous Materials. California Law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Tenant is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Premises, including, but not limited to, vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as asbestos, naturally-occurring radionuclides, lead and formaldehyde. Further, the following reports, copies of which have been delivered to or made available to Tenant describe possible Hazardous Materials on the property: *Schedule 1*; the Asbestos and Lead-Based Paint Survey Report Pier 24 Annex San Francisco, California prepared by RGA Environmental, February 11, 1998; Lead Compliance Plan, Pier 24 Annex, Van Brunt Associates 7/28/2008; and Summary Report: Pre-Renovation Hazardous Materials Survey; Port of SF Pier 24 Annex, SCA Environmental, Inc. 7/2007. By execution of this Lease, Tenant acknowledges that the notice set forth in this section satisfies the requirements of California Health and Safety Code Section 25359.7 and related Laws. Tenant must disclose the information contained in this Section 15.9 to any subtenant, licensee, transferee, or assignee of Tenant's interest in this Lease. Tenant also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

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

For purposes of this Section 15, the term "**Commencement Date**" shall mean the commencement date of the Prior Lease and Prior License.

16. INSURANCE.

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

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

cover non-owned and for-hire vehicles and all mobile equipment or unlicensed vehicles, such as forklifts.

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

(c) Workers' Compensation. Worker's Compensation Insurance in statutory amounts, with Employers' Liability Limits not less than One Million Dollars (\$1,000,000.00) for each accident, injury or illness.

(d) Fine Arts Insurance. Tenant shall maintain, or cause to be maintained by the owner, commercial fine arts insurance for all artwork, photographs, historical or cultural artifacts or similar objects ("**Art Works**") in the Premises, including any Art Works that it owns as well as Art Works that it may borrow from third parties. Such insurance shall provide coverage against all risks of physical loss or damage from any external cause except wear and tear, gradual deterioration, and other standard exclusions contained in fine arts insurance policies. Tenant shall assume all costs associated with any losses not fully covered by such insurance and agrees that in the event that any of the Art Works are lost or damaged, recovery, if any, will be limited to such amount as may be paid by the Tenant's or other owner's insurer.

(e) Property Insurance; Earthquake and Flood Insurance.

(1) Property insurance policies with coverage at least as broad as Insurance Services Office form CP 10 30 06 95 ("Causes of Loss Special Form" (or its replacement)), in an amount not less than 100% of the then-current full replacement cost of the Improvements within the Premises including any foundations, pilings, excavations and footings, including increased cost of construction and demolition of damaged and undamaged structures due to the enforcement of Laws, (with any deductible not to exceed Two Hundred Fifty Thousand Dollars (\$250,000) (except as to earthquake and flood insurance). 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.

(2) Earthquake Insurance in an amount equal to at least the lesser of (i) the Probable Maximum Loss to the Improvements, or (ii) the amount that 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. "**Probable Maximum Loss**" means the scenario upper loss (SUL) estimate of damage that may occur to the structures with a ninety percent (90%) confidence of non-exceedance as a result of an earthquake with a return period of 224 years as determined by a consultant chosen and paid for by Tenant who is reasonably satisfactory to Port; and

(3) Flood Insurance in an amount equal to at least the amount available at commercially reasonable rates from recognized insurance carriers or through the NFIP, with a deductible of up to but not to exceed an amount that is necessary to make flood insurance available at commercially reasonable rates.

(4) Exceptions for Earthquake and Flood Insurance. If Tenant determines that earthquake or flood insurance should not be carried on the Improvements

because it is not (or no longer) available at commercially reasonable rates (or through the NFIP for flood insurance) or, in Tenant's reasonable business judgment, is imprudent, then Tenant will request in writing Port's consent to the absence or deletion thereof. Any request for Port's consent required hereunder will include with such request evidence supporting Tenant's determination of commercial unreasonableness or imprudence as to the applicable coverage. 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 will approve or disapprove the absence or deletion of earthquake or flood insurance within forty-five (45) days after Tenant's request. If Port disapproves such request, Port will state the basis for its disapproval. If Tenant elects not to carry or to discontinue such coverage with Port's approval, and Port later determines that due to changes in the industry or other changed circumstances, earthquake insurance or flood insurance, as applicable, has become commercially available at reasonable rates, then Port may notify Tenant thereof, and Tenant will add such coverage to its policy as soon as reasonably practicable thereafter.

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

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

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

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

(g) Other Coverage. Not more often than every year and upon not less than sixty (60) days prior written notice, Port may require Tenant to increase the insurance limits set forth above or to provide other coverage and/or different coverage amounts as may be required by Law, the City's Risk Manager or as is generally required by commercial owners of buildings

similar in size, character, age and location as the Facility with respect to risks comparable to those associated with the use of the Premises.

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

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

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

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

16.6. General Insurance Matters.

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

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

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

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

Port's request, promptly furnish Port with a complete copy of any insurance policy required hereunder.

17. DAMAGE AND DESTRUCTION.

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

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

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

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

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

17.2. Waiver. Port and Tenant intend that the provisions of Section 17 govern fully in the event of any damage or destruction and accordingly, Port and Tenant each hereby waives the

provisions of Section 1932, subdivision 2, Section 1933, subdivision 4, Sections 1941 and 1942 of the Civil Code of California or under any similar Law now or hereafter in effect.

18. EMINENT DOMAIN.

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

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

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

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

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

19. INDEMNITY AND EXCULPATION.

19.1. General Indemnity. Tenant shall Indemnify Port, City, including, but not limited to, all of their respective boards, commissions, departments, agencies, and other subdivisions, and their respective Agents (collectively, "**Indemnified Parties**") from, and shall defend them, without cost to the Indemnified Parties, against any and all Claims arising directly or indirectly out of: (a) any accident, injury to or death of any person, including any Agents and/or Invitees of

Tenant, or loss or damage to or destruction of any property occurring in, on or about the Premises, the Facility or any other Port property, from any cause whatsoever, or (b) any default by Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease, including the provisions of Section 20, or (c) the use, occupancy, manner of use or occupancy, or condition of the Premises or the activities therein by Tenant, its Agents, or Invitees, or (d) any construction or other work undertaken by Tenant on the Premises whether before or during the Term, or (e) any acts, omissions or negligence of Tenant, its Agents or Invitees, in, on or about the Premises, the Facility or any other Port property.

Without limiting Tenant's Indemnity obligations with respect to the Premises, Port agrees that Tenant's Indemnity for Claims relating to "other Port property" as set forth above in subsection 19.1 applies only if such Claims arise directly or indirectly out of Tenant's, its Agent's or Invitee's acts, omissions or negligence.

19.2. *Hazardous Materials Indemnity.*

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

(b) Tenant's obligation to Indemnify the Indemnified Parties includes: (i) costs incurred in connection with any Investigation or Remediation requested by Port or required by any Environmental Regulatory Agency and to restore the affected area to its condition before the Release; (ii) damages for diminution in the value of the Premises or the Facility; (iii) damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises or the Facility; (iv) damages arising from any adverse impact on marketing the space; (v) sums paid in settlement of Claims, Hazardous Material Claims, Environmental Regulatory Actions, including fines and penalties; (vi) natural resource damages; and (vii) reasonable attorneys' fees, consultant fees, expert fees, court costs, and all other litigation, administrative or other judicial or quasi-judicial proceeding expenses. If Port pays any costs within the scope of this section, Tenant must reimburse Port for Port's costs, plus interest at the Interest Rate from the date Port incurs each cost until paid, within five (5) business days after Port's delivery of an invoice detailing such costs and payment demand to Tenant. Tenant's obligations hereunder shall survive the expiration or earlier termination of this Lease.

19.3. *Scope of Indemnities.* The Indemnification obligations of Tenant set forth in this Lease shall be enforceable regardless of the joint or concurrent, active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the Indemnified Parties. The Indemnification obligations of Tenant set forth in this Lease shall be enforceable except to the extent that such Indemnity is void or otherwise unenforceable under applicable Law in effect on, or validly retroactive to, the date of this Lease. Except as specifically provided otherwise, the Indemnification obligations of Tenant set forth in this Lease shall exclude Claims resulting solely from the willful misconduct or gross negligence of the Indemnified Parties.

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

19.4. *Exculpation and Waiver.* To the fullest extent permitted by law, Tenant, as a material part of the consideration to be rendered to Port, hereby waives any and all Claims, including without limitation all Claims arising from the joint or concurrent, active or passive,

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

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

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

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

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

20. ASSIGNMENT AND SUBLETTING.

20.1. *Transfer.*

(a) Tenant must obtain Port's prior written consent to any Transfer, which consent shall be in Port's sole discretion.

(b) At least ninety (90) days before any proposed Transfer, Tenant must give Port a Transfer Notice and the following: (i) financial statements for the three (3) years before the Transfer Date (or each year of the proposed Transferee's existence, if shorter) for the Transferee and for any other Person who will be liable for Tenant's obligations under this Lease; (ii) Tenant's current financial statements; (iii) a copy of the proposed Transfer Agreement; and (iii) the Transferee's completed pre-screening and leasing application. In addition, Tenant must provide: (1) any other information, documentation, or evidence that Port requests to enable Port to evaluate the Transfer and the Transferee; and (2) if any of the Transfer Terms are modified before the Transfer Date, a new Transfer Notice and all relevant documentation for any modified Transfer Terms. Tenant's Transfer Notice will not be complete until Tenant has provided Port with all information required under this Subsection.

Upon receipt of Tenant's complete Transfer Notice, Port will have the right to: (1) consent to or deny consent to the Transfer in its sole discretion; (2) terminate this Lease as of

the proposed Transfer Date; (3) sublease or take an assignment from Tenant of the interest that Tenant proposes to Transfer, on the same terms and conditions as stated in the Transfer Agreement; and (4) negotiate and contract directly with the Transferee on terms acceptable to Port in its sole and absolute discretion.

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

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

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

20.2. Sublease. In addition to all requirements in Section 20.1, the following provisions apply to any Transfer in the form of a Sublease:

(a) The rental rate under any Sublease must represent fair market rent for similar use and type of premises and reflect an arm's length transaction.

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

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

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

20.3. Sale. In addition to all requirements in Section 20.1, the following provisions apply to any Transfer in the form of a Sale.

(a) Tenant must pay to Port twelve percent (12%) of Tenant's Net Sale Proceeds as Port's Sale Participation, concurrently with and as a condition to the Sale Closing.

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

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

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

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

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

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

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

(f) A provision under which the Transferee expressly agrees to report the transfer to the County Assessor in accordance with Section 6.2 of this Lease.

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

20.6. Transfer Audit. Tenant agrees to make its Books and Records available to, and cooperate with, any Port representative for the purpose of conducting an audit of the accuracy of Tenant's financial reporting on the Transfer until the later of (i) four (4) years after the end of each Lease Year to which such records apply or, (ii) if an audit is commenced or if a controversy should arise between the parties as to the accuracy of Tenant's financial reporting on the Transfer, until such audit or controversy is concluded. If an audit reveals that Tenant has overstated Subletting Expenses or any other costs in connection with a Transfer, Tenant must

pay Port promptly upon demand the difference between the amount Tenant deducted and the amount it should have deducted, plus interest at the Interest Rate from the Transfer Date until paid.

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

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

21. DEFAULT BY TENANT.

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

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

(b) abandonment or vacation of the Premises by Tenant; or

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

(d) failure to conduct the Required Use, as determined by Port in its sole and absolute discretion and such failure continues for a period of seven (7) calendar days following written notice from Port; or

(e) failure by Tenant to execute and deliver to Port the estoppel certificate within the time period and in the manner required by Section 31 below, and Tenant's failure to cure the foregoing default within five (5) days following written notice from Port; or

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

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

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

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

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

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

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

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

(n) without limiting the provisions of Sections 21(c) or 21(h) above or lengthening the cure periods under those subsections, failure by Tenant to comply with Laws and Tenant's failure to cure the foregoing default within forty-eight (48) hours following written notice from Port.

22. PORT'S REMEDIES.

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

22.1. *Tenant's Right to Possession Not Terminated.* Port has the remedy described in Section 1951.4 of the California Civil Code (a landlord may continue the lease in effect after a tenant's breach and abandonment and recover rent as it becomes due, if the tenant has the right to sublet and assign subject only to reasonable limitations) under which it may continue this Lease in full force and effect and Port may enforce all of its rights and remedies under this Lease, including the right to collect Rent when due. During the period Tenant is in default, Port may enter the Premises without terminating this Lease and relet them, or any part of them, to third parties for Tenant's account. Tenant shall be liable immediately to Port for all reasonable costs Port incurs in reletting the Premises, including, but not limited to, broker's commissions, expenses of remodeling the Premises required by the reletting and like costs. Reletting can be for a period shorter or longer than the remaining Term, at such rents and on such other terms and conditions as Port deems advisable. Tenant shall pay to Port the Rent due under this Lease on the dates the Rent is due, less the Rent Port receives from any reletting. In the event that Port shall elect to so relet, then rentals received by Port from such reletting shall be applied in the following order: (i) to reasonable attorneys' fees incurred by Port as a result of a default and

costs in the event suit is filed by Port to enforce such remedies; (ii) to the payment of any indebtedness other than Rent due hereunder from Tenant to Port; (iii) to the payment of any costs of maintaining, preserving, altering, repairing and preparing the Premises for reletting, the other costs of reletting, including but not limited to brokers' commissions, reasonable attorneys' fees and expenses of removal of Tenant's Personal Property, trade fixtures and Alterations; (iv) to the payment of Rent due and unpaid hereunder; (v) to the payment of future Rent and other sums payable by Tenant hereunder as the same may become due and payable hereunder; and (vi) the balance, if any, shall be paid to Tenant upon (but not before) expiration of the Term. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of Rent hereunder, be less than the Rent payable during the month by Tenant hereunder, then Tenant shall pay such deficiency to Port. Such deficiency shall be calculated and paid monthly. No act by Port allowed by this Section 22.1 shall terminate this Lease unless Port notifies Tenant that Port elects to terminate this Lease. After Tenant's default and for as long as Port does not terminate Tenant's right to possession of the Premises, if Tenant obtains Port's consent Tenant shall have the right to assign or sublet its interest in this Lease, but Tenant shall not be released from liability.

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

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

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

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

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

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

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

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

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

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

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

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

23. LITIGATION EXPENSES; ATTORNEYS' FEES.

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

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

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

with approximately the same number of attorneys as employed by the Office of the City Attorney.

24. PORT'S ENTRY ON PREMISES.

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

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

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

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

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

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

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

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

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

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

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

25. SURRENDER AND QUITCLAIM.

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

If the Premises is not surrendered at the end of the Term or sooner termination of this Lease, and in accordance with the provisions of this Section 25 and Section 13.4, Tenant shall Indemnify Port from and against any and all loss or liability resulting from delay by Tenant in so surrendering the Premises including, without limitation, any costs of Port to obtain possession of the Premises; any loss or liability resulting from any Claim against Port made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each instance, reasonable attorneys' fees and costs.

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

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

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

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

26. MINERAL RESERVATION.

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

27. CITY AND PORT REQUIREMENTS.

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

27.1. Nondiscrimination.

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

(b) **Subleases and Other Contracts.** Tenant shall include in all subleases and other contracts relating to the Premises a non-discrimination clause applicable to such subtenant or other contractor in substantially the form of Section 27.1(a) above. In addition, Tenant shall incorporate by reference in all subleases and other contracts the provisions of Sections 12B.2 (a), 12B.2 (c)-(k) and 12C.3 of the Administrative Code and shall require all subtenants and other contractors to comply with such provisions.

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

(d) **CMD Form.** On or prior to the Lease Commencement Date, Tenant shall execute and deliver to Port the “Nondiscrimination in Contracts and Benefits” form approved by the CMD.

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

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

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

(b) Notwithstanding the above, if Tenant meets the requirements of a "small business" by the City pursuant to Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with Section 27.2(a) above.

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

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

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

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

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

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

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

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

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

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

27.5. Indoor Air Quality. Tenant agrees to comply with Section 711(g) of the Environment Code and any additional regulations adopted by the Director of the Department of the Environment pursuant to Environment Code Section 703(b) relating to construction and maintenance protocols to address indoor air quality.

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

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

people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

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

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

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

27.11. Tropical Hardwood and Virgin Redwood Ban. Port and the City urge Tenant not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the Environment Code, Tenant shall not provide

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

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

27.13. *Notification of Limitations on Contributions.* If this Lease is subject to the approval by City's Board of Supervisors, Mayor, or other elected official, the provisions of this Section 27.13 shall apply. Through its execution of this Lease, Tenant acknowledges its obligations under Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of one hundred thousand dollars (\$100,000) or more. Tenant further acknowledges that, if applicable, (i) the prohibition on contributions applies to each Tenant; each member of Tenant's board of directors, and Tenant's principal officers, including its chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten (10%) percent in Tenant; and any subcontractor listed in the Tenant's bid or contract; and (ii) within thirty (30) days of the submission of a proposal for the contract, the Port is obligated to submit to the Ethics Commission the parties to the Lease and any subtenant(s). Additionally, Tenant certifies that if this Section 27.13 applies, Tenant has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract and has provided to City the names of the persons required to be informed.

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

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

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

27.17. Prevailing Wages and Working Conditions. Tenant shall comply with all applicable prevailing wage requirements, including but not limited to any such requirements in the California Labor Code, the City and County of San Francisco Charter or the City and County of San Francisco Municipal Code. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Tenant shall require its contractors and subcontractors performing (i) labor in connection with a “public work” as defined under California Labor Code Section 1720 et seq. (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction to: (A) pay workers performing such work not less than the highest prevailing rate of wages, (B) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (C) employ apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, “**Prevailing Wage Requirements**”). Tenant agrees to cooperate with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Prevailing Wage Requirements.

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

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

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

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

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

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

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

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

27.22. Consideration Of Criminal History In Hiring And Employment Decisions.

(a) Tenant agrees to comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; "**Chapter 12T**"), which are hereby incorporated, including the remedies and implementing regulations as may be amended from time to time, with respect to applicants and employees of Tenant who would be or are performing work at the Premises.

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

(c) Tenant and subtenants shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is

undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

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

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

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

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

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

27.23. Vending Machines; Nutritional Standards and Calorie Labeling Requirements; Offerings. Tenant shall not install or permit any vending machine on the Premises without the prior written consent of Port. Any permitted vending machine must comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code section 4.9- 1(c), as may be amended from time to time (the "**Nutritional Standards Requirements**"). Tenant agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section shall be deemed a material breach of this Lease. Without limiting Port's other rights and remedies under this Lease, Port shall have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements. In addition, any Restaurant including any employee eating establishment located on the Premises is encouraged to ensure that at least twenty-five percent (25%) of Meals (as capitalized terms are defined in San Francisco Administrative Code section 4.9-1) offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code section 4.9-1(e), as may be amended.

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

Tenant acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of

payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment Port is required to make to Tenant under this Lease is withheld, then Port will not be in breach or default under this Lease, and the Treasurer and Tax Collector will authorize release of any payments withheld under this Section 27.24 to Tenant, without interest, late fees, penalties, or other charges, upon Tenant coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

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

27.26. Supervision of Minors . Tenant shall comply and shall require its subtenants, contractors and subcontractors to comply with the obligations in California Public Resources Code Section 5164 if Tenant, or any subtenant, contractor, or subcontractor is providing services at a City park, playground, recreational center or beach, Tenant shall not hire, and shall prevent any subtenant, contractor or subcontractor from hiring, any person for employment or a volunteer position in a position having supervisory or disciplinary authority over a minor if that person has been convicted of any offense listed in Public Resources Code Section 5164. In addition, if Tenant or any subtenant, contractor or subcontractor, is providing services to the City involving the supervision or discipline of minors, Tenant and any subtenant, contractor or subcontractor shall comply with any and all applicable requirements under federal or state law mandating criminal history screening for positions involving the supervision of minors. In the event of a conflict between this section and Section 27.22, "Criminal History in Hiring and Employment Decisions," of this Lease, this section shall control.

28. NOTICES.

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

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

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

29. MISCELLANEOUS PROVISIONS.

29.1. California Law. This Lease is governed by, and shall be construed and interpreted in accordance with, the Laws of the State of California and City's Charter. Port and

Tenant hereby irrevocably consent to the jurisdiction of and proper venue in the Superior Court for the City and County of San Francisco.

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

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

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

29.5. Interpretation of Lease.

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

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

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

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

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

(f) This Lease has been negotiated at arm's length between persons sophisticated and knowledgeable in the matters addressed. In addition, each party has been represented by experienced and knowledgeable legal counsel, or has had the opportunity to consult with counsel. Accordingly, the provisions of this Lease must be construed as a whole according to their common meaning in order to achieve the intents and purposes of the parties,

without any presumption (including a presumption under California Civil Code § 1654) against the party responsible for drafting any part of this Lease.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30. LIMITATION ON DAMAGES.

30.1. *No Recourse Beyond Value of Premises.* Notwithstanding anything to the contrary contained in this Lease, Tenant agrees that Tenant will have no recourse with respect to, and Port shall not be liable for, any obligation of Port under this Lease, or for any claim based upon this Lease, except to the extent of the fair market value of Port's fee interest in the Premises (as encumbered by this Lease). Tenant shall look solely to the fair market value of Port's fee interest in the Premises for the recovery of any judgment or award. By Tenant's execution and delivery hereof and as part of the consideration for Port's obligations hereunder, Tenant expressly waives all other liability. Before filing suit for an alleged default by Port, Tenant shall give Port notice and reasonable time to cure the alleged default.

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

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

31. TENANT ESTOPPEL CERTIFICATES.

Tenant, at any time and from time to time upon not less than ten (10) days' prior notice from Port, shall execute and deliver to Port or to any party designated by Port a certificate in substantially the same form as that attached to this Lease as **Exhibit C**. If Tenant shall fail to provide such certificate within ten (10) days of receipt by Tenant of a written request by Port as

herein provided, such failure shall, at Port's election, constitute a default under this Lease, and Tenant shall be deemed to have admitted the accuracy of any information supplied by Port to a prospective purchaser or mortgagee.

32. APPROVAL OF BOARD OF SUPERVISORS.

Notwithstanding anything to the contrary contained in this Lease, tenant acknowledges and agrees that no officer or employee of City has authority to commit City to this Lease unless and until City's Board of Supervisors shall have duly adopted a Resolution approving this Lease and authorizing the transactions contemplated hereby. Therefore, any obligations or liabilities of City hereunder are contingent upon adoption of such a Resolution, and this Lease shall be null and void if City's Mayor and the Board of Supervisors do not approve this Lease, in their respective sole discretion. Approval of this Lease by any department, commission or agency of City shall not be deemed to imply that such Resolution will be enacted, nor will any such approval create any binding obligations on City.

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

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

By: _____
Michael J. Martin
Deputy Director, Real Estate and Development

Date Signed: _____

TENANT: **PILARA FAMILY FOUNDATION, A NEVADA NON-PROFIT**
CORPORATION

By: _____
Name: _____
Title: _____

Date Signed: _____

By: _____
Name: _____
Title: _____

Date Signed: _____

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

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

Lease Prepared By: Michael J. Martin, Deputy Director, Real Estate and Development

Port Commission Resolution:

Board of Supervisors Resolution:

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EXHIBIT A

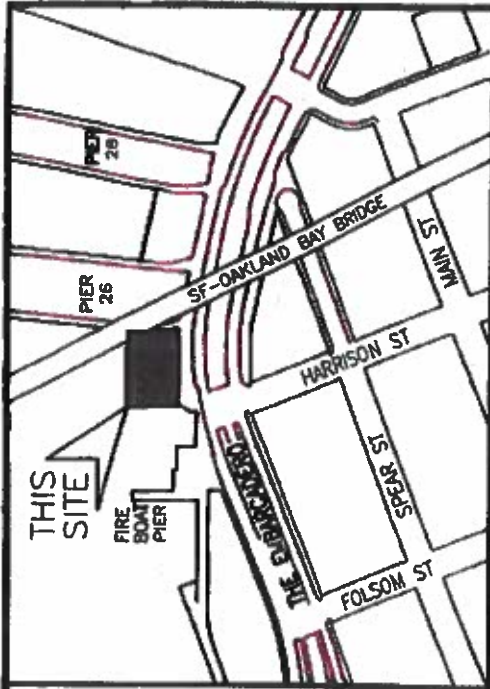
DESCRIPTION OF PREMISES

[Attachment on following page]



EXHIBIT A

INITIALS: _____ PORT: _____ TENANT: _____ DATE: _____



LOCATION PLAN
NO SCALE

BAY BRIDGE ABOVE

SAN FRANCISCO BAY

DOOR

PIER 24 1/2

AREA = 27,311 Sq Ft

ROLL UP DOORS

DOOR

ROLL UP DOORS

GUARD
RAIL

GATE

EXISTING SIDEWALK

TENANT

SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING

PILARA FAMILY
FOUNDATION

DRAWN BY: CDC

DATE: JUN 22, 2009

CHECKED BY:

SCALE: 1" = 30'

PLACE CODE NO.

SHEET NO.

1245-SHEDA

OF SHEETS

LEASE NO.

L-16653

DATE: JUN 22, 2009

EXHIBIT B

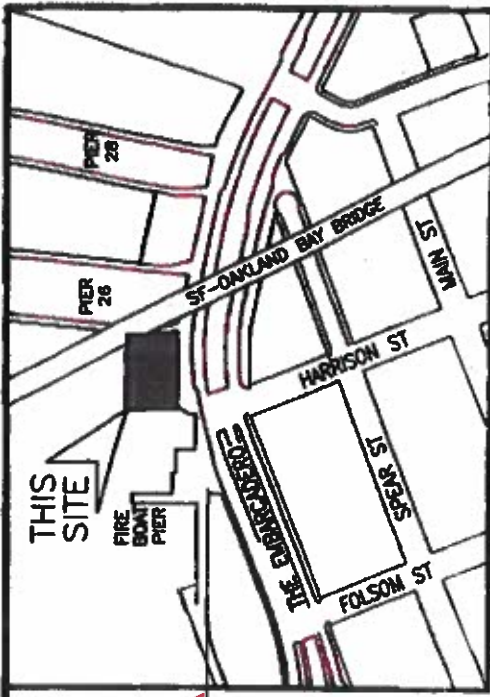
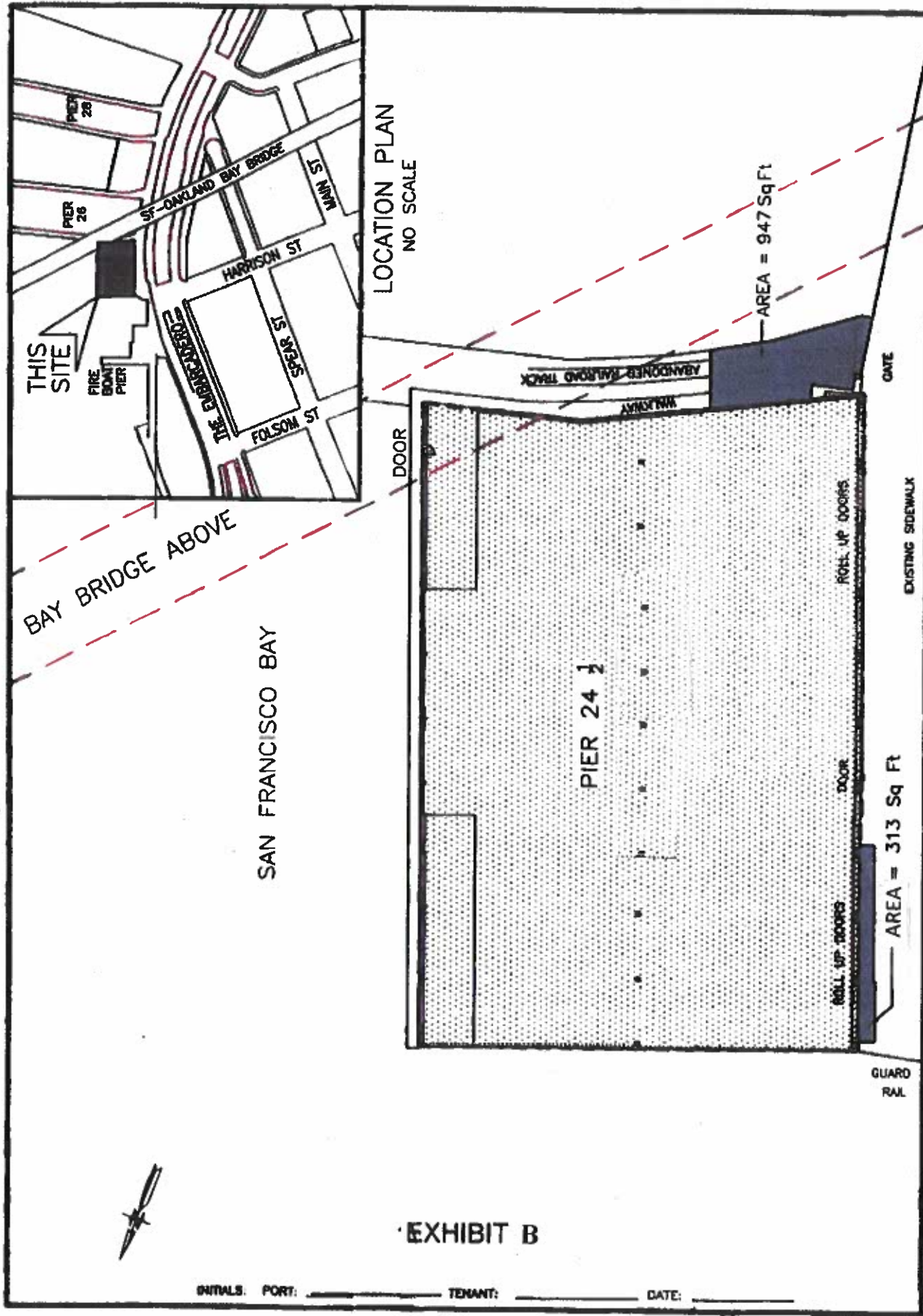
LICENSE AREA

[Attachment on following page]



EXHIBIT B

INITIALS: _____ PORT: _____ TENANT: _____ DATE: _____



LOCATION PLAN
NO SCALE

LOGE NO. L-16653	 SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO DEPARTMENT OF ENGINEERING	TENANT PILARA FAMILY FOUNDATION	DESIGN BY: ECC	DATE: JAN 24, 2008
			CHECKED BY: _____	SCALE: 1" = 30'
			PLACE CODE NO.	SHEET NO.
		1245-SHEDA		
		OF SHEETS		

DATE: JAN 24, 2008
SCALE: 1" = 30'

EXHIBIT C

TENANT ESTOPPEL CERTIFICATE

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

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

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

Dated: _____, 20__.

[Name of Tenant]

By:

Name:

Title:

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

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.

2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.

3. Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.

4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.

5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.

7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

10. New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

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EXHIBIT E

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

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

Background

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

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

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

Port of San Francisco Review Process – Overview

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

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

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

Pier and Bulkhead Wharf Substructures

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

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

SCHEDULE 1

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

[Attachment on following page(s)]

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SCHEDULE 2
SUBSTRUCTURE REPORT(S)

[Attachment on following page(s)]

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SCHEDULE 3

FEMA-National Flood Insurance Program Disclosure Notice

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

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

FIRMs identify areas that are subject to inundation during a flood having a 1% chance of occurrence in a given year (also known as a "base flood" or "100-year flood"). FEMA refers to an area that is at risk from a flood of this magnitude as a special flood hazard area ("SFHA"). To prepare the FIRM for San Francisco, FEMA has performed detailed coastal engineering analyses and mapping of the San Francisco Bay and Pacific Ocean shorelines. These studies include both regional hydrodynamic and wave modeling and detailed onshore coastal analysis used to estimate wave runup and overtopping, as well as overland wave propagation. These onshore analyses form the basis for the Base Flood Elevations (BFEs) and SFHAs shown on the FIRM.

FEMA used these studies to prepare a preliminary FIRM for San Francisco, which it issued in November 2015. The preliminary FIRM identified SFHAs along the City's shoreline in and along the San Francisco Bay consisting of "A zones" (coastal areas subject to inundation by tidal surge and waves less than three feet in height) and "V zones" (areas subject to the additional hazards that accompany waves more than three feet in height). These zones generally affect City property under the jurisdiction of the Port of San Francisco and other areas of the San Francisco waterfront, including parts of Mission Bay, Hunters Point Shipyard, Candlestick Point, Treasure and Yerba Buena Islands, and an area adjacent to Islais Creek. Additionally, the preliminary FIRM shows most of San Francisco International Airport to be within an SFHA.

In response to comments and an appeal submitted by the City, FEMA issued a revised preliminary FIRM in May 2019. The revised preliminary FIRM included changes to the flood hazard data for waterfront piers within the Port's jurisdiction and in the area of the Mission Bay development. FEMA is currently preparing to initiate a 90-day appeal period during which the City and/or property owners may appeal the revised information based on technical data. FEMA expects the appeal period to be initiated in December 2019 or January 2020. Following resolution of any appeals or comments, FEMA will issue a Letter of Final Determination (LFD) stating that the flood hazard data shown on the FIRM is final, and stating that the map will be published in final form six months from the date of the LFD (referred to as the "effective date" of the FIRM). During that six-month period, the City must amend the floodplain management ordinance to adopt the new FIRM. FEMA expects the FIRM to become effective in early 2021. After the effective date, the FIRM will be used for all flood insurance and floodplain management purposes.

The federal legislation and regulations implementing the NFIP are located at 42 U.S.C. §§ 4001 et seq.; 44 C.F.R. Parts 59-78, §§ 59.1-78.14. FEMA also publishes "Answers to Questions About the NFIP" and FEMA Publication 186 entitled "Mandatory Purchase of Flood Insurance Guidelines." Additional information on this matter can be found on the City's and FEMA's websites at the following links:

<http://sfgsa.org/san-francisco-floodplain-management-program>

<https://www.fema.gov/national-flood-insurance-program-flood-hazard-mapping>

<https://www.fema.gov/national-flood-insurance-program>

SETTLEMENT AGREEMENT

This Settlement Agreement ("**Agreement**") dated for reference purposes as of February 1, 2020 is made and entered into by and between the Pilara Family Foundation, a Nevada non-profit corporation ("**PFF**") and the City and County of San Francisco, acting through its San Francisco Port Commission ("**Port**").

RECITALS

The parties enter into this Agreement with reference to the following facts and allegations:

A. In June 2007, Port and PFF (the "**Parties**") entered into Port Lease No. L-14414 for a seven and one-half year term for that certain pier shed space located at the Pier 24 Annex in the City and County of San Francisco, State of California for the sole purpose of storage and curation of an art and photographic collection, visits by researchers by appointment only, and periodic visits by PFF's Board of Trustees (the "**Lease**") (Port Commission Resolution 07-68). The Lease commenced on December 1, 2007. The Lease: (i) provided six (6) months of free rent; (ii) prohibited public assembly, admission of the general public and special events without prior Port approval; and (iii) required PFF to perform the following Initial Tenant Improvements at PFF's sole cost and without rent credits: repairs to the substructure and superstructure, replacement of the roof, installation of a state-of-the-art fire suppression system, installation of a Heating, Ventilation, and Air Conditioning System, connection and installation of utilities, and abatement of existing hazardous materials on the exterior and interior of the building. PFF estimated the cost of the Initial Tenant Improvements to be at \$3.2 million. The Lease was amended by the First Amendment effective June 6, 2008 to remove the requirement to obtain earthquake insurance coverage and to allow a personal guaranty for the improvements.

B. During construction of the Initial Tenant Improvements, PFF encountered unforeseen conditions, including extensive dry rot and termite damage that the Parties agreed could not have been known prior to execution of the Lease. PFF estimated that the total project cost would be \$11 million of which approximately \$7.5 million would be for core and shell improvements including substructure repairs. Accordingly, the Parties executed a Second Amendment to the Lease, effective January 1, 2009, amending the Lease as follows: (i) increasing the monthly rent to reflect the fair market value of the premises; (ii) extending the term until November 30, 2017 (the "**Lease Expiration Date**") for a total ten year term; and (iii) providing rent credits for Certified Core Improvement Costs that would benefit the Port in an amount not to exceed \$3 million (Port Commission Resolution 08-74; Board of Supervisors Resolution 49-09). PFF completed the Initial Tenant Improvements in June of 2010 and represents that it expended a total of \$14 million on the Initial Tenant Improvements including \$9.2 million on the building core and shell.

C. Effective December 16, 2010, the Lease was amended by the Third Amendment to change the Permitted Uses and Prohibited Uses to: (i) allow for visits by the general public to view the photography collection by appointment at no charge; and (ii) to prohibit: public assembly, exceedance of the legal occupancy limit of 93 people at any time, the sale of tickets or products, and any retail uses.

D. The Lease expired on November 30, 2017 and continued on a holdover month-to-month basis ("**Holdover Period**"). At that time, a disagreement arose regarding the rent owed during the holdover period. PFF alleged that it was entitled to continue to apply the same monthly rent credit that it had applied prior to the Lease Expiration Date until a new lease or amendment could be negotiated and Port alleged that the maximum \$3 million rent credit was fully applied and that fair market rent was then due. Despite negotiations, the Parties were

unable to agree and, on December 13, 2019, Port sent PFF a thirty day notice to terminate the Lease, including an estimate of holdover rent in an amount equal to \$1,325,648.76 in alleged unpaid rent and late charges.

E. The Parties now wish to settle their dispute in a manner that allows PFF to continue offering access to its collection to interested members of the public and enter this Agreement with the intention of avoiding protracted disputes, uncertainties, and litigation with their attendant inconveniences and expenses. Nothing contained herein is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of the Parties hereto.

F. As described in further detail below, subject to approval by the Port Commission and Board of Supervisors, under this Agreement, (i) the Parties will terminate the Lease and enter into a new lease in the form attached hereto ("**New Lease**") which allows the application of rent credits for the remaining unamortized core and shell investment for a term commensurate with the exhaustion of such credits and in exchange requires PFF to maximize public access to view its collection to the extent feasible taking into consideration legal occupancy limitations; and (ii) the Parties will release each other for matters related to the dispute.

G. All capitalized terms used herein but not otherwise defined shall have the meaning given to them in the Lease or the New Lease as the case may be.

AGREEMENT

1. RECITALS.

The foregoing recitals are true and correct and are incorporated herein by this reference as if fully set forth herein.

2. LEASE RECONCILIATION AND NEW LEASE.

(a) Port will allow a total rent credit of \$8.5 million for Certified Core Improvements Costs as that term is defined in the Lease. The Parties agree that \$3 million of the total rent credit was exhausted as of the Lease Expiration Date, leaving an additional \$5.5 million rent credit that can be applied (i) during the holdover period of the Lease and (ii) under the New Lease until exhausted. In order to implement this Agreement,

(i) The New Lease will commence upon the termination of the Lease ("**Lease Termination Date**") which date will be the date immediately preceding the New Lease Commencement Date.

(ii) Until the Lease Termination Date, PFF will continue to pay monthly base rent of \$1.18 per square foot and will receive a monthly rent credit of \$1.136 per square foot, resulting in \$1,202.59 of rent payable to the Port each month, and the Parties agree that this amount is the applicable rate for the Holdover Period.

(iii) The remaining balance of the total \$8.5 million rent credit will be applied under the New Lease.

(iv) Under the New Lease, PFF will pay monthly base rent of \$3.40 per square foot with a monthly rent credit of \$3.19 per square foot resulting in \$5,735.31 rent payable to the Port each month.

(v) The term of the New Lease will expire on the date the \$5.5 million rent credit is exhausted.

(b) The Parties must execute the New Lease in the form attached hereto as ***Exhibit A***. The only changes to the attached form of lease for the New Lease will be to fill in the Effective Date, the Commencement Date and the Expiration Date which will be calculated based on the remaining balance of the \$5.5 million rent credit as of the Commencement Date of the New

Lease and to add any new mandatory City requirements applicable as of the Commencement Date of the New Lease. The New Lease shall be effective on the date fully executed by both Parties and shall commence on the first day of the first calendar month following the effective date; and shall expire on the date on which the balance of the rent credit is exhausted. For illustrative purposes, an example calculation of the Expiration Date of the New Lease is attached.

(c) Except as explicitly provided herein with respect to rent credits for Certified Core Improvements Costs, (i) from and after the Lease Termination Date, neither Port nor PFF shall have any rights or obligations under the Lease, except for obligations arising prior to the Lease Termination Date and any rights or obligations which, by their express terms, survive the expiration or termination of the Lease; (ii) except as otherwise provided in Section 4(b) or Section 5 (Mutual Releases) hereof, this Agreement shall not release or discharge PFF from any liability, whether past, present or future, under the Lease (including but not limited to any indemnification, hold harmless or exculpation obligations) nor shall it be construed to waive any breach by PFF, or any of Port's rights thereunder, or to enlarge or increase Port's obligations thereunder; and (iii) Port expressly reserves the right to pursue and does not release PFF from any and all obligations under the Lease, except as otherwise provided and released in Section 4(b) or Section 5 (Mutual Releases).

3. PFF OBLIGATIONS.

(a) No later than March 4, 2020, PFF shall execute this Agreement. PFF agrees that Port has no obligation to present this Agreement to the Port Commission unless and until PFF fulfills this obligation.

(b) As a material consideration for this Agreement, as a condition of the New Lease and to remain entitled to the rent credit described in Section 2(a)(iii), (A) PFF shall continue to maintain the PFF photography collection on the Premises and allow and facilitate maximum public access to view the collection to the extent feasible taking into consideration legal occupancy limitations at no cost through an on-line reservation system similar to the system in place on the Effective Date of this Agreement; (B) in furtherance of the goal of maintaining and maximizing public access to the extent feasible taking into consideration legal occupancy limitations, PFF shall track and report on visits to the Premises as detailed in the New Lease; (C) at Port's request, PFF will meet and confer with Port regarding implementation of measures intended to increase the public's enjoyment of the Premises and the collection and/or provide other public benefits; and (D) PFF (as the tenant) must maintain its nonprofit status and must annually certify to such status in writing and from time to time at Port's request.

(c) No later than thirty (30) days after the Lease Commencement Date, PFF shall reimburse Port for its actual attorney's fees in the amount of \$20,000.

4. PORT OBLIGATIONS.

(a) Upon the necessary approval actions described in Section 9 of this Agreement, Port shall execute this Agreement, produce an execution version of the New Lease, and upon PFF's execution of the New Lease and delivery of the first month's rent and proof of insurance as required by the New Lease, execute the New Lease.

(b) Port agrees to waive all late charges, interest and holdover rent accruing after the Lease Expiration Date (estimated in the Port's termination letter to be \$1,325,648.76), and prior to PFF's execution of this Agreement.

5. MUTUAL RELEASES.

PFF, for itself and on behalf of its officers, employees, owners, successors, and assigns, if any, and on behalf of its agents and invitees, hereby agrees to fully and forever release and discharge the City and County of San Francisco, its elective and/or appointive boards, agents, employees, departments, commissioners, and officers, including without limitation the San

Francisco Port Commission ("**City Releasees**") from any and all claims, actions, causes of action, liabilities, damages, loss of business or profits, demands, attorneys' fees, expenses and costs (including without limitation court costs) of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, which have existed or may have existed, or which do exist, or which hereafter shall or may exist, and which arise out of or are in any way related to any of the transactions, occurrences, acts or omissions related to the Lease or the matters described in this Agreement. PFF agrees that this release includes without limitation, any claims for any cost for improvements made by PFF under the Lease in excess of \$8.5 million.

PFF waives any rights or benefits provided by Section 1542 of the Civil Code, which reads as follows:

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

PFF hereby waives application of Section 1542 of the Civil Code. PFF understands and acknowledges that, as a consequence of this waiver of Section 1542, even if PFF should eventually suffer additional or further loss, damages or injury arising out of or in any way related to any of the events which gave rise to this Agreement, or any of them, PFF will not be permitted to make any claims to recover for such loss, damages or injury. PFF acknowledges that it intends these consequences even as to claims that may exist as of the date of this Agreement but which PFF does not know exist, and which, if known, would materially affect PFF's decision to execute this Agreement, regardless of whether PFF's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

Port, for itself and on behalf of its and City's officers, employees, owners, successors, and assigns, if any, and on behalf of its agents and invitees, hereby agrees to fully and forever release and discharge PFF, its elective and/or appointive boards, agents, employees, ("**PFF Releasees**") from any and all claims, actions, causes of action, liabilities, damages, loss of business or profits, demands, attorneys' fees, expenses and costs (including without limitation court costs) of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, which have existed or may have existed, or which do exist, or which hereafter shall or may exist, and which arise out of or are in any way related to claims related to rent under the Lease.

Port waives any rights or benefits provided by Section 1542 of the Civil Code, which reads as follows:

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

Port hereby waives application of Section 1542 of the Civil Code. Port understands and acknowledges that, as a consequence of this waiver of Section 1542, even if Port should eventually suffer additional or further loss, damages or injury arising out of or in any way related to any of the events which gave rise to this Agreement, or any of them, Port will not be permitted to make any claims to recover for such loss, damages or injury. Port acknowledges that it intends these consequences even as to claims that may exist as of the date of this Agreement but

which Port does not know exist, and which, if known, would materially affect Port's decision to execute this Agreement, regardless of whether Port's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

The terms of this Section 5 shall survive the expiration or earlier termination of this Agreement.

6. AUTHORITY.

Each of the persons executing this Agreement on behalf of PFF hereby covenants and warrants that PFF is a duly authorized and existing entity, that PFF has and is qualified to do business in California, that PFF has full right and authority to enter into this Agreement, and that each and all of the persons signing on behalf of PFF are authorized to do so.

7. RIGHTS ARE CUMULATIVE.

The liability of PFF and all rights, powers, and remedies of Port under this Agreement shall be cumulative and not alternative, and such rights, powers, and remedies given to Port by law or in equity.

8. MISCELLANEOUS.

(a) Each party acknowledges that, in executing this Agreement, it is acting on its own, independent judgment and advised by its legal counsel. Each party acknowledges having read this Agreement and each of its provisions and understands its meaning and effect. Each party acknowledges and warrants that its execution of this Agreement is free and voluntary.

(b) Each party acknowledges that this Agreement and its exhibits contain and constitutes the entire agreement between the Parties with respect to the matters discussed herein. The terms of this Agreement are contractual and not a mere recital. Each party acknowledges that the other party has made no representations, express or implied, to induce that party to enter into this Agreement, other than as expressly set forth herein.

(c) Any prior correspondence, memoranda, agreements, warranties, or representations, whether written or oral, relating to such subject matter are superseded in total by this Agreement. No prior drafts of this Agreement or changes from those drafts to the executed version of this Agreement shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider those drafts in interpreting this Agreement.

(d) No aspect of this Agreement is intended to be nor at any time shall be construed, deemed, or treated in any respect as an admission by either party of liability for any purpose. The Parties expressly understand that this Agreement does not constitute an admission of the truth or accuracy of any of allegations made in the course of the Parties' discussions. Nothing contained herein shall operate as a representation or warranty by Port of any nature whatsoever.

(e) This Agreement has been fully negotiated with the assistance of counsel and should not be construed more strictly against one party than another.

(f) If any of the provisions of this Agreement or the application thereof is held to be invalid, its invalidity shall not affect any other provision or application of this Agreement to the extent that such other provision or application can be given effect without the invalid provision or application, and to this end, the provisions of this Agreement are declared and understood to be severable.

(g) In the event of any inconsistencies between the terms of this Agreement and the Lease, or the New Lease, the terms of this Agreement shall prevail. Time is of the essence of this Agreement. This Agreement shall be governed by the laws of the State of California. Neither this Agreement nor any of the terms hereof may be amended or modified except by a written instrument signed by all the Parties hereto.

9. PORT COMMISSION AND BOARD OF SUPERVISORS APPROVAL.

This Agreement (including the New Lease) is subject to the approval of the San Francisco Port Commission. The New Lease is subject to the approval of the San Francisco Board of Supervisors. Each approval shall be in the sole discretion of the approval body.

Notwithstanding anything to the contrary contained in this Agreement, PFF acknowledges and agrees any obligations or liabilities of City under this Agreement are contingent upon a duly adopted Resolution of the Board of Supervisors approving the New Lease and the New Lease shall be null and void if City's Mayor and the Board of Supervisors do not approve the New Lease, in their respective sole discretion. Approval of this Agreement or the New Lease by any department, commission or agency of City shall not be deemed to imply that such Resolution will be enacted, nor will any such approval create any binding obligations on City.

10. EFFECTIVE DATE; EXPIRATION DATE.

(a) This Agreement shall be effective upon Port's execution following the effective date of a duly adopted a resolution of the Board of Supervisors approving the New Lease.

(b) If a Resolution of the Board of Supervisors approving the New Lease is not adopted by September 1, 2020, this Agreement will automatically expire and the Parties will have no further obligations under this Agreement.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth below.

PILARA FAMILY FOUNDATION, A NEVADA NON-PROFIT CORPORATION

By: _____
Name: ANDREW PILARA
Title: PRESIDENT
Date Signed: 4/4/20

By: _____
Name: _____
Title: _____
Date Signed: _____

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

By: _____
Michael J. Martin
Deputy Director, Real Estate and Development
Date Signed: _____

Approved as to Form:
DENNIS J. HERRERA, City Attorney

By: _____
Rona H. Sandler
Deputy City Attorney

Port Commission Resolution No. _____

Agreement Prepared by: Michael Martin (initial)

EXAMPLE CALCULATION OF EXPIRATION DATE OF NEW LEASE

EXAMPLE 1: Assuming the new lease commences May 1, 2020

- a. Total rent credits available: \$5,500,000
- b. Rent Credits for Holdover Period:
 - i. November 2017 through December 2019: \$873,776.72 (per revised calculation sent by Port on 2/26/20)
 - ii. January 2020 through April 2020: \$124,101.20
 - 1. \$1.136/sf per month per Section 2(a)(ii) of Settlement Agreement
 - 2. $\$1.136 \times 27,311 \text{ sf} = \$31,025.30$
 - 3. $\$31,025.30 \times 4 \text{ months} = \$124,101.20$
 - iii. Total Rent Credits for November 2017 through April 2020: \$997,877.92
- c. Remaining Rent Credits after Holdover Period: \$4,502,122.08
- d. Term to amortize remaining rent credits: 51.7 months
 - i. Monthly rent credit as reflected on Lease page BLI-5: \$3.19/sf per month
 - ii. $\$3.19 \times 27,311 \text{ sf} = \$87,122.09$
 - iii. $\$4,490,781.20 \text{ divided by } \$87,122.09 = 51.7$
- e. Therefore, the expiration date of the New Lease would be August 22, 2024

EXAMPLE 2: Assuming the new lease commences July 1, 2020

- a. Total rent credits available: \$5,500,000
- b. Rent Credits for Holdover Period:
 - i. November 2017 through December 2019: \$873,776.72 (per outline of terms sent by Port on 12/2019)
 - ii. January 2020 through June 2020: \$186,151.80
 - 1. \$1.136/sf per month per Section 2(a)(ii) of Settlement Agreement
 - 2. $\$1.136 \times 27,311 \text{ sf} = \$31,025.30$
 - 3. $\$31,025.30 \times 6 \text{ months} = \$186,151.80$
 - iii. Total Rent Credits for November 2017 through June 2020: \$1,059,928.52
- c. Remaining Rent Credits after Holdover Period: \$4,440,071.48
- d. Term to amortize remaining rent credits: 51 months
 - i. Monthly rent credit as reflected on Lease page BLI-5: \$3.19/sf per month
 - ii. $\$3.19 \times 27,311 \text{ sf} = \$87,122.09$
 - iii. $\$4,428,730.59 \text{ divided by } \$87,122.09 = 50.8$
- e. Therefore, the expiration date of the New Lease term would be September 30, 2024

EXHIBIT A
FORM OF NEW LEASE

[Attachment on following page]

MEMORANDUM

March 5, 2020

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, President
Hon. Willie Adams, Vice President
Hon. Gail Gilman
Hon. Victor Makras
Hon. Doreen Woo Ho

FROM: Elaine Forbes
Executive Director

SUBJECT: Request approval of a Settlement Agreement and Lease No. L-16653 with the Pilara Family Foundation ("PFF") under which: (i) Port's claims for rent due and PFF's claims for rent credits due under current Lease No. L-14414 for the Pier 24 Annex will be resolved; (ii) Port and PFF will enter into a new lease for the Pier 24 Annex for a term of approximately four (4) years; (iii) the new lease will allow storage, curation and display of a photographic collection and require PFF to continue to provide free public access to view the collection and will allow for rent credits of up to \$5.5 million; (iv) the new lease is subject to approval by the Board of Supervisors; (v) the parties will release each other from potential claims in connection with the Settlement Agreement; and (vi) the Settlement Agreement and new lease include other terms and conditions as set forth in the documents on file with the Port Commission secretary

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution

Executive Summary

Lease No. L-14414 with the Pilara Family Foundation ("PFF") for Pier 24 Annex expired on November 30, 2017. In December 2019, after two years of negotiations regarding a new lease and payment of delinquent rent, Port staff issued a notice of termination for the expired lease. The parties agreed to make an additional effort at bridging the divide and Port staff have negotiated a settlement approach that achieves the following goals:

1. Agreement by the Tenant to continue the public-oriented operations at the Premises for the benefit of visitors and residents of San Francisco as a required use of the premises;

THIS PRINT COVERS CALENDAR ITEM NO. 11A

2. Improved reporting of visitor attendance and special event activities, to assist the Port in understanding the value of the space under its current occupancy constraints;
3. A lease term keyed to the amortization of remaining capital expenditures according to the current parameter rental rate of the facility;
4. Establishment of a path by which PFF may elect to prepare an assessment of further repair needs and potential seismic improvements that would form the basis of a negotiation for subject a further lease extension in exchange for capital improvements; and
5. Resolution of the parties' claims while avoiding costly and time-consuming litigation.

The proposed settlement achieves these goals through two methods: settlement of outstanding delinquent rent due and entry of a new lease, all as further described below. Port staff recommends approval of the settlement to set the parties on a path towards continuing and improving the public's ability to access PFF's unique photographic collection and restored shed space.

Strategic Objective

The proposed settlement supports the Strategic Plan goal of Equity by continuing a tenant relationship that attracts a diversity of people to the waterfront.

Background

In 2007, at the time when the Port initially entered the current PFF lease, Pier 24 Annex had been condemned with rotting and missing pilings, sections of collapsed floor, severe water and termite damage to several of the major exterior columns and inadequate utility services. The building had been vacant since the 1980s. In 1998, the Port issued a "Request for Proposals" for retail or entertainment uses. The RFP was awarded to a developer but lease negotiations did not result in a final executed lease due to the small footprint of the building and the extraordinary large amount of investment necessary to activate the building. In light of this deteriorated condition, the Port had approved a capital budget item in the amount of \$3 million for the demolition and removal of the entire pier shed.

Instead, the Port entered into Lease No. L-14414 on January 2007 with the PFF for 27,311 square feet of Pier 24 (the "Current Lease"). Under the Current Lease PFF performed a significant capital improvement to remedy the conditions noted above and make the building safe for storage of PFF's photography collection. The building is very unique; even though PFF improved the space it is still classified as a S2 Occupancy warehouse use with a limited occupancy load of 93 persons.

Over time PFF worked within the occupancy restrictions to operate the premises as a museum-like space for the public to enjoy the space and view the collection. PFF provides a unique opportunity for the public to enjoy the waterfront by engaging the community through exhibitions, publications, and public and school programs. PFF welcomes members of the public, academic institutions, museum groups, and scholars for self-guided tours through the space at no cost. Under the Current Lease, PFF bears

the costs of all building maintenance including the substructure improvements it installed plus all utilities, staffing, program and operational costs.

The Current Lease as previously amended was for a term of ten years with monthly rent and an amortized rent credit in the amount of \$3.0 million for base building core and shell improvements only. The Lease expired November 30, 2017 and the rent credit was exhausted. Per the Tenant, the amount of the project was \$14.0 million with a total of \$9.2 million invested into base building core and shell improvements (including \$1.0 million of substructure work). The Port has reviewed and validated \$8.5 million in base building core and shell improvements, leaving \$5.5 million in unamortized capital improvements as of the expiration date of the Current Lease. The Current Lease has continued on a holdover basis and will be finally terminated upon commencement of the new lease subject to the approvals described in this Staff Report.

In the months leading up to and following the expiration date of the Current Lease, the parties engaged in negotiations for a mutually agreeable extension of the term while PFF continued to pay rent in an amount reflecting the deduction of rent credits. When the best and final offers of the two sides remained appreciably apart after two years of such discussions, Port staff issued a 30-day notice of termination on December 22, 2019.

In the wake of that notice, representatives of the Port and PFF indicated a willingness to revisit the Port's last offer. Upon confirmation of the general agreement to the structure summarized below, Port staff issued a letter agreeing to forbear from taking legal action to enforce the notice of termination while the full agreement could be negotiated. Those discussions were successful and Port staff is recommending approval of these agreements to reframe and refresh the parties' relationship.

Settlement Summary

As noted above, the proposed settlement Port staff achieves these goals through two methods: settlement of outstanding delinquent rent due and entry of a new lease (Lease No. 16653, the "New Lease").

Delinquent Rent under Prior Lease. In terms of the outstanding rent, as of the time of the termination notice PFF had incurred approximately \$1,325,648.76 in delinquent rent charges, with \$873,776.72 attributable to the listed \$1.18/sf rate in the expired lease (the "Base Portion") and \$451,872.04 attributable to the 50% increase in such rate required under Section 26.1 of the expired lease (the "Holdover Provision Portion"). The proposed Settlement Agreement would address these amounts as follows:

- The Port would credit the Base Portion against the \$5.5 million of the unamortized costs noted above, with a true-up of amounts accrued up until the date the new lease commences.
- The Holdover Provision Portion would be waived.
- The unamortized rent credits remaining after addressing the delinquent rent charges would be eligible for use under the New Lease.

Entry of a New Lease. The Settlement Agreement's crediting of delinquent rent is further conditioned on the parties' agreement to enter the New Lease of the premises with the following rent terms:

- Monthly rent is equal to the current parameter rental rate adopted by the Port Commission (\$3.40/sf per month for 27,311 sf, or \$92,857.40 with no indexing increases);
- To defray that amount, Port will authorize PFF to take rent credits of \$3.19/sf per month, leaving a payment of \$0.21/sf per month or \$5,735.31; and
- The total authorized amount of rent credits is equal to the amount remaining after the true-up and crediting of delinquent rent as described above.

The base New Lease term would expire upon full amortization of the unamortized rent credit. This will vary according to the date the New Lease commences; for example, if the New Lease commences on May 1, 2020 then the remaining term will be 4 years and 3.7 months. There will be no provision that provides PFF the right to holdover.

As noted above, PFF would be required to continue the public-oriented operations at the Premises for the benefit of visitors and residents of San Francisco with free entry and will provide Port with improved reporting on its visitors. The New Lease will be non-transferable without Port's consent in its sole discretion. Except as otherwise described below, the New Lease will be on the Port's boilerplate form and will include standard as-is provisions, security deposit, the Seawall project, Port participation in sale of the lease, hazardous materials, indemnity, insurance requirements and all required City provisions. As was the case with the Current Lease, the New Lease does not include the Port's usual termination right for a Port program or project. In light of the short duration of the New Lease staff believes that this deletion is appropriate. In addition, the New Lease also includes an elective termination right for PFF with one year's prior written notice, and a termination right for PFF with 90 days written notice in the event that maintenance and repair obligations exceed what is reasonable in light of the remaining term of the New Lease. The parties have also negotiated an approach that carries over the security deposit from the Current Lease to the New Lease, rather than requiring further deposits in light of the increased underlying rental rate.

Both parties are also interested in exploring whether there are beneficial improvements that can be made to the premises that would justify further extension of the term under the Port's leasing policies. Accordingly, the New Lease provides that Port will consider a proposal by Tenant, made before the first anniversary of the Commencement Date of this Lease, to extend the Term of the Lease on terms and conditions consistent with City and Port policies and practices and which are mutually beneficial to the Parties. The Port's review of such a proposal will be predicated in significant part on the proposed improvements to Port property. Accordingly, any such proposal must be accompanied by a facilities condition report (the "Facilities Condition Report") prepared by a qualified team of construction professionals including a structural and mechanical engineer acceptable to both Parties. The Facilities Condition Report must, at a minimum, describe the condition and integrity of the Facility and improvements, the Seawall, substructure, and all plumbing, electrical, fire protection, life safety, security and other mechanical electrical, and communications systems serving the Premises; and the repair and investment needs and schedule and the estimated costs for such needs. Tenant's proposal must address all necessary repair and investment needs described in the submitted Facilities Condition Report anticipated over the proposed extension term and must also include a feasibility study of seismic upgrades that would eliminate the

current occupancy limitation and/or allow for public assembly. Any extension will be subject to approval by the Port Commission and the City's Board of Supervisors in the sole discretion of each.

Port Staff Policy Analysis

As noted above, Port staff negotiated the proposed settlement terms to provide more certainty for the continuation of the ability of the public to enjoy PFF's collection which in turn further fulfills PFF's stated mission as a nonprofit. In addition, PFF and Port staff expressed a shared desire to explore whether an agreement for additional lease term in exchange for additional improvements will allow PFF to continue its operations; the New Lease specifically lays out a process by which the parties can engage in the further technical review and negotiations needed to achieve such an arrangement.

Port Staff Recommendation

Port staff recommends that the Port Commission approve the attached resolution at the March 10, 2020 meeting authorizing execution of the Settlement Agreement and approving form of New Lease. If approved by the Port Commission, the New Lease would also require further approval by the Board of Supervisors per Charter Section 9.118. Upon such approval, the Port would execute both the Settlement Agreement and New Lease.

Prepared by: Michael Martin
Deputy Director
Real Estate and Development

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

RESOLUTION NO. 20-14

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of the City and County of San Francisco; and
- WHEREAS, the Port entered into Lease No. L-14414 in January 2007 with the Pilara Family Foundation, a nonprofit corporation ("PFF") for 27,311 square feet of Pier 24 Annex (the "Lease"); and
- WHEREAS, The Lease, as subsequently amended, was for a term of ten years with monthly rent and an amortized rent credit in the amount of \$3.0 million for base building core and shell improvements only; and
- WHEREAS, The Port reviewed and validated \$8.5 million in base building core and shell improvements performed by PFF, leaving \$5.5 million in unamortized capital improvements; and
- WHEREAS, The Lease expired November 30, 2017 and the rent credit was exhausted; the Lease has been on holdover status since its expiration; and
- WHEREAS, The parties were unable to resolve their disputes regarding Port's claims for rent due and PFF's claims for rent credits due and after two years of such discussions, Port staff issued a 30-day notice of termination on December 22, 2019; and
- WHEREAS, After the issuance of that notice, the parties revisited their final offers and reached agreement on a draft Settlement Agreement (the "Settlement Agreement") which requires the parties to enter into a new lease for the premises (the "New Lease"); and
- WHEREAS, Under the proposed Settlement Agreement, (i) Port's claims for rent due and PFF's claims for rent credits due under current Lease No. L-14414 will be resolved; (ii) Port and PFF will terminate the Lease and enter into a New Lease for the Pier 24 Annex for a term of approximately four (4) years equivalent to the time needed to apply the unamortized rent credits; (iii) the New Lease will allow storage, curation and display of a photographic collection and require PFF to continue to provide free public access to view the collection and will allow for rent credits of up to \$5.5 million; (iv) the parties will release each other from potential claims in connection with the Settlement Agreement; and (v) the Settlement Agreement and the New Lease

include other terms and conditions as set forth in the documents on file with the Port Commission secretary and as described in more detail in the Memorandum to the Port Commission dated March 5, 2020; and

WHEREAS, The parties now wish to settle their dispute in a manner that allows PFF to continue offering free access to its collection to interested members of the public and with the intention of avoiding protracted disputes, uncertainties, and litigation with their attendant inconveniences and expenses; and now therefor be it

RESOLVED, that, subject to Board of Supervisors' approval of the New Lease, the Port Commission hereby approves the execution of the Settlement Agreement and the New Lease, each in substantially the same form on file with the Port Commission Secretary; and be it further

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

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of March 10, 2020.



Secretary

THIRD AMENDMENT TO LEASE NO. L-14414

This Third Amendment to Lease No. L-14414 (the "**Third Amendment**"), dated for reference purposes only as of December 7, 2010, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "**City**"), operating through the SAN FRANCISCO PORT COMMISSION (the "**Port**"), as landlord, and Pilara Family Foundation, a Nevada Non-Profit Corporation, as tenant (the "**Tenant**").

RECITALS

A. Port and Tenant entered into Port Lease No. L-14414, dated June 21, 2007 for reference purposes only (the "**Original Lease**"), for that certain real property located at Pier 24 Annex consisting of approximately 27,311 square feet of pier shed space in the City and County of San Francisco, State of California, more particularly described in the Original Lease. The Lease was approved by the Port Commission by Resolution 07-68.

B. Port and Tenant subsequently executed a First Amendment to Lease on June 6, 2008 ("**First Amendment**"). The First Amendment made certain revisions to the Original Lease, including providing for a Personal Guaranty by Tenant in the amount of \$6 million to ensure completion of Initial Tenant Improvements.

C. Port and Tenant subsequently executed a Second Amendment to Lease on June February 25, 2009 ("**Second Amendment**"). The Second Amendment made certain revisions to the Original Lease, including (i) increasing the Monthly Base Rent, (ii) extending the Term by two and a half years for a total ten year term; and (iii) providing rent credits to Tenant for certain Core Improvements that benefit the Port in an amount not to exceed \$3 million. The Second Amendment was approved by the Port Commission by Resolution 08-74 and by the Board of Supervisors by Resolution 49-09 (due to the ten year term of the Lease) which also ratified the earlier actions of the Port Commission. Among other things, these Resolutions authorized the Port's Executive Direct to make additional amendments that are in the best interest of the Port and which do not materially increase the obligations or liabilities of the City or Port, and are necessary or advisable to complete the transactions contemplated by the Resolutions.

D. Consistent with Tenant's non-profit status and mission, the parties desire to amend the use provision of the Lease to allow for visits by the general public to view the photography collection by appointment only and at no charge. All visits, by the public, researchers, Board members and special events are subject to the occupancy limit under the existing occupancy classification (S-2) which is currently 93 people. The parties agree that no retail uses will be allowed on the Premises. This amendment is consistent with the authority granted to the Executive Director by the Resolutions cited above.

E. Tenant is in good standing.

F. The Original Lease, the First Amendment, and the Second Amendment are at times collectively referred to as the "**Lease**." All capitalized terms used herein but not otherwise

ORIGINAL

defined shall have the meaning given to them in the Original Lease, First Amendment or Second Amendment.

NOW THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the Port and Tenant hereby amend the Lease as follows:

AGREEMENT

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference as if fully set forth herein.

2. **Permitted Use.** The Permitted Use section of the Basic Lease Information in the Original Lease is hereby deleted in its entirety and replaced with the following:

<i>Permitted Use:</i>	The Premises shall be used solely for storage and curation of a photographic collection; visits by researchers and invitees; and visits by the general public by appointment only and at no charge and for no other purpose. Such visits shall not cause Tenant to exceed the allowable occupancy limit under the existing occupancy classification (S-2).
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3. **Additional Prohibited Uses.** The Additional Prohibited Uses section of the Basic Lease Information in the Original Lease is hereby deleted in its entirety and replaced with the following:

<i>Additional Prohibited Uses:</i>	<p>In addition to, and without limiting, the Prohibited Uses specified in Section 8.2 below, Tenant shall be prohibited from using the Premises for any of the following activities:</p> <ul style="list-style-type: none">(a) Public Assembly(b) Exceedance of the legal occupancy limit under the existing occupancy classification of the Premises (S-2) at any time, including researchers, invitees, or members of the general public;(c) Sale of tickets, products or any retail uses. <p>Port shall have all remedies set forth in this Lease, and at law or equity in the event Tenant performs any of the Prohibited Uses.</p>
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4. **Entire Agreement.** This Third Amendment contains all of the representations and the entire agreement between the parties with respect to the subject matter of this agreement. This Third Amendment supersedes any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to the subject matter of the Third Amendment in their entirety. No prior drafts of this Third Amendment or changes between those drafts and the executed version of this Third Amendment shall be introduced as evidence in any

litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider such drafts in interpreting this Third Amendment.

5. **Miscellaneous.** This Third Amendment shall bind, and shall inure to the benefit of, the successors and assigns of the parties hereto. This Third Amendment is made for the purpose of setting forth certain rights and obligations of Tenant and the Port, and no other person shall have any rights hereunder or by reason hereof as a third party beneficiary or otherwise.

This Third Amendment may be executed in counterparts with the same force and effect as if the parties had executed one instrument, and each such counterpart shall constitute an original hereof. No provision of this Third Amendment that is held to be inoperative, unenforceable or invalid shall affect the remaining provisions, and to this end all provisions hereof are hereby declared to be severable. As amended hereby, the Lease is hereby ratified and confirmed in all respects. In the event of any inconsistencies between the terms of this Third Amendment and the Lease, the terms of this Third Amendment shall prevail. This Third Amendment shall be governed by the laws of the State of California. Neither this Third Amendment nor any of the terms hereof may be amended or modified except by a written instrument signed by all the parties hereto.

6. **Full Force and Effect.** Except as specifically amended herein, the terms and conditions of the Original Lease, as amended by the First Amendment and the Second Amendment, shall remain in full force and effect.

7. **Effective Date.** This Third Amendment shall become effective upon the full execution hereof by Tenant and Port.

[Remainder of Page Intentionally Left Blank – Signature Page Follows]

IN WITNESS WHEREOF, PORT and TENANT execute this Third Amendment to Lease No. L-14414 at San Francisco, California, as of the last date set forth below.

PORT:

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

By: [Signature]
Name: Susan Reynolds
Title: Deputy Director, Real Estate
Date Signed: 12/16/10

TENANT:

PILARA FAMILY FOUNDATION, a Nevada non-profit corporation

By: [Signature]
Name: ANDREW PILARA
Title: PRESIDENT
Date Signed: 12/12/10

Two Corporate Officers
MUST SIGN

By: [Signature]
Name: MARY PILARA
Title: Vice President
Date Signed: 12-12-10

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

[Signature]
By: Rona H. Sandler
Deputy City Attorney

ORIGINAL

SECOND AMENDMENT TO LEASE NO. L-14414

This Second Amendment to Lease No. L-14414 (the "**Second Amendment**"), dated for reference purposes only as of February 25, 2009, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "**City**"), operating through the SAN FRANCISCO PORT COMMISSION (the "**Port**"), as landlord, and Pilara Family Foundation, a Nevada Non-Profit Corporation, as tenant (the "**Tenant**").

RECITALS

A. Port and Tenant entered into Port Lease No. L-14414, dated June 21, 2007 for reference purposes only (the "**Original Lease**"), for that certain real property located at Pier 24 Annex consisting of approximately 27,311 square feet of pier shed space in the City and County of San Francisco, State of California, more particularly described in the Original Lease. The term of the Original Lease expires on May 31, 2015. The First Amendment, effective June 6, 2008, made certain revisions to the Original Lease ("**First Amendment**").

B. Pursuant to the Original Lease and First Amendment, Tenant is required to construct approximately \$6 Million of Initial Tenant Improvements, including improvements to the core and shell of the building (estimated cost \$3.2 million) and interior improvements. The Original Lease requires fair market rent and allowed no rent credits for the improvements.

On June 6, 2008, pursuant to the First Amendment, Andrew Pilara and Mary Pilara, husband and wife jointly and severally as "Guarantor" executed a Personal Guaranty in favor of the City and Port to guarantee the construction of the Initial Tenant Improvements and other defined Lease terms ("**Original Guaranty**").

C. During construction, Tenant has encountered unforeseen conditions, including extensive dry rot and termite damage. The Port agrees that such conditions could not have been known prior to execution of the Original Lease. Tenant now estimates the total project cost at \$11 million of which approximately \$7.5 million is for core and shell improvements, including substructure repairs.

D. Due to the unexpected increase in costs and the benefits to the Port that the Tenant is willing to offer, the parties have agreed to amend certain terms of the Lease to: (i) increase the amount of Base Rent, (ii) extend the initial term by two and a half years for a total ten year term; and (iii) provide rent credits to Tenant for certain improvements to the core and shell of the building that benefit the Port in an amount not to exceed \$3 million. Guarantor will execute a personal guaranty covering the increased costs.

E. The Original Lease, the First Amendment and this Second Amendment shall collectively be referred to as the "**Lease**." All capitalized terms used herein but not otherwise defined shall have the meaning given to them in the Original Lease or First Amendment.

NOW THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the Port and Tenant hereby amend the Lease as follows:

AGREEMENT

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference as if fully set forth herein.

2. Length of Term; Expiration Date. The Original Lease Term will be extended by two years and six months (2 ½ years) for a total term of ten (10) years. The Expiration Date shall be November 30, 2017. The Length of Term and Expiration Date Sections of the Basic Lease Information and Section 4.1 of the Original Lease are hereby revised accordingly.

3. Monthly Base Rent. The Monthly Base Rent Section of the Basic Lease Information in the Original Lease is hereby deleted in its entirety and replaced with the following:

<i>Monthly Base Rent:</i>	Months	Sq. Ft.	Monthly Base Rate	Total Monthly Base Rent
	7-13	27,311	\$0.40	\$10,924.40
	14-78	27,311	\$1.02	\$27,857.22
	79-120	27,311	\$1.18	\$32,226.98

4. **Security Deposit.** Prior to the Port's execution of this Second Amendment, Tenant shall increase the amount of the Security Deposit to a total amount of Sixty Four Thousand Four Hundred and Fifty Three Dollars and Ninety Six Cents (\$64,453.96). The Basic Lease Information in the Original Lease shall be revised accordingly.

5. Section 40, Rent Credits, is hereby added to the Lease to read as follows:

***40. RENT CREDITS.**

(a) Tenant shall be entitled to a rent credit to be taken monthly against Base Rent otherwise due for Certified Core Improvement Costs in an amount not to exceed the following amounts:

Month	Total Base Rent/Month	Maximum Rent Credit/Month
7-13	\$10,924.40	\$0
14-78	\$27,857.22	\$27,000
79-118	\$32,226.98	\$31,024.39
119	\$32,226.98	\$4,024.40

The total amount of the rent credit under this Lease shall be equal to the lesser of (i) the actual Certified Core Improvements Costs incurred after June 25, 2008, or (ii) Three Million Dollars (\$3,000,000.00). The period during which Tenant may take rent credits shall commence on January 1, 2009, and shall continue thereafter until the earlier of (i) the time at which the entire \$3,000,000 has been credited, or (iii) the Expiration Date or earlier termination of this Lease.

(b) **Certified Costs.** In order for the costs for any of the Core Improvements to be approved and certified by Port ("**Certified Core Improvements Costs**"), Tenant must first obtain, prior to commencing the Core Improvements (a) written approval from Port that the proposed Core and Shell Improvements would qualify as work for which Tenant would be

3. **Monthly Base Rent.** The Monthly Base Rent Section of the Basic Lease Information in the Original Lease is hereby deleted in its entirety and replaced with the following:

<i>Monthly Base Rent:</i>	Months	Sq. Ft.	Monthly Base Rate	Total Monthly Base Rent
	7-13	27,311	\$0.40	\$10,924.40
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119	\$32,226.98	\$4,024.40

The total amount of the rent credit under this Lease shall be equal to the lesser of (i) the actual Certified Core Improvements Costs incurred after June 25, 2008, or (ii) Three Million Dollars (\$3,000,000.00). The period during which Tenant may take rent credits shall commence on January 1, 2009, and shall continue thereafter until the earlier of (i) the time at which the entire \$3,000,000 has been credited, or (iii) the Expiration Date or earlier termination of this Lease.

entitled to Rent Credits under the terms of this Lease, and that the proposed work and the anticipated budget categories and amounts for the construction costs of the proposed Core Improvements are reasonable (not to be unreasonably withheld or delayed), (b) written approval from Port of the Construction Documents as defined in the Work Letter for the design and construction of the Core Improvements (not to be unreasonably withheld or delayed), (c) payment of any and all permit or review fees (including, but not limited to those charged by Port), and (d) all required governmental approvals, including, but not limited to permits from the Bay Conservation and Development Commission, the San Francisco Planning Department, and Port's Chief Harbor Engineer.

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

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

(d) Notwithstanding anything to the contrary contained herein, in no event shall Tenant receive any rent credit in the event Tenant is in default, or an event has occurred which, with the passage of time or the giving of notice, or both, would constitute a default. Upon the occurrence of a Tenant Event of Default during period Tenant is eligible for rent credits, Tenant's right to apply any rent credit shall cease and shall not be reinstated until the Tenant Event of Default is cured. If a Tenant Event of Default occurs on a day other than the first day of the calendar month or a Tenant Event of Default is cured on a day other than the last day of the calendar month, Base Rent due to Port shall be apportioned based on a thirty (30) day month. In no event shall the cessation in the application of the rent credit against any Base Rent extend the rent credit period.

6. Section 2.1(d) is hereby added to the Work Letter (Exhibit F) to read as follows:

"2.1(d) Tenant's failure to pay its contractors and subcontractors any amounts due for the Initial Tenant Improvements when due, subject to Tenant's rights to withhold payment or contest payment in accordance with the terms of the applicable contract, which failure to pay continues for a period of five (5) days after written notice from Port, shall constitute an Event of Default subject to Section 21 and shall be subject to Port's remedies as set forth in Section 22 of the Lease."

7. Attachment 1 of the Work Letter, "Narrative Portion of Scope of Development," is hereby deleted and replaced with Attachment 1-A "Scope of Development" hereto.

8. **Personal Guaranty.** No later than the Effective Date, Tenant shall provide Port, at Tenant's sole cost and expense, an amended and restated personal guaranty in the form attached hereto as Exhibit G, guaranteeing the full and faithful performance of the Initial Tenant Improvements by Tenant and providing remedies for a default (the "**Amended and Restated Personal Guaranty**").

9. **Approval of Board of Supervisors.** Notwithstanding anything to the contrary contained in this Second Amendment, Tenant acknowledges and agrees that no officer or employee of City has authority to commit City to this Second Amendment Lease unless and until City's Board of Supervisors shall have duly adopted a resolution approving this Second Amendment and authorizing the transactions contemplated hereby. Therefore, any obligations or liabilities of City hereunder are contingent upon adoption of such a resolution, and this Second Amendment shall be null and void if City's Mayor and the Board of Supervisors do not approve this Second Amendment, in their respective sole discretion. Approval of this Second Amendment by any department, commission or agency of City shall not be deemed to imply that such resolution will be enacted, nor will any such approval create any binding obligations on City.

10. **Entire Agreement.** This Second Amendment contains all of the representations and the entire agreement between the parties with respect to the subject matter of this agreement. This Second Amendment supersedes any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to the subject matter of the Second Amendment in their entirety. No prior drafts of this Second Amendment or changes between those drafts and the executed version of this Second Amendment shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider such drafts in interpreting this Second Amendment.

11. **Miscellaneous.** This Second Amendment shall bind, and shall inure to the benefit of, the successors and assigns of the parties hereto. This Second Amendment is made for the purpose of setting forth certain rights and obligations of Tenant and the Port, and no other person shall have any rights hereunder or by reason hereof as a third party beneficiary of otherwise.

This Second Amendment may be executed in counterparts with the same force and effect as if the parties had executed one instrument, and each such counterpart shall constitute an original hereof. No provision of this Second Amendment that is held to be inoperative, unenforceable or invalid shall affect the remaining provisions, and to this end all provisions hereof are hereby declared to be severable. As amended hereby, the Lease is hereby ratified and confirmed in all respects. In the event of any inconsistencies between the terms of this Second Amendment and the Lease, the terms of this Second Amendment shall prevail. This Second Amendment shall bind and inure to the benefit of Port and Tenant and their successors and assigns. Time is of the essence of this Second Amendment. This Second Amendment shall be governed by the laws of the State of California. Neither this Second Amendment nor any of the terms hereof may be amended or modified except by a written instrument signed by all the parties hereto.

12. **Full Force and Effect.** Except as specifically amended herein, the terms and conditions of the Original Lease, as amended by the First Amendment, shall remain in full force and effect.

13. **Effective Date.** The Effective Date of this Second Amendment is January 1, 2009.

IN WITNESS WHEREOF, PORT and TENANT execute this Second Amendment to Lease No. L-14414 at San Francisco, California, as of the last date set forth below.

PORT:

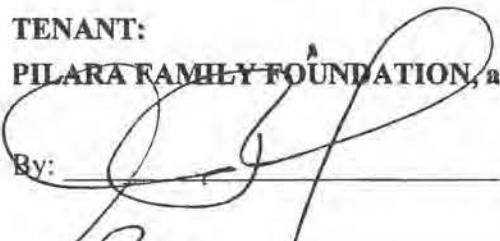
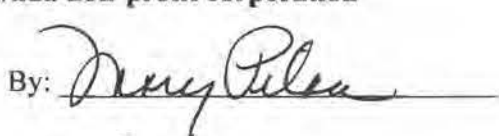
CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through the **SAN FRANCISCO PORT COMMISSION**

By: 
Susan Reynolds
Deputy Director, Real Estate

Dated: 03/06/09

TENANT:

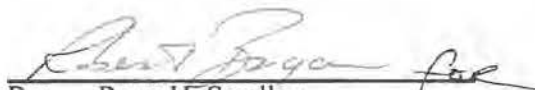
PILARA FAMILY FOUNDATION, a Nevada non-profit corporation

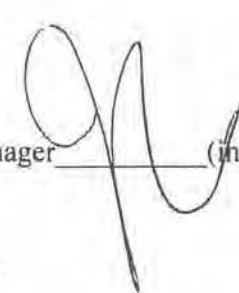
By:  By: 
Its: PRESIDENT Its: V President

Dated: 3/3/09 Dated: 3/3/09

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: 
Rona H. Sandler
Deputy City Attorney

Amendment Prepared By: Jeffrey A. Bauer, Senior Leasing Manager  (initial)

ATTACHMENT 1-A
SCOPE OF DEVELOPMENT
[TO BE ATTACHED]

EXHIBIT G

AMENDED AND RESTATED PERSONAL GUARANTY

THIS AMENDED AND RESTATED PERSONAL GUARANTY ("**Guaranty**" or "**Agreement**") is made as of June 6, 2008 by Andrew Pilara and Mary Pilara, husband and wife jointly and severally (collectively "**Guarantor**"), in favor of the City and County of San Francisco, acting by and through the San Francisco Port Commission ("**Port**").

RECITALS:

A. Pilara Family Foundation, a Nevada non-profit corporation ("**Tenant**"), entered into Lease No. L-14414, dated as of October 26, 2007, and amended by that certain First Amendment, dated for June 1, 2008 for reference purposes ("**First Amendment**") and that certain Second Amendment, dated December 1, 2008 for reference purposes ("**Second Amendment**") (collectively, the "**Lease**").

B. Under the Lease, Tenant agreed to (a) acquire by lease certain real property located in the City and County of San Francisco at the Pier 24 Annex within Port's jurisdiction and more particularly described in Exhibit A attached to the Lease (the "**Premises**"); and (b) construct certain improvements on the Premises. The improvements to be constructed by Tenant are referred to in the Lease and herein as the "**Initial Tenant Improvements**" as defined in Section 2.26 of the Lease and as generally described in Exhibit F, Attachment 1 of the Lease and detailed in Port Building Permit number B-2007-0095. Port and Tenant also plan to enter into an Encroachment Permit and License to Use Property License No. L-14527 (the "**License**") for use of sidewalk and pier space adjacent to the Premises upon which Tenant will construct and maintain the Access Improvements (as defined in the License) for improved access to the Premises.

C. As a condition to allowing Tenant to construct the Initial Tenant Improvements, Guarantor executed a Personal Guaranty dated June 6, 2008, ("**Original Guaranty**") guaranteeing the performance by Tenant of its obligations to complete the Initial Tenant Improvements as required in the Lease, including without limitation, as such Tenant Improvements are required pursuant to Sections 13, 14, 16 and 19 and Exhibit F and the Access Improvements as described in the License and all other responsibilities and claims, losses or liabilities associated with Tenant's performance of such obligations or non-performance whenever discovered (collectively, the "**Obligations**").

D. During construction, Tenant encountered unforeseen conditions, including extensive dry rot and termite damage and now estimates the total project cost is eleven million dollars (\$11,000,000). This Guaranty amends and restates the Original Guaranty in its entirety as of the date of the Original Guaranty and covers the entire cost of the Obligations, regardless of whether such costs exceed the current estimate.

E. Upon execution of this Amended and Restated Guaranty Port shall release all obligations of guarantor under the Original Guaranty.

F. Guarantors are officers of Tenant and acknowledge that they have derived or expect to derive material financial advantages and other benefits commensurate in value to the obligations and liabilities being undertaken by them under the terms of this Guaranty including without limitation, rent credits to be provided under the Lease.

NOW, THEREFORE, in consideration to Port for amending the Lease, Guarantor covenants and agrees as follows:

1. RECITALS. The foregoing recitals are true and correct and are incorporated herein by this reference.

2. **DEFINED TERMS.** All defined terms used herein and not defined herein, have the meanings ascribed to them in the Lease. If there is more than one Guarantor, then all words used herein in the singular shall be deemed to have been used in the plural when the context and construction so require; and when this Guaranty is executed by more than one Guarantor, the word "Guarantor" respectively shall mean all and any one or more of them.

3. **GUARANTY.** Guarantor and each of them, jointly and severally irrevocably and unconditionally guarantees to Port the full, faithful and timely performance of the Obligations by Tenant. The provisions of the Lease which provide for the Obligations are hereby incorporated into this Guaranty, including, without limitation, Sections 13, 14, 16 and 19 and Exhibit F of the Lease.

4. **OBLIGATIONS OF GUARANTOR UPON TENANT DEFAULT.** In the event that an Event of Default by Tenant under the Lease occurs with respect to the Obligations guaranteed hereby, Guarantor, and each of them, at Guarantor's expense, shall diligently proceed to cure such default and procure complete performance of all of the Obligations on same time schedule as provided for Tenant in the Lease. Port shall accept such performance by or at the insistence of Guarantor as if the same had been timely made by Tenant.

5. **REMEDIES.** If Guarantor fails to perform as herein provided or fails to faithfully perform its obligations hereunder (a "Default"), Port has the following remedies:

(a) at its option and without any obligation so to do, proceed to perform on behalf of Guarantor any and all of the Obligations to the extent Port deems necessary in its sole discretion, and Guarantor shall pay to Port within ten (10) days after written demand all reasonable sums expended by Port in such performance on behalf of Guarantor and all costs associated with the failure of the Obligations to be fully satisfied by Tenant and Guarantor; and

(b) from time to time and without requiring performance on the part of Tenant and without being required to exhaust any or all security held by Port to require performance by Tenant or Guarantor of any obligation on the part of Guarantor to be performed pursuant to the terms hereof, file an action at law or in equity or both to secure performance and further to collect in any such action compensation for all loss, damage and injury and expense sustained or incurred by Port as a consequence of such breach, as well as to collect any reasonable expenses incurred in such action.

(c) immediately require a letter of credit or a payment and performance bond from Tenant or Guarantor in the amount of 150% of the outstanding costs for the Initial Tenant Improvements.

6. **ACKNOWLEDGMENTS BY GUARANTOR.** Guarantor acknowledges, confirms, and agrees that (i) it has received fair and adequate consideration for its execution and delivery of this Guaranty, (ii) it will derive material financial benefit from Port's acceptance of this Guaranty, (iii) Port's agreement to allow the Initial Tenant Improvements is in consideration of, and in material reliance upon, Guarantor's execution and delivery of this Guaranty, and (iv) there are no conditions to the full effectiveness of this Guaranty.

7. **NO WAIVER.** Guarantor, and each of them, authorizes Port, without notice or demand and without affecting Guarantor's obligations or liabilities under this Guaranty, to: (a) amend, compromise, release or otherwise alter any term, covenant or condition of the Lease; (b) assign or sublet the Lease; (c) exercise, not exercise, impair, modify, limit, destroy or suspend any right or remedy under the Lease and Guarantor guarantees and promises to perform the Obligations as so amended; (d) take and hold security for any payment provided for in the Lease or the performance of any covenant, term, or condition of the Lease or exchange, waive, or release any security; and (e) apply such security as Port may determine. Notwithstanding any termination, renewal, extension or holding over of the Lease, this Guaranty shall continue until all of the Obligations have been fully and completely performed by Tenant or Guarantor, and Guarantor shall not be released of any obligation or liability under this Guaranty as long as there is any

claim against Tenant arising out of the Lease regarding the Obligations that have not been settled or discharge in full.

8. COVENANTS, REPRESENTATIONS AND WARRANTIES OF GUARANTOR.

(a) Guarantor shall advise Port promptly in writing of (i) all actions, suits or proceedings against or involving Guarantor, pending or to his or her knowledge threatened in writing, at law or in equity, before any federal, state, municipal or other court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, involving the possibility of judgments, penalties or liabilities against Guarantor, is reasonably likely to, in the aggregate exceed Five Hundred Thousand Dollars (\$500,000) and which are not reasonably anticipated to be covered by insurance or (ii) adverse changes in the value of their community and separate assets, resulting in Guarantor's failure to meet the net worth requirements in Section 10;

(b) Guarantor, and each of them, represents, covenants and warrants to Port as follows:

(i) Guarantor is a married couple whose community and separate assets shall be available to satisfy their obligations under this Guaranty;

(ii) The execution, delivery and performance by Guarantor of this Agreement will not violate any provision of law, any order of any court or agency of government, or any indenture, agreement or any other instrument to which Guarantor is a party or by which Guarantor or its property is bound, or be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of its property or assets; and

(iii) This Agreement, when executed and delivered to Port, will constitute a legal, valid and binding obligation enforceable against Guarantor in accordance with its terms to the fullest extent allowed by law;

(iv) All financial statements and data that have been given or shown to Port or its representatives or that will be given or shown to Port by Guarantor (A) are complete and correct in all material respects as of the date given, and (B) accurately present the financial condition of Guarantor on each date as of which, and the results of Guarantor's operations for the periods for which, the same have been furnished.

(c) If this Guaranty is signed or proposed to be signed by more than one person, nevertheless it shall be effective and shall be deemed to be fully delivered as to each of the signers immediately upon his or her signing the Guaranty. In the event it is proposed that more than one person shall sign this Guaranty, the failure of such additional person or persons to sign the Guaranty shall not affect the liability of any person or persons whose signatures are fixed or subscribed to this Guaranty but such liability shall be absolute, fixed and unconditional upon the signing of this Guaranty, it being the intention of the undersigned person or persons that concurrently with the signing of this Guaranty with such person or respective persons, this Guaranty shall instantly be absolutely and unconditionally in full force and effect as to all of its terms without any oral or other reservations, modifications or collateral agreement or understanding whatsoever.

9. GUARANTY INDEPENDENT; WAIVERS.

(a) Guarantor agrees that the obligations hereunder are independent of, may exceed and are in addition to the undertakings of Tenant pursuant to the Lease, any deed of trust or security agreement given to secure the same, any other guaranties given in connection with the Lease. A separate action may, at Port's option, be brought and prosecuted against Guarantor, or any of them whether or not any action is first or subsequently brought against Tenant, or whether

or not Tenant is joined in any action, and Guarantor may be joined in any action or proceeding commenced by Port against Tenant arising out of, in connection with, or based upon the Lease.

(b) Guarantor waives any right to (i) require Port to proceed against Tenant or any other person or entity or pursue any other remedy in Port's power, (ii) complain of delay in the enforcement of Port's rights under the Lease; and (iii) require Port to proceed against or exhaust any security held from Tenant or Guarantor. Guarantor waives any defense arising by reason of any disability or other defense of Tenant or by reason of the cessation from any cause whatsoever of the liability of Tenant. If this Guaranty is signed by more than one Guarantor, a release of any one or more of Guarantor or any limitation of this Guaranty in favor of or for the benefit of one or more Guarantor shall not in any way be deemed a release of or for the benefits of any other Guarantor.

(c) Guarantor shall not, without the prior written consent of Port, commence, or join with any other person in commencing, any bankruptcy, reorganization, or insolvency proceeding against Tenant. The obligations of Guarantor under this Guaranty shall not be altered, limited, or affected by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation, or arrangement of Tenant, or by any defense that Tenant may have by reason of any order, decree, or decision or any court or administrative body resulting from any such proceeding. Guarantor shall file in any bankruptcy or other proceeding in which the filing of claims is required or permitted by law all claims that Guarantor may have against Tenant relating to any indebtedness of Tenant to Guarantor, and shall assign to Port all rights of Guarantor under these claims. Port shall have the sole right to accept or reject any plan proposed in such proceeding and to take any other action that a party filing a claim is entitled to take. In all such cases, whether in administration, bankruptcy, or otherwise, the person or persons authorized to pay such claim shall pay to Port the amount payable on such claim and, to the full extent necessary for that purpose, Guarantor assigns to Port all of Guarantor's rights to any such payments or distributions to which Guarantor would otherwise be entitled; provided, however, that Guarantor's obligations under this Guaranty shall not be satisfied except to the extent that Port receives cash by reason of any such payment or distribution. If Port receives anything other than cash, the same shall be held as collateral for amounts due under this Guaranty.

(d) Guarantor, and each of them, is acting as a primary obligor. Without limiting the generality of the waivers contained in this Guaranty, Guarantor waives, to the fullest extent permitted by law, all rights, defenses, and other benefits under California Civil Code Sections 2787 through 2856, 2899, and 3433, and any similar or analogous statutes of California or any other jurisdiction and judicial decisions applying these statutes and any defense based on any statutory or other limitation of the amount of any deficiency judgment available to Port after foreclosure or other proceedings to realize upon any such collateral security or guaranty, shall not relieve Guarantor of any liability, and shall not impair or affect the rights and remedies of Port against Guarantor. Guarantor acknowledges that Port is relying on all of the waivers contained throughout this Guaranty in accepting this Guaranty.

10. FINANCIAL COVENANTS. Guarantor covenants and agrees that during the term of this Agreement:

(a) **Liquidity.** Guarantor shall maintain at all times, in the aggregate, Liquid Assets (as defined below) that are totally unencumbered by liens or pledges and as to which there are no restrictions upon the use thereof imposed by any agreement as to which Guarantor's property may be bound, with a market value of not less than sixteen million five hundred thousand dollars (\$16,500,000). As used herein "Liquid Assets" means the sum of the following unencumbered community and separate assets of Guarantor: (i) all cash, (ii) any demand deposits, (iii) marketable securities consisting of short-term (maturity of one year or less) obligations issued or guaranteed as to principal and interest by the United States of America, (iv) short-term certificates of deposit, with a maturity of one year or less, issued by any bank

organized under the laws of the United States of America and having total assets in excess of one billion dollars (\$1,000,000,000), (v) other marketable securities traded on a nationally recognized exchange operating in the United States; (vi) mutual funds, or (vii) any other securities acceptable to Port as evidenced by Port's written approval.

(b) **Minimum Net Worth.** Guarantor shall at all times maintain an aggregate Minimum Net Worth of not less than Twenty-two million dollars (\$22,000,000). As used herein, "Minimum Net Worth means the sum of: (i) the market value of Liquid Assets and marketable securities traded on a nationally recognized exchange operating in the United States, and (ii) estimates of fair market value made in good faith by Guarantor as to all other assets, less the sum of all liabilities, all as evidenced by Guarantor's most recent financial statements provided in accordance with the provisions of this Guaranty.

11. DISPOSITION OF ASSETS. Guarantor will not at any time enter into any transaction providing for the sale, transfer, encumbrance, pledge, mortgage or other disposition of any assets (or the future income therefrom), or otherwise dispose of any property (whether by assignment, gift or creation of a trust or otherwise), other than in the ordinary course of Guarantor's business. Guarantor shall advise Port promptly in writing of any transaction providing for the sale, transfer, encumbrance, pledge, mortgage or other disposition of any Liquid Assets (or the future income therefrom), or other disposition of property (whether by assignment, gift or creation of a trust or otherwise) affecting Two Million Dollars (\$2,000,000) or more.

12. FINANCIAL STATEMENTS. At any time during the Lease Term (as defined in the Lease), Guarantor shall, upon ten (10) days prior written notice from Port allow Port to inspect their current financial statements and financial statements of the two (2) years prior to the current financial statement year. Guarantor also consents to the release to Port from time to time of credit reports issued by a nationally recognized credit reporting agency.

13. SUCCESSORS AND ASSIGNS. This Guaranty shall be binding upon Guarantor and each of their estate, heirs, devisees, legatees, executors, administrators, personal and legal representatives, successors and assigns, and shall inure to the benefit of Port and Port's successors and assigns. Port may, without notice, assign this Guaranty in whole or in part in connection with an assignment of the Port's interests in the Lease.

14. NO RELEASE. Guarantor agrees that a sale, transfer or assignment by only Tenant of all or any portion of its interest in the Lease, the Premises and/or the Improvements shall not cause a release or reduction of, or otherwise impair the obligations of Guarantor under this Agreement.

15. INTEREST, ATTORNEYS' FEES AND COSTS.

(a) Any sum required to be paid by Guarantor to Port pursuant to the terms hereof shall bear annual interest at a rate of twelve percent (12%). If any party commences legal action to enforce the terms of the Lease as to the Obligations or of this Guaranty or in connection with any dispute arising out of or related to this Guaranty, the prevailing party shall be entitled to its attorneys' fees and costs, including costs incurred on appeal, in connection with the bankruptcy of any party, and in enforcing any judgment and interest. For the purposes of this provision, any attorneys' fees of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. The term "attorneys' fees" shall also include, without limitation, all such fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees were incurred. The term "costs" shall mean the costs and expenses of counsel to the parties, which may include printing, duplicating and other expenses, air freight charges,

hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

16. RIGHTS ARE CUMULATIVE. The liability of Guarantor, and each of them, and all rights, powers, and remedies of Port under this Guaranty and under any other agreement now or at any time hereafter in force between Port and Guarantor relating to the Lease shall be cumulative and not alternative, and such rights, powers, and remedies given to Port by law or in equity.

17. NOTICES. Any notice, request, demand, instruction, or other communication to be given to any party under this Guaranty shall be in writing and shall be delivered in the manner provided in the Lease for delivery of notices (and be deemed delivered in accordance with the time periods set forth in the Lease) and addressed to the party to be notified at the address set forth in the Basic Lease Information in the Lease.

18. MISCELLANEOUS.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of California and the City's Charter, and Port and Guarantor hereby irrevocably consent to the jurisdiction and proper venue of the State and the City and County of San Francisco. Further, Guarantor irrevocably waives and agrees not to assert, by way of motion, as a defense or otherwise, any right that it might have to a trial by jury in connection with any suit, action, or proceeding arising out of or relating to the Lease or this Guaranty, all to the fullest extent permissible under applicable law.

(b) Except as provided to the contrary herein, Guarantor waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor and notices of acceptance of this Agreement and of the existence, creation or incurring of all or any part of the obligations now existing or hereafter arising.

(c) Time is of the essence in the performance and enforcement of the terms and conditions of this Agreement.

(d) If any term, provision, covenant or condition hereof or any application thereof should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all terms, provisions, covenants and conditions hereof, and all applications thereof not held invalid, void or unenforceable shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

(e) Guarantor, and each of them assumes full responsibility for keeping fully informed of the financial condition of Tenant and of all other circumstances bearing upon the risk of nonperformance by Tenant of its Obligations under the Lease and agrees that Port shall have no duty to advise or report to Guarantor any information that Port receives about Tenant's financial condition or any condition or circumstances, whether or not material, bearing on Tenant's ability to perform the Obligations.

(f) Entire Agreement. This Guaranty embodies the entire agreement and understanding between the parties hereto relating to the guaranty of the Obligations. All prior or contemporaneous negotiations, agreements, and understandings, oral or written, are hereby revoked, cancelled, and rescinded, and are all merged herein and superseded hereby. The provisions of this Guaranty may be altered, amended, modified, or repealed, in whole or in part, only upon the written agreement of Port and Guarantor.

(g) This Guaranty and Guarantor's liability hereunder shall not be altered, limited, or otherwise affected by Port's failure to enforce, or delay in enforcing, any of its rights or remedies under the Lease or hereunder, and no such failure or delay shall be construed as a waiver of any such rights or remedies.

ORIGINAL

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the day and year first above written.

GUARANTOR:

By:

Andrew Pilara

By:

Mary Pilara

(b) Section 2.5 of Exhibit F of the Lease shall be deleted and replaced with the following: LEFT BLANK BY AGREEMENT OF PARTIES

(c) Attachment 2 of Exhibit F of the Lease shall be deleted.

(d) The Basic Lease Information is hereby amended by deleting the Section entitled "Performance Bond" and replacing it with the following:

Guaranty for Initial Tenant Improvements	Tenant shall provide a Personal Guaranty to ensure the completion of the Initial Tenant Improvements in the form provided in Exhibit E.
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4. **Earthquake Insurance.** The requirement that Tenant provide Earthquake Insurance as required by Sections 16.1(b) and 16.6(b) (i) and (ii) is hereby deleted.

5. **Review Fee.** Tenant shall reimburse Port for all costs, including without limitation attorneys' fees, which are incurred by Port in connection with the review, investigation, processing, documentation and/or consent to this First Amendment with respect to the Personal Guaranty ("Review Fees"). Accordingly, as a condition to Port's consent to this First Amendment, prior to the Effective Date, Tenant shall pay to Port an amount equaling four thousand dollars (\$4,000) to reimburse Port for its Review Fees.

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

7. **Miscellaneous.** This First Amendment shall bind, and shall inure to the benefit of, the successors and assigns of the parties hereto. This First Amendment is made for the purpose of setting forth certain rights and obligations of Tenant and the Port, and no other person shall have any rights hereunder or by reason hereof as a third party beneficiary of otherwise.

This First Amendment may be executed in counterparts with the same force and effect as if the parties had executed one instrument, and each such counterpart shall constitute an original hereof. No provision of this First Amendment that is held to be inoperative, unenforceable or invalid shall affect the remaining provisions, and to this end all provisions hereof are hereby declared to be severable. As amended hereby, the Lease is hereby ratified and confirmed in all respects. In the event of any inconsistencies between the terms of this First Amendment and the Lease, the terms of this Amendment shall prevail. This First Amendment shall bind and inure to the benefit of Port and Tenant and their successors and assigns. Time is of the essence of this First Amendment. This First Amendment shall be governed by the laws of the State of California. Neither this First Amendment nor any of the terms hereof may be amended or modified except by a written instrument signed by all the parties hereto.

8. **Full Force and Effect.** Except as specifically amended herein, the terms and conditions of the Original Lease shall remain in full force and effect.

9. **Effective Date.** The Effective Date of this First Amendment is June 6, 2008.

IN WITNESS WHEREOF, PORT and TENANT execute this First Amendment to Lease No. L-14414 at San Francisco, California, as of the last date set forth below.

PORT:

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

By: 

Susan Reynolds
Deputy Director, Real Estate

Dated: 06/16/08

TENANT:

PILARA FAMILY FOUNDATION, A NEVADA NON-PROFIT CORPORATION

By: 

Its: PRESIDENT

Dated: 6/11/08

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: 

Deputy City Attorney

Dated: 6/16/08

Amendment Prepared By: Jeffrey A. Bauer, Senior Leasing Manager


(initial)

EXHIBIT E

PERSONAL GUARANTY

THIS PERSONAL GUARANTY ("Guaranty" or "Agreement") is made as of June 6, 2008 by Andrew Pilara and Mary Pilara, husband and wife jointly and severally (collectively "Guarantor"), in favor of the City and County of San Francisco, acting by and through the San Francisco Port Commission ("Port").

RECITALS:

A. Pilara Family Foundation, a Nevada non-profit corporation ("Tenant"), entered into Lease No. L-14414, dated as of October 26, 2007, and amended by that certain First Amendment, dated for June 1, 2008 for reference purposes ("First Amendment") (collectively, the "Lease").

B. Under the Lease, Tenant agreed to (a) acquire by lease certain real property located in the City and County of San Francisco at the Pier 24 Annex within Port's jurisdiction and more particularly described in Exhibit A attached to the Lease (the "Premises"); and (b) construct certain improvements on the Premises. The improvements to be constructed by Tenant are referred to in the Lease and herein as the "Initial Tenant Improvements" as defined in Section 2.26 of the Lease and as generally described in Exhibit F, Attachment 1 of the Lease and detailed in Port Building Permit number B-2007-0095. Port and Tenant also plan to enter into an Encroachment Permit and License to Use Property License No. L-14527 (the "License") for use of sidewalk and pier space adjacent to the Premises upon which Tenant will construct and maintain the Access Improvements (as defined in the License) for improved access to the Premises.

C. As a condition to allowing Tenant to construct the Initial Tenant Improvements, Port required that Tenant provide, prior to commencement of the construction of the Initial Tenant Improvements, a payment and performance bond in a form acceptable to Port in a principal amount equal to 150% of the estimated costs of such Initial Tenant Improvements to ensure Port against any liability for mechanics' and materialmen's liens and stop notices and to ensure completion of the work. Tenant has requested and Port agrees to amend the Lease by the First Amendment to allow Tenant to substitute this Guaranty instead of the payment and performance bond.

D. Guarantors are officers of Tenant and acknowledge that they have derived or expect to derive material financial advantages and other benefits commensurate in value to the obligations and liabilities being undertaken by them under the terms of this Guaranty.

E. Guarantor executes this Agreement guaranteeing the performance by Tenant of its obligations to complete the Initial Tenant Improvements as required in the Lease, including without limitation, Sections 13, 14, 16 and 19 and Exhibit F and the Access Improvements as described in the License and all other responsibilities and claims, losses or liabilities associated with Tenant's performance of such obligations or non-performance whenever discovered (collectively, the "Obligations").

F. The current estimated cost of the Initial Tenant Improvements is six million dollars (\$6,000,000). This Guaranty covers the entire cost of the Obligations, regardless of whether such costs exceed the current estimate.

NOW, THEREFORE, in consideration to Port for amending the Lease, Guarantor covenants and agrees as follows:

1. **RECITALS.** The foregoing recitals are true and correct and are incorporated herein by this reference.

2. **DEFINED TERMS.** All defined terms used herein and not defined herein, have the meanings ascribed to them in the Lease. If there is more than one Guarantor, then all words used herein in the singular shall be deemed to have been used in the plural when the context and construction so require; and when this Guaranty is executed by more than one Guarantor, the word "Guarantor" respectively shall mean all and any one or more of them.

3. **GUARANTY.** Guarantor and each of them, jointly and severally irrevocably and unconditionally guarantees to Port the full, faithful and timely performance of the Obligations by Tenant. The provisions of the Lease which provide for the Obligations are hereby incorporated into this Guaranty, including, without limitation, Sections 13, 14, 16 and 19 and Exhibit F of the Lease.

4. **OBLIGATIONS OF GUARANTOR UPON TENANT DEFAULT.** In the event that an Event of Default by Tenant under the Lease occurs with respect to the Obligations guaranteed hereby, Guarantor, and each of them, at Guarantor's expense, shall diligently proceed to cure such default and procure complete performance of all of the Obligations on same time schedule as provided for Tenant in the Lease. Port shall accept such performance by or at the insistence of Guarantor as if the same had been timely made by Tenant.

5. **REMEDIES.** If Guarantor fails to perform as herein provided or fails to faithfully perform its obligations hereunder (a "Default"), Port has the following remedies:

(a) at its option and without any obligation so to do, proceed to perform on behalf of Guarantor any and all of the Obligations to the extent Port deems necessary in its sole discretion, and Guarantor shall pay to Port within ten (10) days after written demand all reasonable sums expended by Port in such performance on behalf of Guarantor and all costs associated with the failure of the Obligations to be fully satisfied by Tenant and Guarantor; and

(b) from time to time and without requiring performance on the part of Tenant and without being required to exhaust any or all security held by Port to require performance by Tenant or Guarantor of any obligation on the part of Guarantor to be performed pursuant to the terms hereof, file an action at law or in equity or both to secure performance and further to collect in any such action compensation for all loss, damage and injury and expense sustained or incurred by Port as a consequence of such breach, as well as to collect any reasonable expenses incurred in such action.

(c) immediately require a letter of credit or a payment and performance bond from Tenant or Guarantor in the amount of 150% of the outstanding costs for the Initial Tenant Improvements.

6. **ACKNOWLEDGMENTS BY GUARANTOR.** Guarantor acknowledges, confirms, and agrees that (i) it has received fair and adequate consideration for its execution and delivery of this Guaranty, (ii) it will derive material financial benefit from Port's acceptance of this Guaranty, (iii) Port's agreement to allow the Initial Tenant Improvements is in consideration of, and in material reliance upon, Guarantor's execution and delivery of this Guaranty, and (iv) there are no conditions to the full effectiveness of this Guaranty.

7. **NO WAIVER.** Guarantor, and each of them, authorizes Port, without notice or demand and without affecting Guarantor's obligations or liabilities under this Guaranty, to: (a) amend, compromise, release or otherwise alter any term, covenant or condition of the Lease; (b) assign or sublet the Lease; (c) exercise, not exercise, impair, modify, limit, destroy or suspend any right or remedy under the Lease and Guarantor guarantees and promises to perform the Obligations as so amended; (d) take and hold security for any payment provided for in the Lease or the performance of any covenant, term, or condition of the Lease or exchange, waive, or release any security; and (e) apply such security as Port may determine. Notwithstanding any termination, renewal, extension or holding over of the Lease, this Guaranty shall continue until all of the Obligations have been fully and completely performed by Tenant or Guarantor, and Guarantor shall not be released of any obligation or liability under this Guaranty as long as there is any

claim against Tenant arising out of the Lease regarding the Obligations that have not been settled or discharge in full.

8. COVENANTS, REPRESENTATIONS AND WARRANTIES OF GUARANTOR.

(a) Guarantor shall advise Port promptly in writing of (i) all actions, suits or proceedings against or involving Guarantor, pending or to his or her knowledge threatened in writing, at law or in equity, before any federal, state, municipal or other court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, involving the possibility of judgments, penalties or liabilities against Guarantor, is reasonably likely to, in the aggregate exceed Five Hundred Thousand Dollars (\$500,000) and which are not reasonably anticipated to be covered by insurance or (ii) adverse changes in the value of their community and separate assets, resulting in Guarantor's failure to meet the net worth requirements in Section 10;

(b) Guarantor, and each of them, represents, covenants and warrants to Port as follows:

(i) Guarantor is a married couple whose community and separate assets shall be available to satisfy their obligations under this Guaranty;

(ii) The execution, delivery and performance by Guarantor of this Agreement will not violate any provision of law, any order of any court or agency of government, or any indenture, agreement or any other instrument to which Guarantor is a party or by which Guarantor or its property is bound, or be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of its property or assets; and

(iii) This Agreement, when executed and delivered to Port, will constitute a legal, valid and binding obligation enforceable against Guarantor in accordance with its terms to the fullest extent allowed by law;

(iv) All financial statements and data that have been given or shown to Port or its representatives or that will be given or shown to Port by Guarantor (A) are complete and correct in all material respects as of the date given, and (B) accurately present the financial condition of Guarantor on each date as of which, and the results of Guarantor's operations for the periods for which, the same have been furnished.

(c) If this Guaranty is signed or proposed to be signed by more than one person, nevertheless it shall be effective and shall be deemed to be fully delivered as to each of the signers immediately upon his or her signing the Guaranty. In the event it is proposed that more than one person shall sign this Guaranty, the failure of such additional person or persons to sign the Guaranty shall not affect the liability of any person or persons whose signatures are fixed or subscribed to this Guaranty but such liability shall be absolute, fixed and unconditional upon the signing of this Guaranty, it being the intention of the undersigned person or persons that concurrently with the signing of this Guaranty with such person or respective persons, this Guaranty shall instantly be absolutely and unconditionally in full force and effect as to all of its terms without any oral or other reservations, modifications or collateral agreement or understanding whatsoever.

9. GUARANTY INDEPENDENT; WAIVERS.

(a) Guarantor agrees that the obligations hereunder are independent of, may exceed and are in addition to the undertakings of Tenant pursuant to the Lease, any deed of trust or security agreement given to secure the same, any other guaranties given in connection with the Lease. A separate action may, at Port's option, be brought and prosecuted against Guarantor, or any of them whether or not any action is first or subsequently brought against Tenant, or whether

or not Tenant is joined in any action, and Guarantor may be joined in any action or proceeding commenced by Port against Tenant arising out of, in connection with, or based upon the Lease.

(b) Guarantor waives any right to (i) require Port to proceed against Tenant or any other person or entity or pursue any other remedy in Port's power, (ii) complain of delay in the enforcement of Port's rights under the Lease; and (iii) require Port to proceed against or exhaust any security held from Tenant or Guarantor. Guarantor waives any defense arising by reason of any disability or other defense of Tenant or by reason of the cessation from any cause whatsoever of the liability of Tenant. If this Guaranty is signed by more than one Guarantor, a release of any one or more of Guarantor or any limitation of this Guaranty in favor of or for the benefit of one or more Guarantor shall not in any way be deemed a release of or for the benefits of any other Guarantor.

(c) Guarantor shall not, without the prior written consent of Port, commence, or join with any other person in commencing, any bankruptcy, reorganization, or insolvency proceeding against Tenant. The obligations of Guarantor under this Guaranty shall not be altered, limited, or affected by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation, or arrangement of Tenant, or by any defense that Tenant may have by reason of any order, decree, or decision or any court or administrative body resulting from any such proceeding. Guarantor shall file in any bankruptcy or other proceeding in which the filing of claims is required or permitted by law all claims that Guarantor may have against Tenant relating to any indebtedness of Tenant to Guarantor, and shall assign to Port all rights of Guarantor under these claims. Port shall have the sole right to accept or reject any plan proposed in such proceeding and to take any other action that a party filing a claim is entitled to take. In all such cases, whether in administration, bankruptcy, or otherwise, the person or persons authorized to pay such claim shall pay to Port the amount payable on such claim and, to the full extent necessary for that purpose, Guarantor assigns to Port all of Guarantor's rights to any such payments or distributions to which Guarantor would otherwise be entitled; provided, however, that Guarantor's obligations under this Guaranty shall not be satisfied except to the extent that Port receives cash by reason of any such payment or distribution. If Port receives anything other than cash, the same shall be held as collateral for amounts due under this Guaranty.

(d) Guarantor, and each of them, is acting as a primary obligor and not as a surety. Without limiting the generality of the waivers contained in this Guaranty, Guarantor waives, to the fullest extent permitted by law, all rights, defenses, and other benefits under California Civil Code Sections 2787 through 2856, 2899, and 3433, and any similar or analogous statutes of California or any other jurisdiction and judicial decisions applying these statutes and any defense based on any statutory or other limitation of the amount of any deficiency judgment available to Port after foreclosure or other proceedings to realize upon any such collateral security or guaranty, shall not relieve Guarantor of any liability, and shall not impair or affect the rights and remedies of Port against Guarantor. Guarantor acknowledges that Port is relying on all of the waivers contained throughout this Guaranty in accepting this Guaranty.

10. FINANCIAL COVENANTS. Guarantor covenants and agrees that during the term of this Agreement:

(a) **Liquidity.** Guarantor shall maintain at all times, in the aggregate, Liquid Assets (as defined below) that are totally unencumbered by liens or pledges and as to which there are no restrictions upon the use thereof imposed by any agreement as to which Guarantor's property may be bound, with a market value of not less than nine million dollars (\$9,000,000). As used herein "Liquid Assets" means the sum of the following unencumbered community and separate assets of Guarantor: (i) all cash, (ii) any demand deposits, (iii) marketable securities consisting of short-term (maturity of one year or less) obligations issued or guaranteed as to principal and interest by the United States of America, (iv) short-term certificates of deposit, with a maturity of one year or less, issued by any bank organized under the laws of the United

States of America and having total assets in excess of one billion dollars (\$1,000,000,000), (v) other marketable securities traded on a nationally recognized exchange operating in the United States; (vi) mutual funds, or (vii) any other securities acceptable to Port as evidenced by Port's written approval.

(b) **Minimum Net Worth.** Guarantor shall at all times maintain an aggregate Minimum Net Worth of not less than twelve million dollars (\$12,000,000). As used herein, "Minimum Net Worth means the sum of: (i) the market value of Liquid Assets and marketable securities traded on a nationally recognized exchange operating in the United States, and (ii) estimates of fair market value made in good faith by Guarantor as to all other assets, less the sum of all liabilities, all as evidenced by Guarantor's most recent financial statements provided in accordance with the provisions of this Guaranty.

11. DISPOSITION OF ASSETS. Guarantor will not at any time enter into any transaction providing for the sale, transfer, encumbrance, pledge, mortgage or other disposition of any assets (or the future income therefrom), or otherwise dispose of any property (whether by assignment, gift or creation of a trust or otherwise), other than in the ordinary course of Guarantor's business. Guarantor shall advise Port promptly in writing of any transaction providing for the sale, transfer, encumbrance, pledge, mortgage or other disposition of any Liquid Assets (or the future income therefrom), or other disposition of property (whether by assignment, gift or creation of a trust or otherwise) affecting Two Million Dollars (\$2,000,000) or more.

12. FINANCIAL STATEMENTS. At any time during the Lease Term (as defined in the Lease), Guarantor shall, upon ten (10) days prior written notice from Port allow Port to inspect their current financial statements and financial statements of the two (2) years prior to the current financial statement year. Guarantor also consents to the release to Port from time to time of credit reports issued by a nationally recognized credit reporting agency.

13. SUCCESSORS AND ASSIGNS. This Guaranty shall be binding upon Guarantor and each of their estate, heirs, devisees, legatees, executors, administrators, personal and legal representatives, successors and assigns, and shall inure to the benefit of Port and Port's successors and assigns. Port may, without notice, assign this Guaranty in whole or in part in connection with an assignment of the Port's interests in the Lease.

14. NO RELEASE. Guarantor agrees that a sale, transfer or assignment by only Tenant of all or any portion of its interest in the Lease, the Premises and/or the Improvements shall not cause a release or reduction of, or otherwise impair the obligations of Guarantor under this Agreement.

15. INTEREST, ATTORNEYS' FEES AND COSTS.

(a) Any sum required to be paid by Guarantor to Port pursuant to the terms hereof shall bear annual interest at a rate of twelve percent (12%). If any party commences legal action to enforce the terms of the Lease as to the Obligations or of this Guaranty or in connection with any dispute arising out of or related to this Guaranty, the prevailing party shall be entitled to its attorneys' fees and costs, including costs incurred on appeal, in connection with the bankruptcy of any party, and in enforcing any judgment and interest. For the purposes of this provision, any attorneys' fees of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. The term "attorneys' fees" shall also include, without limitation, all such fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees were incurred. The term "costs" shall mean the costs and expenses of counsel to the parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

16. **RIGHTS ARE CUMULATIVE.** The liability of Guarantor, and each of them, and all rights, powers, and remedies of Port under this Guaranty and under any other agreement now or at any time hereafter in force between Port and Guarantor relating to the Lease shall be cumulative and not alternative, and such rights, powers, and remedies given to Port by law or in equity.

17. **NOTICES.** Any notice, request, demand, instruction, or other communication to be given to any party under this Guaranty shall be in writing and shall be delivered in the manner provided in the Lease for delivery of notices (and be deemed delivered in accordance with the time periods set forth in the Lease) and addressed to the party to be notified at the address set forth in the Basic Lease Information in the Lease.

18. **MISCELLANEOUS.**

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of California and the City's Charter, and Port and Guarantor hereby irrevocably consent to the jurisdiction and proper venue of the State and the City and County of San Francisco. Further, Guarantor irrevocably waives and agrees not to assert, by way of motion, as a defense or otherwise, any right that it might have to a trial by jury in connection with any suit, action, or proceeding arising out of or relating to the Lease or this Guaranty, all to the fullest extent permissible under applicable law.

(b) Except as provided to the contrary herein, Guarantor waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor and notices of acceptance of this Agreement and of the existence, creation or incurring of all or any part of the obligations now existing or hereafter arising.

(c) Time is of the essence in the performance and enforcement of the terms and conditions of this Agreement.

(d) If any term, provision, covenant or condition hereof or any application thereof should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all terms, provisions, covenants and conditions hereof, and all applications thereof not held invalid, void or unenforceable shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

(e) Guarantor, and each of them assumes full responsibility for keeping fully informed of the financial condition of Tenant and of all other circumstances bearing upon the risk of nonperformance by Tenant of its Obligations under the Lease and agrees that Port shall have no duty to advise or report to Guarantor any information that Port receives about Tenant's financial condition or any condition or circumstances, whether or not material, bearing on Tenant's ability to perform the Obligations.

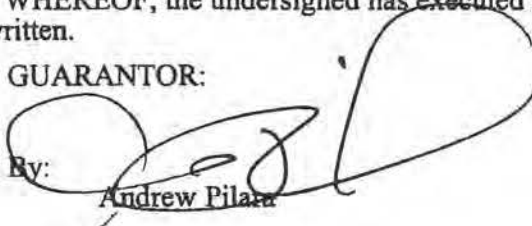
(f) **Entire Agreement.** This Guaranty embodies the entire agreement and understanding between the parties hereto relating to the guaranty of the Obligations. All prior or contemporaneous negotiations, agreements, and understandings, oral or written, are hereby revoked, cancelled, and rescinded, and are all merged herein and superseded hereby. The provisions of this Guaranty may be altered, amended, modified, or repealed, in whole or in part, only upon the written agreement of Port and Guarantor.

(g) This Guaranty and Guarantor's liability hereunder shall not be altered, limited, or otherwise affected by Port's failure to enforce, or delay in enforcing, any of its rights or remedies under the Lease or hereunder, and no such failure or delay shall be construed as a waiver of any such rights or remedies.

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the day and year first above written.

GUARANTOR:

By:


Andrew Pilara

By:


Mary Pilara

ORIGINAL



**CITY AND COUNTY OF SAN FRANCISCO
GAVIN NEWSOM, MAYOR**

LEASE NO. L-14414

BY AND BETWEEN

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

AND

**PILARA FAMILY FOUNDATION,
A NEVADA NON-PROFIT CORPORATION**

PIER 24 ANNEX

**MONIQUE MOYER
EXECUTIVE DIRECTOR**

SAN FRANCISCO PORT COMMISSION

**ANN LAZARUS, PRESIDENT
KIMBERLY BRANDON, VICE PRESIDENT
RODNEY FONG, COMMISSIONER
MICHAEL HARDEMAN, COMMISSIONER
STEPHANIE SHAKOFSKY, COMMISSIONER**

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EXHIBIT F	WORK LETTER
SCHEDULE 1	ASBESTOS NOTIFICATION AND INFORMATION
SCHEDULE 2	SUBSTRUCTURE REPORT(S)
SCHEDULE 3	PORT'S BASELINE LEAD-BASED PAINT AND ASBESTOS STUDY

BASIC LEASE INFORMATION

<i>Lease Date:</i>	June 21, 2007
<i>Lease Number:</i>	L-14414
<i>Landlord or Port:</i>	CITY AND COUNTY OF SAN FRANCISCO , a municipal corporation, operating by and through the SAN FRANCISCO PORT COMMISSION
<i>Landlord's Address:</i>	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Director of Real Estate Telephone: (415) 274-0400 Facsimile: (415) 274-0494
<i>Tenant:</i>	Pilara Family Foundation, a Nevada Non-Profit Corporation
<i>Tenant's Contact Person:</i>	Andrew Pilara
<i>Tenant's Address:</i>	One Pine Street, Apartment 2501 San Francisco, CA 94111 Telephone: (415) 601-3894 Facsimile: (415)
<i>Contact Information for Tenant's Agent for Service of Process (if Tenant is a corporation):</i>	Simon Snellgrove Pier 1, Bay 3 San Francisco, CA 94111
<i>Premises:</i>	Pier 24 Annex
<i>Facility:</i>	Pier 24 Annex San Francisco, California 94105
<i>Premises Rentable Square Footage:</i>	Approximately 27,311 rentable square feet of pier shed space
<i>Length of Term:</i>	Ninety (90) months

<i>Commencement Date:</i>		As defined in Section 4.1		
<i>Rent Commencement Date:</i>		One Hundred Eighty (180) days after the Commencement Date		
<i>Expiration Date:</i>		Seven (7) Years from the Rent Commencement Date		
<i>Monthly Base Rent:</i>	Months	Sq. Ft.	Monthly Base Rate	Total Monthly Base Rent
	7-18	27,311	\$0.40	\$10,924.40 ✓
	19-30	27,311	\$0.42	\$11,470.62 ✓
	31-42	27,311	\$0.44	\$12,016.84 ✓
	43-54	27,311	\$0.46	\$12,563.06 ✓
	55-66	27,311	\$0.48	\$13,109.28 ✓
	67-78	27,311	\$0.50	\$13,655.50 ✓
	79-90	27,311	\$0.52	\$14,201.72
<i>Security Deposit:</i>		Twenty-Eight Thousand Four Hundred Three Dollars and Forty-Four Cents (\$28,403.44)		
<i>Permitted Use:</i>		The Premises shall be used solely for storage in connection with curation of an art and photographic collection; visits by researchers by appointment only; and periodic visits by Tenant's Board of Trustees and for no other purpose.		
<i>Additional Prohibited Uses:</i>		<p>In addition to, and without limiting, the Prohibited Uses specified in Section 8.2 below, Tenant shall be prohibited from using the Premises for any of the following activities:</p> <p>(a) Public Assembly</p> <p>(b) Admittance of general public</p> <p>(c) Special Events without prior written Port approval not less than five (5) business days in advance of such event.</p>		

	Port shall have all remedies set forth in this Lease, and at law or equity in the event Tenant performs any of the Prohibited Uses.
<i>Load Restrictions/Substructure Report(s):</i>	See <i>Schedule 2</i> attached hereto.
<i>Maintenance and Repair:</i>	Tenant's sole responsibility, as further described in Section 11 below
<i>Utilities:</i>	Tenant's sole responsibility, as further described in Section 12 below
<i>Location of Asbestos in Facility:</i>	See <i>Schedule 1</i> attached hereto.
<i>Initial Tenant Improvements:</i>	As described in Section 13 below and the Work Letter attached hereto as Exhibit F.
<i>Performance Bond:</i>	In an amount equal to one hundred fifty percent (150%) of the estimated cost of the construction of the Initial Tenant Improvements
<i>Other Information:</i>	Tenant acknowledges that Port will not provide security in, on or about the Premises
<i>Lease Prepared By:</i>	Jeffrey A. Bauer, Senior Leasing Manager

LEASE AGREEMENT

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

1. DEMISE

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

2. DEFINITIONS

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

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

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

2.3. "Agents" means, when used with reference to either party hereto, the officers, directors, employees, agents and contractors of such party, and their respective heirs, legal representatives, successors and assigns.

2.4. "Anniversary Date" means the first anniversary of the Commencement Date and each anniversary of such date thereafter; provided, however, that if the Commencement Date is other than the first day of a month, then the first Anniversary Date shall be the first day of the thirteenth (13th) month thereafter.

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

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

2.7. "Certificate of Completion" is the temporary or final certificate of occupancy issued by Port allowing for commencement of that portion of the Permitted Use sought in the building permit.

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

2.9. "Claims" means all liabilities, injuries, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, including without limitation, direct and vicarious liability of any kind.

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

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

2.12. **"Completion"** means completion of construction of all or any applicable portion of the **"Core Improvements"** or the **"Interior Improvements"** in accordance with the terms of the Work Letter, except for any Deferred Items. **"Complete"** shall have a correlative meaning.

2.13. **"Core Improvement"** is defined in Section 2.26 below.

2.14. **"Core Improvements Construction Period"** means the period from and after the Commencement Date until and including the earlier of (i) the date a temporary certificate of occupancy for the Premises is issued, (ii) the date a final certificate of occupancy for the Premises is issued, or (iii) nine (9) months following issuance of a Port building permit for the Core Improvements.

2.15. **"Core Improvements Construction Period Expiration Date"** means the earlier of (i) the date a temporary certificate of occupancy for the Premises is issued, or (ii) the date a final certificate of occupancy for the Premises is issued, or (iii) nine (9) months following issuance of a Port building permit for the Core Improvements.

2.16. **"Environmental Laws"** means any present or future federal, state or local laws, ordinances, regulations or policies relating to Hazardous Material (including, without limitation, their use, handling, transportation, production, disposal, discharge or storage) or to health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises, including, without limitation, soil, air, bay water and groundwater conditions.

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

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

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

2.20. **"Force Majeure"** means delay due to strikes, acts of God, shortages of labor or materials, war, civil disturbances and other causes beyond the reasonable control of the performing party.

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

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

2.23. **"Handle"** or **"Handling"** means to use, generate, process, produce, package, treat, transport store, emit, discharge or dispose.

2.24. **"Hazardous Material"** means any substance, waste or material which now or in the future is determined by any state, federal, or local governmental authority to be capable of posing a present or potential risk of injury to health, safety, the environment or property, including, but not limited to, all of those materials, wastes and substances designated as hazardous, toxic, pollutant or contaminant by the United States Environmental Protection Agency, the City and County of San Francisco, the United States Department of Labor, the United States Department of Transportation, any department or agency of the California Environmental Protection Agency or any other governmental agency now or hereafter authorized to regulate materials and substances in the environment.

2.25. **"Improvements"** means any and all buildings, structures, fixtures or other improvements erected, built, placed, installed or constructed upon or under the Premises,

including, but not limited to, the Initial Tenant Improvements and Subsequent Alterations located on the Premises

2.26. "Initial Tenant Improvements" means the required tenant improvements to be constructed by Tenant, at its sole cost and expense, as further described in Section 13 and the Work Letter. The Initial Tenant Improvements shall include the **"Core Improvements"** which include, without limitation, all work on the core and shell (but excluding demolition activities), structural repairs to the building and substructures, installation of fire suppression, utility upgrades, ADA upgrades, and asbestos and lead-based paint abatement, and the **"Interior Improvements"** which include without limitation, painting and flooring, installation of a bathroom and kitchen facility, and office build-out, both as further defined in the Work Letter and its attachments.

2.27. "Interior Improvements" is defined in Section 2.26 above.

2.28. "Interior Improvements Construction Period" means the period from and after the Commencement Date until and including the earlier of (i) the date a temporary certificate of occupancy for the Premises is issued, (ii) the date a final certificate of occupancy for the Premises is issued, or (iii) twelve (12) months following issuance of a Port building permit for the Interior Improvements.

2.29. "Interior Improvements Construction Period Expiration Date" means the earlier of (i) the date a temporary certificate of occupancy for the Premises is issued, or (ii) the date a final certificate of occupancy for the Premises is issued, or (iii) twelve (12) months following issuance of a Port building permit for the Interior Improvements.

2.30. "Invitees" when used with respect to Tenant means the clients, customers, invitees, guests, members, licensees, assignees and subtenants of Tenant.

2.31. "Late Charge" means a fee equivalent to ten percent (10%) per annum.

2.32. "Laws" means all present or future laws, statutes, ordinances, codes, resolutions, regulations, judicial decisions, requirements, proclamations, orders or decrees of any municipal, county, state or federal government or the departments, courts, commissions, boards and officers thereof, or other governmental or regulatory authority with jurisdiction over the Premises or any portion thereof (including, but not limited to, the Waterfront Land Use Plan) and with any and all recorded covenants, conditions and restrictions affecting the Facility or any portion thereof, whether in effect at the time of the execution of this Lease or adopted or recorded at any time thereafter and whether or not within the present contemplation of the parties.

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

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

2.35. "Premises" means the real property described in Section 3.1 below.

2.36. "Regulatory Approval" means any authorization, approval or a permit required by any governmental agency having jurisdiction over the Premises, including but not limited to BCDC, Port (in its regulatory capacity), Port's Chief Harbor Engineer, environmental review by MEA, or approval of this Lease by the Port Commission and the San Francisco Board of Supervisors.

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

2.38. "Rent" means the Base Rent, Additional Rent and all other sums payable by Tenant to Port hereunder, including, without limitation, any Late Charge assessed pursuant to Section 5.4 below and any interest assessed pursuant to Section 5.5 below.

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

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

2.41. "Restoration" means the restoration, replacement, or rebuilding of the Improvements (or the relevant portion thereof) in accordance with all Laws then applicable (including code upgrades) to substantially the same condition they were in immediately before an event of damage or destruction. Notwithstanding the foregoing, Port may, in its sole and absolute discretion, in connection with any Restoration, allow the Improvements to be redesigned, reconfigured, or otherwise modified, provided that the Improvements as so redesigned complies with applicable requirements of the Public Trust, are of first-class quality affording similar public benefit as the original Initial Tenant Improvements, including any Subsequent Alterations, and are subject to the terms of this Lease and provided that the design of the modified Improvements be subject to approval in the same manner as the Initial Tenant Improvements or Subsequent Alterations, as the case may be. All Restoration shall be conducted in accordance with the provisions of Section 13 below. ("Restore" and "Restored" shall have correlative meanings.)

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

2.43. "Subsequent Alteration" means any alterations, installations, Improvements (including, without limitation, to any and all buildings, structures, fixtures) constructed or installed on the Premises, including those constructed by or on behalf of Tenant pursuant to this Lease, and all repairs to and reconstruction, replacement, addition, expansion, restoration, alteration or modification of any Improvements, or any construction of additional Improvements, following completion of the Initial Tenant Improvements pursuant to the Work Letter.

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

2.45. "Tenant's Property" means all furniture, trade fixtures, office equipment and articles of movable personal property installed in the Premises by or for the account of Tenant, without expense to Port, and that can be removed without structural or other substantial damage to the Premises.

2.46. "Transfer" is defined in Section 20.1 below.

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

3. PREMISES; AS-IS CONDITION.

3.1. Premises.

Subject to the provisions of this Lease, Port hereby leases to Tenant, and Tenant hereby leases from Port, the Premises in the Facility identified in the Basic Lease Information. The Premises has the address and contains the square footage specified in the Basic Lease Information. The location and dimensions of the Premises are depicted on *Exhibit A* attached hereto and incorporated herein by reference (the "Premises"). Port and Tenant agree and acknowledge that any statement of rentable or usable (if applicable) square footage set forth in this Lease is an approximation which Port and Tenant agree is reasonable and that the usable square footage of the Premises may be less than the rentable square footage of the Premises. Port and Tenant further agree and acknowledge that the rentable square footage of the Premises shall be used at all times to calculate the Base Rent due and payable by Tenant under this Lease

and neither the Base Rent nor any other economic term based on rentable square footage shall be subject to revision whether or not the actual rentable or usable square footage is more or less.

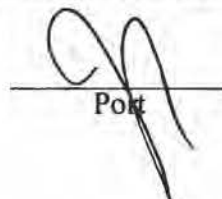
In the event Tenant (including, its Agents, Invitees, successors and assigns) uses or occupies space outside the Premises without the prior written consent of Port (the "Encroachment Area"), then upon written notice from Port ("Notice to Vacate"), Tenant shall immediately vacate such Encroachment Area and pay as Additional Rent for each day Tenant used, occupied, uses or occupies such Encroachment Area, an amount equal to the rentable square footage of the Encroachment Area, multiplied by the higher of the (a) highest rental rate then approved by the San Francisco Port Commission for the Premises or the Facility, or (b) then current fair market rent for such Encroachment Area, as reasonably determined by Port (the "Encroachment Area Charge"). If Tenant uses or occupies such Encroachment Area for a fractional month, then the Encroachment Area Charge for such period shall be prorated based on a thirty (30) day month. In no event shall acceptance by Port of the Encroachment Area Charge be deemed a consent by Port to the use or occupancy of the Encroachment Area by Tenant, its Agents, Invitees, successors or assigns, or a waiver (or be deemed as waiver) by Port of any and all other rights and remedies of Port under this Lease (including Tenant's obligation to indemnify, defend and hold Port harmless as set forth in the last paragraph of this Section 3.1), at law or in equity.

In addition to the foregoing amount, Tenant shall pay to Port, as Additional Rent, an amount equaling Two Hundred Dollars (\$200.00) upon delivery of the initial Notice to Vacate plus the actual cost associated with a survey of the Encroachment Area. In the event Port determines during subsequent inspection(s) that Tenant has failed to vacate the Encroachment Area, then Tenant shall pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300.00) for each additional Notice to Vacate, if applicable, delivered by Port to Tenant following each inspection. The parties agree that the charges associated with each inspection of the Encroachment Area, delivery of each Notice to Vacate and survey of the Encroachment Area represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the Premises, issuance of each Notice to Vacate and survey of the Encroachment Area. Tenant's failure to comply with the applicable Notice to Vacate and Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this Lease, at law or in equity. The amounts set forth in this Section 3.1 shall be due within three (3) business days following the applicable Notice to Vacate and/or separate invoice relating to the actual cost associated with a survey of the Encroachment Area.

In addition to the rights and remedies of Port as set forth in the immediately foregoing two paragraphs of this Section 3.1, the terms and conditions of the indemnity and exculpation provision set forth in Section 19 below shall also apply to Tenant's (including, its Agents, Invitees, successors and assigns) use and occupancy of the Encroachment Area as if the Premises originally included the Encroachment Area, and Tenant shall additionally indemnify, defend and hold Port harmless from and against any and all loss or liability resulting from delay by Tenant in so surrendering the Encroachment Area including, without limitation, any loss or liability resulting from any Claims against Port made by any tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Encroachment Area to any such tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

By placing their initials below, each party specifically confirms the accuracy of the statements made in this Section 3.1 and the reasonableness of the amount of the charges described in this Section 3.1.

Initials:


Port


Tenant

3.2. *As Is Condition.*

TENANT ACKNOWLEDGES AND AGREES THAT TENANT IS FAMILIAR WITH THE PREMISES, THE PREMISES ARE BEING LEASED AND ACCEPTED IN THEIR "AS IS" CONDITION, WITHOUT ANY IMPROVEMENTS OR ALTERATIONS BY PORT, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, AND SUBJECT TO ALL APPLICABLE LAWS GOVERNING THEIR USE, OCCUPANCY AND POSSESSION. TENANT REPRESENTS AND WARRANTS TO PORT THAT TENANT HAS RECEIVED AND REVIEWED A COPY OF THE REPORT(S), IF ANY, RELATING TO THE SUBSTRUCTURE AND/OR STRUCTURE OF THE FACILITY, AS FURTHER DESCRIBED IN *SCHEDULE 2* ATTACHED HERETO. TENANT FURTHER REPRESENTS AND WARRANTS TO PORT THAT TENANT HAS INVESTIGATED AND INSPECTED, EITHER INDEPENDENTLY OR THROUGH AGENTS OF TENANT'S OWN CHOOSING, THE CONDITION OF THE PREMISES AND THE SUITABILITY OF THE PREMISES FOR TENANT'S BUSINESS AND INTENDED USE. TENANT ACKNOWLEDGES AND AGREES THAT NEITHER PORT NOR ANY OF ITS AGENTS HAVE MADE, AND PORT HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE RENTABLE AREA OF THE PREMISES, THE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PREMISES OR THE FACILITY (INCLUDING, BUT LIMITED TO THE SUBSTRUCTURE), THE PRESENT OR FUTURE SUITABILITY OF THE PREMISES FOR TENANT'S BUSINESS, OR ANY OTHER MATTER WHATSOEVER RELATING TO THE PREMISES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

TENANT ACKNOWLEDGES AND AGREES THAT THE PORT AND CITY SHALL NOT BE RESPONSIBLE FOR PROVIDING ANY SECURITY TO PROTECT THE ART WORKS (AS DEFINED IN SECTION 16.1(h)) OR THE PREMISES AND THAT THE PREMISES MAY NOT BE SUITABLE FOR THE STORAGE OR CURATION OF THE ART WORKS. TENANT ASSUMES ALL RISKS ASSOCIATED WITH STORING OR DISPLAYING THE ART WORKS IN THE PREMISES.

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

4.1. *Term*

The term of this Lease (the "**Term**") shall be for the period of months specified in the Basic Lease Information commencing on the earlier of: (i) December 1, 2007 or (ii) the date that the Port issues a Building Permit for the Core Improvements, provided that Tenant use its best efforts to diligently and expeditiously complete and submit all documents and information necessary for the Port to issue such Building Permit ("**Commencement Date**") and expiring on the Expiration Date. If the Commencement Date and Expiration Date occur on a date other than the Commencement Date and the Expiration Date set forth in the Basic Lease Information, then promptly following the actual Commencement Date, Port and Tenant shall execute a Commencement Date and Expiration Date Memorandum substantially in the form attached hereto as *Exhibit B*, confirming the actual Commencement Date and Expiration Date, but either party's failure to do so shall not affect the commencement or expiration of the Term.

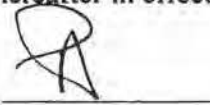
If Port is unable to deliver possession of the Premises to Tenant on or before the Commencement Date, then the validity of this Lease shall not be affected thereby and Port shall not be liable to Tenant for any Claims resulting therefrom, and Tenant waives all provisions of any Laws to the contrary. In such case, the Term shall not commence until Port delivers possession of the Premises and the Rent Commencement Date shall not commence until one hundred and eighty (180) days thereafter. Notwithstanding anything to the contrary above, if Port's inability to deliver possession of the Premises on the estimated Commencement Date results from Tenant's or its Agents' acts or omissions, then Base Rent and Additional Rent

payable by Tenant hereunder shall commence on the date when Port would have delivered possession of the Premises but for such acts or omissions.

4.2. Waiver of Relocation.

Tenant hereby waives any and all rights, benefits or privileges of the California Relocation Assistance Law, California Government Code §7260 et seq., and the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. §4601 et seq. or under any similar law, statute or ordinance now or hereafter in effect except as may be provided this Section 4.2.

Initials:



Tenant

5. RENT.

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

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

5.2. Left Blank by Agreement of the Parties.

5.3. Manner of Payment.

All payments due from Tenant to Port under this Lease shall be made to Port without abatement, deduction, setoff, prior notice or demand, in lawful money of the United States of America at Port's address for notices as set forth in the Basic Lease Information, or to such other person or at such other place as Port may from time to time designate in writing to Tenant.

5.4. Late Charges. Tenant acknowledges that late payment by Tenant to Port of Rent or other sums due under this Lease will cause Port increased costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Accordingly, a Late Charge will be paid by Tenant for any Rent that remains due and unpaid, plus any attorneys' fees incurred by Port by reason of Tenant's failure to pay Rent when due under this Lease. The Late Charge shall be computed from the date on which Rent first became due. Additionally, in the event Tenant is notified by Port that Tenant is considered to be a Habitual Late Payer, Tenant shall pay, as Additional Rent, an amount equal to Fifty Dollars (\$50.00) (as such amount may be adjusted from time to time by the Port Commission) upon written notification from Port of Tenant's Habitual Late Payer status. The parties agree that the charges set forth in this Section 5.4 represent a fair and reasonable estimate of the cost that Port will incur by reason of any late payment. Such charges may be assessed without notice and cure periods and regardless of whether such late payment results in an Event of Default. Amounts due under this Section are in addition to, not in lieu of, amounts due under Section 5.5 below.

5.5. Default Interest. Any Rent, if not paid within five (5) days following the due date, shall bear interest from the due date until paid at the rate of ten percent (10%) per year or, if a higher rate is legally permissible, at the highest rate an individual is permitted to charge under Law (the "Interest Rate"). However, interest shall not be payable on Late Charges incurred by Tenant nor on any amounts on which Late Charges are paid by Tenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Tenant.

5.6. *Net Lease.*

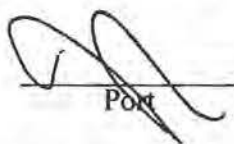
It is the purpose of this Lease and intent of Port and Tenant that all Rent shall be absolutely net to Port, so that this Lease shall yield to Port the full amount of the Rent at all times during the Term, without deduction, abatement or offset. Except as otherwise expressly set forth in this Lease,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

5.7. *Additional Charges.*

Without limiting Port's other rights and remedies set forth in this Lease, at law or in equity, in the event Tenant fails to submit to the appropriate party, on a timely basis, the items identified in Sections 15.4(a), 15.9, 28.1(d), and 34 below, or to provide evidence of the required insurance coverage described in Section 16 below, then upon written notice of such failure, Tenant shall pay, as Additional Rent, an amount equaling One Hundred Dollars (\$100.00). In the event Tenant fails to provide the necessary document within the time period set forth in the initial notice and Port delivers to Tenant additional written notice requesting such document, then Tenant shall pay to Port, as Additional Rent, an amount equaling One Hundred Fifty Dollars (\$150.00) for each additional written notice Port delivers to Tenant requesting such document. The parties agree that the charges set forth in this Section 5.7 represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Tenant's failure to provide the documents identified in this Section 5.7 and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this Lease, at law or in equity.

By placing their initials below, each party specifically confirms the accuracy of the statements made in this Section 5.7 and the reasonableness of the amount of the charges described in this Section 5.7.

Initials:


Port


Tenant

6. TAXES AND ASSESSMENTS.

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

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

7. SECURITY DEPOSIT.

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

Tenant agrees that Port may (but shall not be required to) apply the Security Deposit in whole or in part to (a) pay any sum due to Port under this Lease; (b) compensate Port for any expense incurred or damage caused by Tenant, its Agents or Invitees; (c) cure any default by

Tenant; or (d) cure, or attempt to cure, any failure of Tenant to perform any other covenant, term or condition contained herein. Tenant shall immediately upon demand pay Port a sum equal to the portion of the Security Deposit expended or applied by Port. Port shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to any interest on the Security Deposit. Nothing contained in this Section 7 shall in any way diminish or be construed as waiving any of Port's other remedies set forth in this Lease or provided by law or equity.

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

8. USE OF THE PREMISES.

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

8.2. Prohibited Use.

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

- (a) any activity, or the maintaining of any object, which is not within the Permitted Use;
- (b) any activity, or the maintaining of any object, which will in any way increase the existing rate of, affect or cause a cancellation of, any fire or other insurance policy covering the Premises, any part thereof or any of its contents;
- (c) any activity or object which will overload or cause damage to the Premises;
- (d) any activity which constitutes waste or nuisance, including, but not limited to, the preparation, manufacture or mixing of anything that might emit any objectionable odors, noises or lights onto adjacent properties, or the use of loudspeakers or sound or light apparatus which can be heard or seen outside the Premises;
- (e) any activity which will in any way injure, obstruct or interfere with the rights of other tenants in the Facility or of owners or occupants of adjacent properties, including, but not limited to, rights of ingress and egress;
- (f) use of the Premises for residential, sleeping or personal living quarters and/or "Live/Work" space;
- (g) any auction, distress, fire, bankruptcy or going out of business sale on the Premises without the prior written consent of Port, which consent may be granted, conditioned, or withheld in the sole and absolute discretion of Port;
- (h) the operation, use, or berthing of any vessels, watercraft or floating barges owned or operated by Tenant;
- (i) Tenant's employment of any maritime workers within the Premises for loading, unloading, building, repairing, dismantling, or longshoring of any vessel;

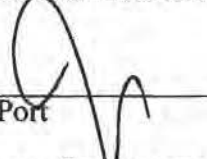
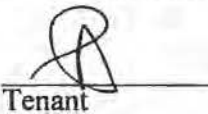
- (j) any vehicle and equipment maintenance, including but not limited to fueling, changing oil, transmission or other automotive fluids;
- (k) the storage of any and all excavated materials, including but not limited to dirt, concrete, sand, asphalt, and pipes;
- (l) except during construction of the Initial Tenant Improvements and in connection with such Initial Tenant Improvements, the storage of any and all aggregate material, or bulk storage, such as wood or of other loose materials;
- (m) the washing of any vehicles or equipment;
- (n) the placement of any object, machinery or equipment on any portion of the Premises that exceeds the Load Restrictions, if any, described in the Basic Lease Information; or
- (o) any other Prohibited Uses identified in the Basic Lease Information, if any.

8.3. Notice of Prohibited Use Charge.

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

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

Initials:

Port  Tenant 

9. COMPLIANCE WITH LAWS AND REGULATIONS.

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

The parties acknowledge and agree that Tenant's obligation to comply with all Laws as provided herein is a material part of the bargained for consideration under this Lease. Tenant's obligation under this Section 9 shall include, without limitation, the responsibility of Tenant to make substantial or structural repairs and Alterations to the Premises, regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of

the then remaining Term hereof, the relative benefit of the repairs to Tenant or Port, the degree to which the curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Laws involved, and whether the Laws involved is related to Tenant's particular use of the Premises. Any Alteration or Improvements made by or on behalf of Tenant pursuant to the provisions of this Section 9 shall comply with the provisions of Section 13 below. Except as otherwise expressly set forth in this Lease, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant of its obligations hereunder, nor give Tenant any right to terminate this Lease in whole or in part or to seek redress against Port, except to the extent Tenant may have remedies against Port pursuant to this Lease or applicable Law. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel Port to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

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

10.1. *Port Acting as Owner of Property.* Tenant understands and agrees that Port is entering into this Lease in its capacity as a landowner with a proprietary interest in the Premises and not as a regulatory agency of the City with certain police powers. Port's legal status as an agency of City shall in no way limit the obligation of Tenant to obtain any required approvals from City or State departments, boards or commissions or any other regulatory body which have jurisdiction over the Premises, including Port. By entering into this Lease, Port is in no way modifying or limiting the obligation of Tenant to cause the Premises to be used and occupied in accordance with all Laws and required Regulatory Approvals.

10.2. *Regulatory Approvals.*

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

Any fines or penalties imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval shall be promptly paid and discharged by Tenant, and Port shall have no liability, monetary or otherwise, for said fines and penalties. To the fullest extent permitted by Law, Tenant agrees to indemnify and hold City, Port and their Agents harmless from and against any loss, expense, cost, damage, attorneys' fees, penalties, claims or liabilities which City or Port may incur as a result of Tenant's failure to obtain or comply with the terms and conditions of any Regulatory Approval.

Without limiting the terms and conditions of Sections 10.1 and 10.2, by initialing below, Tenant agrees and acknowledges that (i) Port has made no representation or warranty that Regulatory Approvals to allow for the Changes, if any, can be obtained, (ii) although Port is an agency of the City, Port has no authority or influence over City or State officials, departments,

boards, commissions or agencies or any other regulatory body, including, but not limited to BCDC (individually defined as "Regulatory Agency" and collectively as "Regulatory Agencies") responsible for the issuance of such required Regulatory Approvals, (iii) Port is entering into this Lease in its capacity as a landowner with a proprietary interest in the Facility and not as a regulatory agency of the City with certain police powers, and (iv) Tenant is solely responsible for obtaining any and all required Regulatory Approvals in connection with any Changes. Accordingly, Tenant understands that there is no guarantee, nor a presumption, that any required Regulatory Approvals will be issued by the appropriate Regulatory Agency and Port's status as an agency of the City shall in no way limit the obligation of Tenant to obtain approvals from any Regulatory Agencies (including Port) that have jurisdiction over the Facility. Tenant hereby releases and discharges Port from any liability relating to the failure of any Regulatory Agency (including Port) from issuing any required Regulatory Approval.

Initials:



Tenant

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

11. MAINTENANCE AND REPAIRS.

11.1. Maintenance and Repair Obligations.

Tenant shall at all times during the Term, and at its sole cost and expense, maintain and repair in good and working order, condition and repair the Premises, the Improvements, the Initial Tenant Improvements and Subsequent Alterations thereon all in a condition as good as, or better than, their condition on the date the Initial Tenant Improvements are completed, excepting ordinary wear and tear and in compliance with all applicable Laws and the requirements of this Lease. Except as otherwise provided in Section 11.2, Tenant shall promptly make (or cause others to make) all necessary or appropriate repairs whether structural or non-structural, interior or exterior, ordinary or extraordinary, foreseen or unforeseen. Tenant shall make such repairs with materials, apparatus and facilities as originally installed by Tenant and approved by Port under this Lease as part of the Initial Tenant Improvements, or Subsequent Alterations, if applicable, 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 made by Tenant shall be at least equivalent in quality, appearance, public safety, and durability to and in all respects consistent with the Initial Tenant Improvements and Subsequent Alterations, if any. Tenant shall not make, nor cause or suffer to be made any repairs or other work for which a permit is required by the San Francisco Building Code, the Port Facility Code, or of any rule or regulation of Port without first obtaining Port's prior written consent and a permit therefore.

11.2. Pier Substructure. Notwithstanding the foregoing, except as to the Initial Tenant Improvements related to the Pier Substructure for which Tenant has maintenance, repair and replacement responsibility, neither Port nor Tenant shall have the obligation to repair or maintain the Pier Substructure underlying the Premises. "Pier Substructure" as used herein shall mean the wooden substructure, consisting of the wooden piles, the cap of the wooden portion of the Pier Substructure, the wooden stringers and the wooden deck, and the concrete substructure consisting of the concrete deck, the concrete pilings of the concrete portion of the Pier Substructure and the seawall. Tenant shall, at its sole cost and expense, annually inspect the Pier Substructure and submit to Port a report detailing its findings. In the event that the Pier

Substructure requires maintenance repair or replacement such that Tenant cannot reasonably use the Premises for the Permitted Uses absent such maintenance repair or replacement, then either Party may terminate this Lease upon not less than thirty (30) days written notice to the other Party. If Port elects to terminate, Tenant may elect to conduct such maintenance and repairs upon written notice to Port prior to the effective date of Port's written notice to terminate. If Tenant elects to conduct such maintenance and repairs, Tenant shall not be entitled to any rent abatement or credit. Upon termination pursuant to this Section 11.2, the Parties shall be released thereby without further obligations to the other Party as of the effective date of such termination subject to payment to Port of accrued and unpaid Rent, up to the effective date of such termination and all insurance proceeds; provided, however, that the indemnification provisions hereof and any other provisions that expressly survive the earlier termination or expiration of this Lease shall survive any such termination. At Port's request following any termination, Tenant shall deliver to Port a duly executed and acknowledged quitclaim deed suitable for recordation and in form and content satisfactory to Port.

11.3. No Obligations of Port.

Port shall have no obligation to make repairs, renewals, or replacements of any kind, nature or description, or maintain the Premises, or any other of the Improvements or any portion thereof. Tenant waives the benefit of any existing or future Law that would permit Tenant to make repairs or replacements at Port's expense, or abate or reduce any of Tenant's obligations under, or terminate, this Lease, on account of the need for any repairs or replacements. Without limiting the foregoing, Tenant hereby waives any right to make repairs at Port's expense as may be provided by Sections 1932(1), 1941 and 1942 of the California Civil Code, as any such provisions may from time to time be amended, replaced, or restated.

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

11.5. Port's Right to Repair.

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

With respect to any work where the total hard costs of such work are less than Two Thousand Dollars (\$2,000), Tenant shall pay to Port, as Additional Rent, an amount equaling Two Hundred Dollars (\$200.00) upon delivery of the initial notice relating to Tenant's failure to maintain the Premises in accordance with Section 11 ("Maintenance Notice"). In the event Port determines during subsequent inspection(s) that Tenant has failed to maintain the Premises in accordance with Section 11, then Tenant shall pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300.00) for each additional Maintenance Notice, if applicable, delivered by Port to Tenant following each inspection. Parties agree that the charges associated

with each inspection of the Premises and delivery of each Maintenance Notice represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the Premises and issuance of each Maintenance Notice. Tenant's failure to comply with the applicable Maintenance Notice and Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this Lease, at law or in equity. The amounts set forth in this Section 11.5 shall be due within three (3) business days following delivery of the applicable Maintenance Notice.

Initials:



Tenant

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

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

12. UTILITIES AND SERVICES.

12.1. Utilities.

Tenant shall make arrangements and shall pay all charges for all Utilities to be furnished on, in or to the Premises or to be used by Tenant.

Tenant shall be obligated, at its sole cost and expense, to repair and maintain in good operating condition all utilities located within the Premises and all utilities installed by Tenant (whether within or outside the Premises). If Tenant requests Port to perform such maintenance or repair, whether emergency or routine, Port shall charge Tenant for the cost of the work performed at the then prevailing standard rates, and Tenant agrees to pay said charges to Port promptly upon billing. Tenant shall pay for repair of utilities located outside the Premises (regardless of who installed the same) which are damaged by or adversely affected by Tenant's use of such utility and shall be responsible for all damages, liabilities and claims arising therefrom.

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

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

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

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

12.2. Services.

Tenant shall make arrangements and shall pay all charges for all services to be furnished on, in or to the Premises or to be used by Tenant, including, without limitation, garbage and trash collection, janitorial service and extermination service.

12.3. Antennae and Telecommunications Dishes. No antennae or telecommunications dish or other similar facilities on the exterior of the Premises may be installed on the Premises without the prior written approval of Port, which may be given or withheld in its sole and absolute discretion. Any wireless telecommunications systems installed on the exterior of the Premises shall be subject to Port's approval pursuant to the Port Commission's adopted policy on the siting and requirements for wireless telecommunications, as the same may be amended or modified from time to time. No such antennae shall interfere with the City's emergency and non-emergency communications facilities or the transmission facilities of Port.

13. IMPROVEMENTS AND ALTERATIONS.

13.1. Port Consent Required. Tenant shall not make nor cause or suffer to be made, any Alterations or Improvements to the Premises (i) without the prior written consent of Port, which consent shall not be unreasonably withheld; provided, however, that Port shall have the right in its sole and absolute discretion to consent or to withhold its consent to any Alterations or Improvements which affects the structural portions of the Premises, the Facility, the Facility or

the Facility Systems, and (ii) until Tenant shall have procured and paid for all Port, municipal and other governmental permits and authorizations of the various municipal departments and governmental agencies having jurisdiction over the Premises, including, but not limited to, any building or similar permits required by Port or its Chief Harbor Engineer in the exercise of its jurisdiction with respect to the Premises. As a further condition to giving consent, with respect to Alterations or Improvements having an estimated hard cost in excess of One Hundred Thousand Dollars (\$100,000), Port may require Tenant to provide Port, at Tenant's sole cost and expense, a payment and performance bond in form acceptable to Port, in a principal amount no more than one and one-half (1.5) times the estimated costs of such Subsequent Alterations, to ensure Port against any liability for mechanics' and materialmen's liens, stop notices and to ensure completion of work.

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

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

(a) Construction Requirements.

All Subsequent Alterations to the Premises made by or on behalf of Tenant shall be subject to the following conditions, which Tenant covenants faithfully to perform:

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

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

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

(iv) At the completion of any work described in this Section, Tenant shall furnish to Port one reproducible "as built" drawing of all Subsequent Alterations made in the Premises.

(b) Historic Resources. Tenant expressly acknowledges that the Facility is a Contributing resource to the Embarcadero National Register Historic District. Accordingly, all interior and exterior alterations (including but not limited to any repair, alteration, improvement, or construction to the interior or exterior of the facility) are subject to review by Port for consistency with the design policies and criteria set forth in the Waterfront Land Use Plan, Design and Access Element, the Secretary of the Interior's Standards for the Treatment of Historic Properties, and the Port of San Francisco Historic Preservation Review Guidelines for Pier and Bulkhead Wharf Substructures attached hereto as *Exhibits D and E*. Tenant expressly agrees to comply with the Secretary of the Interior's Standards for the Treatment of Historic Properties for all current and future interior and exterior repair, alteration improvement or construction. Additionally, Tenant expressly agrees to comply with and the Port of San Francisco Historic Preservation Review Guidelines for Pier and Bulkhead Wharf Substructures as applicable.

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

(d) Without limiting Section 15 (Hazardous Materials) below, Tenant, on behalf of itself and its Agents or Invitees, shall comply with all requirements of the San Francisco Building Code, Section 3407, and all other applicable Laws, including, without limitation, the California and United States Occupational Health and Safety Acts and their implementing regulations, when the Initial Tenant Improvements or Subsequent Alterations disturbs or removes exterior lead-based or "presumed" lead-based paint (as defined below). Tenant and its Agents or Invitees shall give to Port three (3) business days prior written notice of any disturbance or removal of exterior lead-based or presumed lead-based paint. Further, Tenant and its Agents or Invitees, when disturbing or removing exterior lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter ("HEPA") local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool; and (e) heat guns operating above 1,100 degrees Fahrenheit. Paint on the exterior of buildings built before December 31, 1978, is presumed to be lead-based paint unless lead-based paint testing, as defined in Section 3407 of the San Francisco Facility Code, demonstrates an absence of lead-based paint on the exterior surfaces of such buildings. Under this Section 13.2(d), lead-based paint is "disturbed or removed" if the work of Alterations or Improvements involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on an exterior surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface.

13.3. Improvements Part of Realty. Other than Tenant's Property and as set forth in Section 13.4 below, the Initial Tenant Improvements or any other Subsequent Alterations on the Premises shall immediately upon construction or installation become part of the realty, shall be owned by Port and shall, at the end of the Term hereof, remain on the Premises without compensation to Tenant.

13.4. Removal of Improvements. At Port's election made in accordance with this Section, Tenant shall be obligated at its own expense to remove any or all Subsequent Alterations which Tenant has made to the Premises, including without limitation all telephone wiring and equipment installed by Tenant. Tenant shall promptly repair, at its own expense, in good and workmanlike fashion any damage occasioned thereby. Prior to the Expiration Date or earlier termination of this Lease, Port shall give written notice to Tenant (herein "**Notice of Removal**") specifying the Subsequent Alterations or portions thereof which Tenant shall be required to remove and relocate or demolish and remove from the Premises. If termination of this Lease is the result of loss or destruction of the Premises or any Improvements thereon, Port shall deliver said Notice of Removal to Tenant within a reasonable time after the loss or destruction. If Tenant fails to complete such demolition or removal on or before the termination of this Lease, Port may perform such removal or demolition at Tenant's expense, and Tenant shall reimburse Port within three (3) business days after upon demand therefor.

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

13.6. Port's Alterations. Port reserves the right at any time to make alterations, additions, repairs, deletions or improvements to any part of the Facility, or the Facility Systems, provided that any such alterations or additions shall not materially adversely affect the functional utilization of the Premises for the Permitted Use. Port shall use its commercially reasonable efforts to conduct any of the foregoing activities in a manner that, to the extent reasonably practicable, will minimize inconvenience or disturbance to Tenant.

14. LIENS.

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

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

15. HAZARDOUS MATERIALS.

15.1. *Requirements for Handling.* Neither Tenant nor its Agents or Invitees, shall Handle in, on or about the Premises any Hazardous Material. Notwithstanding the foregoing, Tenant may Handle on the Premises janitorial or office supplies or similar materials in such limited amounts as are customarily used for general office purposes so long as such Handling is at all times in full compliance with all Environmental Laws.

15.2. *Tenant Responsibility.*

Tenant agrees that during its use and occupancy of the Premises it will: (i) not (A) permit Hazardous Materials to be present on or about the Premises (other than as may be permitted in Section 15.1 above) or (B) Release any Hazardous Materials on, in, at, under, or emanating from, the Premises or the Facility; (ii) comply with all Environmental Laws relating to the Premises and the use of Hazardous Materials on or about the Premises and not engage in or permit others to engage in any activity at the Premises in violation of any Environmental Laws; and (iii) subject to the restrictions set forth in Section 15.1 above, Tenant shall Handle all Hazardous Materials discovered, introduced, or Released on the Premises during Tenant's occupancy of the Premises in compliance with all Environmental Laws. Notwithstanding the foregoing, Tenant shall not be responsible for the safe Handling of Hazardous Materials introduced on the Premises during Tenant's occupancy of the Premises solely by City, Port or their Agents or introduced onto the Premises prior to the Commencement Date or the date of Tenant's first use of the Premises, whichever is earlier, except to the extent Tenant exacerbates or Releases such Hazardous Materials. Tenant shall protect its employees and the general public in accordance with all Environmental Laws. Port may from time to time request, and Tenant shall be obligated to provide, information reasonably adequate for Port to determine that any and all Hazardous Materials are being Handled in a manner which complies with all Environmental Laws. Port shall have the right, but not the obligation, to inspect and audit the Premises for Hazardous Materials including the right to obtain environmental samples and perform equipment and facility testing, such as testing the integrity of secondary containment and above and underground tanks at reasonable times, pursuant to Section 24 below (Entry). Port's failure to inspect or obtain samples or to detect conditions attributable to Tenant's operation if an inspection is conducted shall not be deemed to be a release of any liability for environmental conditions subsequently determined to be Tenant's responsibility under this Lease.

Tenant shall immediately notify Port in writing of and when Tenant learns or has reason to believe that there has been any Release of any quantity of a Hazardous Materials in, on or about the Premises, the Facility or the environment. After notifying Port, and in compliance with all Laws and this Lease, the Tenant must promptly perform whatever removal or remedial action is necessary to clean up the Release to Port's satisfaction. If Tenant fails to comply with this provision, Port may perform the removal or remedial action at Tenant's expense, and Tenant shall immediately reimburse Port therefor. Tenant shall not be responsible for the removal of Hazardous Materials introduced on the Premises during Tenant's occupancy of the Premises solely by City, Port or their respective Agents.

15.3. *Requirement to Remove.*

Prior to the expiration or earlier termination of this Lease, Tenant, at its sole cost and expense, shall remove to the Port's satisfaction any and all Hazardous Materials introduced in, on, under or about the Premises during Tenant's occupancy of the Premises. Further, Tenant, at its sole cost and expense, shall remove any Hazardous Materials discovered on the Premises during Tenant's occupancy which is required to be removed by any governmental agency, including Port, which removal would not have been required except for Tenant's use of the

Premises or Tenant's alteration to the Premises. Notwithstanding the foregoing, Tenant shall not be obligated to remove any Hazardous Materials introduced on the Premises during Tenant's occupancy of the Premises solely by City, Port, or their Agents, except to the extent Tenant exacerbates such Hazardous Materials conditions. Except as otherwise provided in this Section 15, Tenant shall not be obligated to remove any Hazardous Materials introduced onto the Premises prior to the Commencement Date or the date of Tenant's first use of the Premises, whichever is earlier. Prior to the expiration or earlier termination of this Lease, Port shall have the right but not the obligation to conduct an inspection and audit at Tenant's cost, of the Premises for the purpose of identifying Hazardous Materials existing on or under the Premises that Tenant is required to remove. Port's failure to conduct an audit or to detect conditions of any audit is conducted shall not be deemed to be a release of any liability for environmental conditions subsequently determined to be Tenant's responsibility under this Lease. If Tenant fails to comply with this provision, Port may perform the removal or remedial action at Tenant's expense, and Tenant shall immediately reimburse Port therefor.

Tenant shall surrender the Premises to Port upon the expiration or earlier termination of this Lease free of debris, waste or Hazardous Materials placed on, about or near the Premises by Tenant, its Agents or Invitees, and in a condition which complies with all Environmental Laws and any additional requirements of Port that are reasonably necessary to protect the value of the Premises or the Facility, including, without limitation, the obtaining of any closure permits or other governmental permits or approvals related to Tenant's use of Hazardous Materials in or about the Premises. If it is determined by Port that the condition of all or any portion of the Premises and/or the Facility is not in compliance with the provisions of this Lease with respect to Hazardous Materials, including, without limitation, all Environmental Laws, at the expiration or earlier termination of this Lease, then at Port's sole option, Port may require Tenant to hold over possession of the Premises until Tenant can surrender the Premises to Port in the condition in which the Premises existed as of the Commencement Date or the date of Tenant's first use of the Premises, whichever is earlier, and prior to the appearance of such Hazardous Materials except for normal wear and tear, including, without limitation, the conduct or performance of any closures as required by any Environmental Laws. The burden of proof hereunder shall be upon Tenant. For purposes hereof, the term "normal wear and tear" shall not include any deterioration in the condition or diminution of the value of any portion of the Premises and/or the Facility in any manner whatsoever related to directly, or indirectly, Hazardous Materials. Any such holdover by Tenant will be with Port's consent, will not be terminable by Tenant in any event or circumstance and will otherwise be subject to the provisions of Section 26.2 below (Holdover).

15.4. Tenant's Environmental Condition Notification Requirements.

(a) Tenant shall notify Port upon the issuance of any environmental permit, approval or license issued by any of the following: the U.S. Environmental Protection Agency; any California Environmental Protection Agency board, department or office, including, but not limited to, the Department of Toxic Substances Control and the San Francisco Bay Regional Water Quality Control Board, the Bay Area Air Quality Management District, the SF Department of Public Health, SF Public Utilities Commission, the SF Fire Department, any other governmental or quasi-governmental agency as requested from Port from time to time, and any hazardous waste generator identification numbers issued by the U.S. Environmental Protection Agency or the California Environmental Protection Agency, to itself, its subtenants or any other occupant of the Premises. Tenant shall provide notice to Port by providing a list of the issuing entity, the permit, approval or license number and the date of issuance and expiration of the permit, approval or license and the generator identification number(s). In addition, Tenant shall provide to Port a list of any plan or procedure required to be prepared and/or filed with an environmental regulatory agency, including a Spill Pollution Control and Countermeasure plan, that is required for its operations, its subtenants' operations or other occupants' operations. Tenant may use a form provided by Port to submit the information required under this

subsection. Tenant shall provide Port with copies of any of the documents listed in this subsection upon request.

(b) Tenant shall immediately notify Port in writing of any release or discharge of any Hazardous Materials, whether or not the release is in quantities that would be required under Laws to be reported to a governmental or regulatory agency.

(c) Tenant shall immediately notify Port in writing of, and shall contemporaneously provide Port with a copy of:

(i) Any written notice of Release of Hazardous Materials in or on the Premises that is provided by Tenant or any subtenant or other occupant of the Premises to a governmental or regulatory agency including any City agency other than the Port;

(ii) Any notice of a violation, or a potential or alleged violation, of any Environmental Law that is received by Tenant or any subtenant or other occupant of the Premises from any governmental or regulatory agency including any City agency other than the Port;

(iii) Any inquiry, investigation, enforcement, cleanup, removal, or other action that is instituted or threatened by a governmental or regulatory agency, including any City agency other than the Port, against Tenant or any subtenant or other occupant of the Premises and that relates to the Release or discharge of Hazardous Material on or from the Premises;

(iv) Any claim that is instituted or threatened by any third party against Tenant or any subtenant or other occupant of the Premises and that relates to any Release or discharge of Hazardous Materials on or from the Premises; and

(v) Any notice of the termination, expiration or substantial amendment of any environmental operating permit or license needed by Tenant or any subtenant or other occupant of the Premises.

15.5. Notification of Asbestos.

Port hereby notifies Tenant, in accordance with the United States Occupational Safety and Health Administration (OSHA) Asbestos Rule (1995), 59 Fed. Reg. 40964, 29 CFR §§ 1910.1001, 1926.1101, clarification 60 Fed. Reg. 33974 (OSHA Asbestos Rule); Chapter 10.4 of Division 20 of the California Health and Safety Code and the California Occupational Safety and Health Administration (Cal-OSHA) General Industry Safety Order for Asbestos, 8 CCR § 5208, of the presence of asbestos-containing materials (ACMs) and/or presumed asbestos-containing materials (PACMs) (as such terms are defined in the Cal-OSHA General Industry Safety Order for Asbestos – 8 CCR § 5208(b)), in the locations identified in the summary/table, if any, set forth in *Schedules 1 and 3* attached hereto.

This notification by Port is made pursuant to a building inspection survey(s), if any, performed by the Port or its contractors qualified to perform an asbestos building survey identified in the summary/table, if any, set forth in *Schedules 1 and 3* attached hereto. Such survey(s), monitoring data and other information are kept at Port of San Francisco, Pier 1, San Francisco, California, 94111 and are available for inspection upon request.

Tenant hereby acknowledges receipt of the notification specified in the first paragraph of this Section 15.5 hereof and the "Notice To Employees, Owners, Lessees, Sublessees, Agents And Contractors" set forth in *Schedules 1 and 3* attached hereto and understands, after having consulted its legal counsel, that it must make its agents, employees, and contractors aware of the presence of ACMs and/or PACMs in or about the Premises in order to avoid or minimize any damage to or disturbance of such ACMs and/or PACMs. Tenant further acknowledges its obligations under the Cal-OSHA General Industry Safety Order for Asbestos to provide information to its employees and contractors regarding the presence of ACMs and PACMs at the

Premises and to provide a training program for its employees that conforms with 8 CCR § 5208(j)(7)(C).

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

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

15.6. Notification of Lead

Port hereby notifies Tenant of the presence of lead-containing materials and/or presumed materials in the locations identified in *Schedule 3* attached hereto. Disturbance or removal of lead is regulated by 29 CFR §§ 1910.1025, 1926.62; Chapter 10.4 of Division 20 of the California Health and Safety Code; the California Occupational Safety and Health Administration (Cal-OSHA) Construction Safety Order for Lead, 8 CCR § 1532.1, and the San Francisco Building Code, Chapter 36, Section 3407.2.3. This notification by Port is made pursuant to a building inspection survey(s).

Tenant hereby acknowledges receipt of the notification specified in this Section and *Schedule 3* attached hereto and understands, after having consulted its legal counsel, that it must make its agents, employees, and contractors aware of the presence of lead in or about the Premises in order to avoid or minimize any lead hazards.

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

proceedings, and (2) any Claims for damages arising from an alleged violation of Cal-OSHA Construction Safety Order for lead and/or exposures to lead.

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

(a) Terminate this Lease and collect damages Port incurs as a result of such default, including, without limitation, cleanup costs incurred by Port resulting from the cleanup of any Hazardous Materials present in or on the Premises, soil, or groundwater; or

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

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

15.9. Storm Water Pollution Prevention.

(a) 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 to be covered, developing and implementing a site-specific Storm Water Pollution Prevention Plan ("SWPPP"), and conducting storm water monitoring and reporting. As applicable, Tenant's SWPPP and a copy of a Notice of Intent for Tenant's Premises shall be submitted to Port's Environmental Health and Safety section prior to beginning on-site construction or operations.

(b) In addition to requiring compliance with the permit requirements under Section 15.9(a) above, Port requires that tenants leasing areas between Pier 70 and India Basin comply with provisions of a recently completed area-wide storm water planning effort for the Southern Waterfront area between Pier 70 and India Basin (the "Study"). The Study establishes specific standards, storm water management practices, and control technologies that apply to existing and proposed facilities in the Southern Waterfront area. Tenant's SWPPP will be reviewed for consistency with the storm water management objectives established in the Study. Based on that review, Port may require Tenant to institute additional storm water management practices or controls.

15.10. Presence of Hazardous Materials.

California law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Tenant is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Premises, including, but not limited to vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as formaldehyde. Further, the following known Hazardous Materials are present on the property: asbestos and lead-based paint in the building, as defined in *Schedules 1 and 3* and the Asbestos and Lead-Based Paint Survey Report Pier 24 Annex San Francisco, California prepared by RGA Environmental, February 11, 1998 copies of which have been delivered to or made available to Tenant. By execution of this Lease, Tenant acknowledges that the notice set forth in this section satisfies the requirements of California Health and Safety Code Section 25359.7 and related statutes. Tenant also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

16. INSURANCE

16.1. Required Insurance Coverage.

Tenant, at its sole cost and expense, shall maintain, or cause to be maintained, throughout the Term of this Lease, the following insurance:

(a) Builders Risk Insurance. At all times prior to Completion of the Initial Tenant Improvements and during any period of Subsequent Alterations having an estimated hard cost of in excess of One Hundred Thousand Dollars (\$100,000), Tenant shall maintain, on a form reasonably approved by Port, builders' risk insurance in the amount of one hundred percent (100%) of the completed value of all new construction, insuring all new construction, including all materials and equipment incorporated in, on or about the Premises, and in transit or storage off-site, that are or will be part of the permanent Improvements, against "all risk" and "special form" hazards, water damage (including groundwater damage and water damage resulting from backed up sewers and drains) and flood insurance (subject to the provisions of Section 16.6(c) below).

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

(c) Commercial General Liability Insurance. Comprehensive or commercial general liability insurance, with limits not less than Five Million Dollars (\$5,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for contractual liability, independent contractors, broad form property damage, personal injury, products and completed operations, fire damage and legal liability with limits not less than Two Hundred Fifty Thousand Dollars (\$250,000.00), explosion, collapse and underground (XCU).

(d) Automobile Liability Insurance. Comprehensive or business automobile liability insurance with limits not less than One Million Dollars (\$1,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for owned and hired vehicles and for employer's non-ownership liability, which insurance shall be required if any automobiles or any other motor vehicles are operated in connection with Tenant's activity on the Premises or the Permitted Use.

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

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

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

(h) **Fine Arts Insurance.** Tenant shall maintain commercial fine arts insurance for all artwork, photographs, historical or cultural artifacts or similar objects ("Art Works") in the Premises, including any Art Works that it owns as well as Art Works that it may borrow from third parties. Such insurance shall provide coverage against all risks of physical loss or damage from any external cause except wear and tear, gradual deterioration, and other standard exclusions contained in fine arts insurance policies. Tenant shall assume all costs associated with any losses not fully covered by such insurance and agrees that in the event that any of the Art Works are lost or damaged, recovery, if any, will be limited to such amount as may be paid by the Tenant's insurer.

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

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

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

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

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

16.6. General Insurance Matters.

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

(b) As to earthquake insurance:

(i) during construction of the Initial Tenant Improvements, such insurance shall be in an amount at least equal to the maximum amount as is available at rates that are commercially reasonable for owners or operators of comparable businesses located in the City and County of San Francisco, from recognized carriers (with a deductible of up to but not to exceed five percent (5%) of the then-current, full replacement cost of the Improvements or other

property being insured pursuant thereto (including building code upgrade coverage and without any deduction being made for depreciation).

(ii) from and after Completion of the Initial Tenant Improvements, such insurance shall be in an amount at least equal to One Hundred percent (100%) of the maximum probable loss that would be sustained by the Premises as a result of an earthquake measuring 8.0 on the Richter Scale, as determined not less frequently than every 5 years by the City's Risk Manager, to the extent that such insurance is available at rates that are commercially reasonable for owners or operators of comparable businesses located in the City and County of San Francisco.

(c) As to flood insurance only: if the City purchases flood insurance, then Tenant shall purchase same as provided below

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

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

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

(e) All insurance policies required to be maintained by Tenant hereunder shall provide for thirty (30) days prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to Tenant and Port. Such notice shall be given in accordance with the notice provisions of Section 29 below.

(f) Tenant shall deliver to Port certificates of insurance and additional insured policy endorsements in a form satisfactory to Port evidencing the coverages required herein, together with evidence of payment of premiums, on or before the Commencement Date, and upon renewal of each policy not less than thirty (30) days before expiration of the term of the policy. Tenant shall, upon Port's request, promptly furnish Port with a complete copy of any insurance policy required hereunder.

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

17. DAMAGE AND DESTRUCTION.

17.1. *Damage and Destruction.*

Except with respect to the Pier Substructure as discussed in Section 17.2, if the Premises or the Facility is damaged by fire or other casualty, then Port shall repair the same provided that funds for such repairs are appropriated by Port, in its sole discretion, for such purpose and that such repairs can be made within two hundred ten (210) days after the date of such damage (the "Repair Period"). In the event such conditions are satisfied, this Lease shall remain in full force and effect except that so long as such damage or casualty is not attributable to Tenant, its Agents or Invitees, Tenant shall be entitled to a proportionate reduction of Base Rent during the Repair Period based upon the extent to which such damage and the making of such repairs materially interferes with Tenant's use or occupancy of the Premises less any insurance proceeds Tenant receives, or would have received if Tenant complied with the requirements set forth in Section 16 above, which proceeds are to be applied against the payment of Rent during any Repair Period.

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

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

If at any time during the last six (6) months of the Term of this Lease, the Premises or the Facility is damaged or destroyed, then either Port or Tenant may terminate this Lease by giving written notice to the other party of its election to do so within thirty (30) days after the date of the occurrence of such damage; provided, however, Tenant may terminate only if such damage or destruction substantially impairs its use or occupancy of the Premises for the Permitted Use. The effective date of termination shall be specified in the notice of termination, which date shall not be more than thirty (30) days from the date of the notice. Notwithstanding anything to the contrary in this Lease, (i) Port shall have no obligation to repair the Premises or the Facility, (ii) Tenant shall not be entitled to any abatement of Rent, and (iii) Tenant shall not be entitled to terminate this Lease, in the event the damage or destruction is attributable to any act or omission of Tenant, its Agents, or Invitees. In no event shall Port be required to repair any damage to Tenant's Property or any paneling, decorations, railings, floor coverings, or any Improvements or other Alterations installed or made on the Premises by or at the expense of Tenant. In the event the Premises or the Facility is substantially damaged or destroyed and Port intends to rebuild for public purposes inconsistent with this Lease, Port may terminate this Lease upon written notice to Tenant.

17.2. *Pier Substructure.* In the event that any time during the Term of this Lease, Port in its sole and absolute discretion, determines that due to the condition of the Pier Substructure beneath the Premises or the Pier Substructure affecting any areas adjacent to or surrounding the Premises, all or any portion of the Premises cannot be safely used for the Permitted Uses, or it

becomes necessary to block or "red tag" all or any portion of the Premises to protect the health, welfare, and safety of the users of the Premises and/or the general public due to the condition of the Pier Substructure, Port shall give written notice to Tenant ("Substructure Notice") of Port's intent to either (a) redefine the Premises to exclude the area which, in Port's sole and absolute discretion, needs to be removed from the Premises to protect the health, welfare, and safety of the users of the Premises and/or the general public ("Affected Area"), or (ii) terminate this Lease upon no less than thirty (30) days from the date of the Substructure Notice. Upon receipt of the Substructure Notice, Tenant shall promptly vacate the Affected Area, or the entire Premises, as the case may be, but in no event more than sixty (60) days from receipt of the Substructure Notice.

Upon receipt of the Substructure Notice, Tenant shall have the following three (3) options:

(a) In the event Port elects to remove the Affected Area from the Premises and Tenant, in its reasonable judgment, determines that the removal of the Affected Area renders the Premises unusable to Tenant for the Permitted Uses, then Tenant may terminate this Lease upon thirty (30) days prior written notice to Port (which shall be exercised, if at all, at any time within forty-five (45) days after receipt of the Substructure Notice by Tenant by delivering written notice of termination to Port).

(b) In the event Port elects to remove the Affected Area from the Premises, Tenant may elect to remain on the remaining portion of the Premises and from and after the date Tenant vacates the Affected Area and the Affected Area is so removed from the Premises, Base Rent shall be reduced in proportion to the Affected Area so removed from the Premises.

(c) Tenant may, within thirty (30) days after receipt of the Substructure Notice by Tenant, notify Port of Tenant's election to repair, at its sole cost and expense, the Pier Substructure ("Notice of Election to Repair"). Upon receipt by Port of the Notice of Election to Repair, it shall be deemed as if Port had never delivered the Substructure Notice to Tenant. Promptly following delivery of the Notice of Election to Repair, Tenant shall commence and diligently pursue to completion, the repair to or replacement of the Pier Substructure in accordance with the provisions of Section 13. During the period of repair to or replacement of the Pier Substructure ("Substructure Repair Period"), Base Rent shall be reduced in proportion to the area of the Premises that is untenable. Other than the abatement of Base Rent during the Substructure Repair Period set forth in the immediately foregoing sentence, Tenant shall not be entitled to, nor shall Port be liable for the payment of, any other rent credit, allowance, abatement, or any other monetary consideration arising from Tenant's repair to or replacement of the Pier Substructure. If the Base Rent was reduced as apart of Tenant's repair to or replacement of the Pier Substructure due to the untenability of all or a portion of the Premises, following the completion of any such repairs or replacement, the Base Rent will be adjusted to reflect such area's reincorporation into the Premises.

In the event this Lease terminates in accordance with this Section, neither party shall be deemed at fault and Port shall have no further obligations to Tenant, including without limitation, any obligation to reimburse Tenant for any costs related to the required alterations, any alterations and any other improvements Tenant may have made to the Premises. In no event shall the Port be liable to Tenant for any loss of business to Tenant or any other costs or losses of any kind or nature whatsoever incurred by Tenant as a result of a removal of a portion of the Premises pursuant to this Section 17.8 or any termination of this Lease resulting therefrom.

Tenant Initials: 

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

18. EMINENT DOMAIN.

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

18.2. Partial Takings. If (a) a part of the Premises shall be taken by any public or quasi-public authority under the power of eminent domain or conveyance in lieu thereof, and (b) Tenant is reasonably able to continue the operation of Tenant's business in that portion of the Premises remaining, and (c) Port elects to restore the Premises to an architectural whole, then this Lease shall remain in effect as to said portion of the Premises remaining, and the Base Rent payable from the Date of Taking shall be reduced by an amount that is in the same ratio to the Base Rent as the value of the area so taken bears to the total value of the Premises immediately before the Date of Taking. If, after a partial taking, Tenant is not reasonably able to continue the operation of its business in the Premises or Port elects not to restore the Premises to an architectural whole, this Lease may be terminated by either Port or Tenant by giving written notice to the other party no earlier than thirty (30) days prior to the Date of Taking and no later than thirty (30) days after the Date of Taking. Such notice shall specify the date of termination which shall be not less than thirty (30) or more than sixty (60) days after the date of said notice.

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

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

18.5. Award; Waiver. Port shall be entitled to any and all payment, income, rent, award, or any interest therein whatsoever which may be paid or made in connection with any taking or conveyance hereunder, and Tenant shall have no claim against Port or otherwise for the value of any unexpired term of this Lease. Notwithstanding the foregoing, to the extent that the same shall not diminish Port's recovery for such taking, Tenant shall have the right to make a claim, and to receive any award specifically made to Tenant, for moving expenses and for loss or damage to Tenant's trade fixtures, equipment and movable furniture. Port and Tenant intend that the provisions of Section 18 shall govern fully in the event of condemnation and accordingly, Port and Tenant each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.110, 1265.120, 1265.130, and 1265.140 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

19. INDEMNITY AND EXCULPATION.

19.1. Indemnity. Tenant shall indemnify and hold Port, City, including, but not limited to, all of their respective boards, commissions, departments, agencies, and other subdivisions and their respective Agents (collectively, "**Indemnified Parties**") harmless from, and, if requested, shall defend them against any and all Claims, direct or vicarious liability, damage, injury or loss arising directly or indirectly out of: (a) any accident, injury to or death of any person, including



Photo 1: North end wall and partial west elevation of Pier 24 Annex



Photo 2: Damaged column base



Photo 3: Damaged end wall column base



Photo 4: Mandoor exit with no exterior access

PORT OF SAN FRANCISCO

SUBSTRUCTURE RAPID EVALUATION SAFETY ASSESSMENT FORM

Substructure Description: Name: Pier 24 Annex Location Code: 1245 Piling: Wood XX Concrete Steel Concrete Jacket XX Wrapped Wood Substructure: Concrete Slab Concrete Beams Steel Beams Wood XX Apron: Concrete Wood XX	Overall Rating: INSPECTED (Green) REQUIRES REVIEW (Yellow) XX UNSAFE (RED) Inspector Name: EFB Affiliation: Port Inspection Date (M/D/Y): 04/15/02 Time: morning
--	---

Condition Assessment

Condition	Yes	No	More Review Needed	Comments
1) Severe seawall failure		X		Generally the substructure is in good condition, however, there are a number of piles that require repair and some framing that requires repair before this facility can be put back into operation.
2) Many missing piles		X		
3) Many significantly damaged piles	X			
4) Significant beam deterioration		X		
5) Significant slab deterioration		X		
6) Other hazard present		X		

Recommendations:

<input type="checkbox"/>	No further action required
<input checked="" type="checkbox"/>	Detailed Structural evaluation required: Develop plans for pile, beam and deck repair
<input type="checkbox"/>	Detailed Geotechnical evaluation required:
<input type="checkbox"/>	Barricades required in the following areas:
<input type="checkbox"/>	Apron
<input type="checkbox"/>	Other

Comments:

Photos Available:

Yes X

No _____



Photo 1: Pier 24 Annex Looking West



Photo 2: Fungus at Top Pile Section

Attachment 4
Sampling Location Diagrams

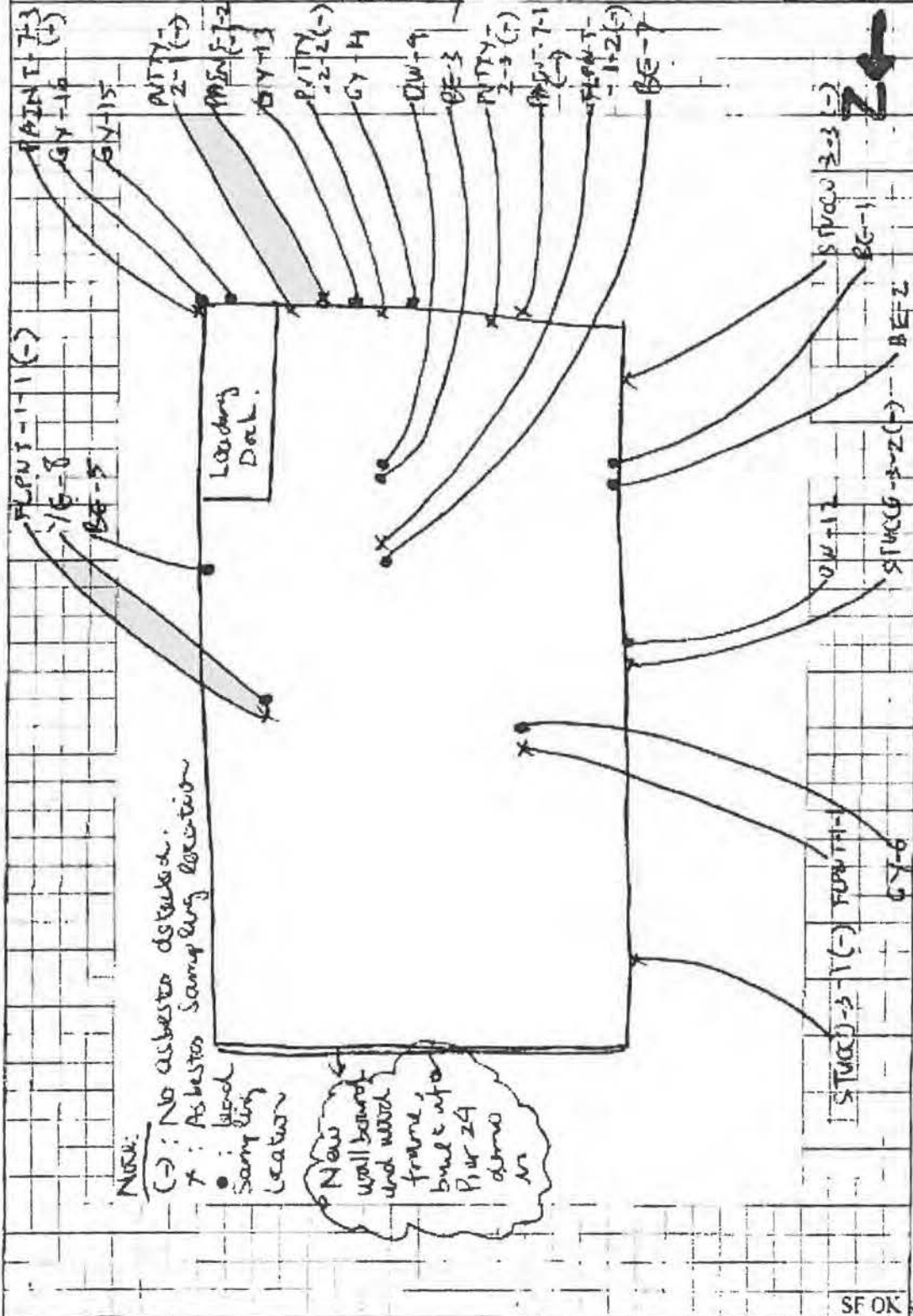
SCA

Environmental, Inc.
334 19th Street
Oakland, CA 94612
tel (510) 845-8200
fax (510) 839-8200

Title: Asbestos and LBP Sampling Location
Project: SFDPW Pier 24 Annex - Interior
Project No: B-84
Drawn By: SH
Checked By:
Date: 6/20/07

Figure 1

Scale: NTS



SCA

Environmental, Inc.

334 19th Street

Oakland, CA 94612

tel: (510) 845-6200

fax: (510) 839-6200

Title: Asbestos and LBP Sampling Location

Project: SPDPW Pier 24 Annex - Roof.

Project No: B35

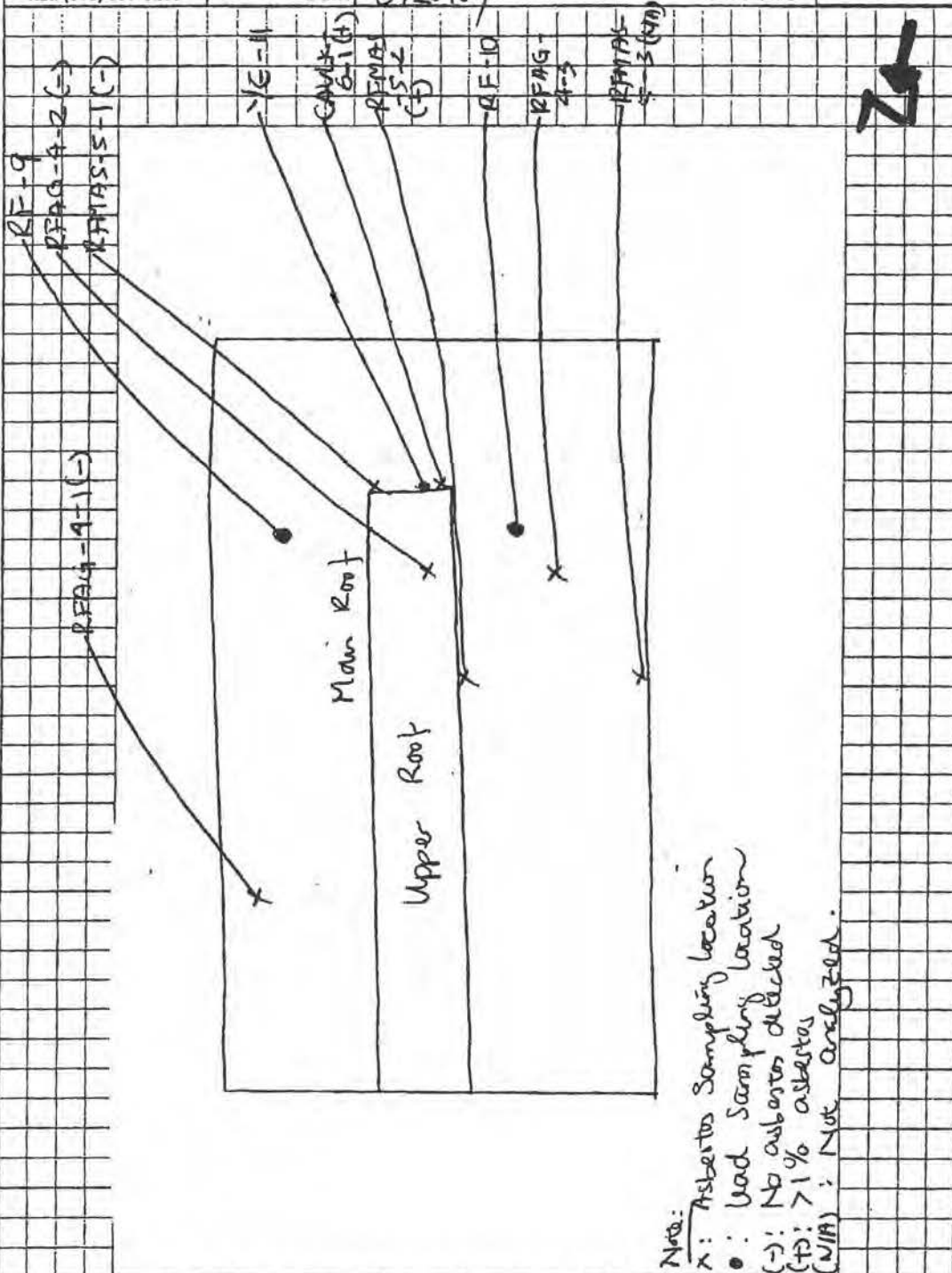
Drawn By: SH

Checked By:

Date: 6/20/07

Scale: NTS

Figure 2



any Agents and/or Invitees of Tenant, or loss or damage to or destruction of any property occurring in, on or about the Premises, or any part thereof, from any cause whatsoever, or (b) any default by Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease, or (c) the use, occupancy, manner of use or occupancy, or condition of the Premises or the activities therein by Tenant, its Agents, or Invitees, or (d) any construction or other work undertaken by Tenant on the Premises whether before or during the Term of this Lease, or (e) any acts, omissions or negligence of Tenant, its Agents or Invitees, in, on or about the Premises or the Facility.

19.2. Hazardous Materials Indemnity.

Tenant shall indemnify, defend and hold the Indemnified Parties harmless from any and all Claims which arise during or after the Term of this Lease as a result of the presence, Handling, Release, or threatened Release of Hazardous Materials on the Premises during Tenant's occupancy of the Premises, except where such presence is caused by the sole negligence or willful misconduct of the Indemnified Parties and Tenant has not exacerbated the Hazardous Material condition. Tenant's obligation to indemnify, defend and hold the Indemnified Parties harmless shall include without limitation, all costs of investigating and remediating the same, damages for diminution in the value of the Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises, damages arising from any adverse impact on marketing of any such space and sums paid in settlement of Claims, attorneys' fees, consultant fees and expert fees.

This indemnification of the Indemnified Parties by Tenant includes, but is not limited to, costs incurred in connection with any investigation of site conditions or any clean-up, remediation, removal or restoration work requested by Port or required by any federal, state or local governmental agency or political subdivision because of Hazardous Materials present in the soil or groundwater in, on, under or about the Premises or in any portion of the Facility or Improvements, which Hazardous Materials were introduced or Released in, on, under or about the Premises during Tenant's occupancy, except where such presence is caused by the sole negligence or willful misconduct of the Indemnified Parties. Tenant's obligation to indemnify, defend and hold the Indemnified Parties harmless shall include without limitation, any and all causes other than the sole negligence or willful misconduct of the Indemnified Parties. Tenant's obligations hereunder shall survive the expiration or earlier termination of this Lease.

19.3. General Indemnity Provision.

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

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

The indemnification obligations of Tenant set forth in this Lease shall include without limitation, indemnification from all loss and liability, including attorneys' fees, court costs and all other litigation expenses. This indemnification by Tenant shall begin from the first notice that any claim or demand is or may be made. The provisions of Section 19 shall survive the expiration or earlier termination of this Lease.

19.4. *Exculpation.*

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

The Indemnified Parties shall not be responsible for or liable to Tenant, and Tenant hereby assumes the risk of, and waives and releases the Indemnified Parties from all Claims for, any injury, loss or damage to any person or property including any Art Works, in or about the Premises by or from any cause whatsoever including, without limitation, (i) any act or omission of persons occupying adjoining premises or any part of the Facility adjacent to or connected with the Premises, (ii) theft, (iii) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (iv) stopped, leaking or defective Facility Systems, (v) Facility defects, and (vi) any other acts, omissions or causes. Nothing in this Section 19.4 shall relieve the Indemnified Parties from liability caused solely and directly by the gross negligence or willful misconduct of the Indemnified Parties, but the Indemnified Parties shall not be liable under any circumstances for any consequential, incidental or punitive damages.

20. ASSIGNMENT AND SUBLETTING.

20.1. *Definition of Transfer.*

The occurrence of any of the following (whether voluntarily, involuntarily or by operation of Law) shall constitute a "Transfer" of this Lease:

(a) any direct or indirect assignment, conveyance, mortgage, encumbrance, hypothecation, alienation, pledge, sale, sublease, or other transfer of Tenant's interest in this Lease or in the Premises, or any part thereof or interest therein; or

(b) the use of all or part of the Premises by any person or entity other than Tenant, except Tenant's authorized Agents or Invitees; or

(c) if Tenant is a privately-held corporation, the dissolution, merger, consolidation or other reorganization of Tenant, or any cumulative or aggregate sale, transfer, assignment or hypothecation of fifty percent (50%) or more of the total capital stock of Tenant or any sale or cumulative sales of fifty percent (50%) or more of the value of the assets of Tenant; or

(d) if Tenant is a partnership or an unincorporated association, (1) the withdrawal or substitution (whether voluntarily, involuntarily or by operation of Law and whether occurring at one time or over a period of time) of any partner(s) owning fifty percent (50%) or more of said partnership or association, or (2) the cumulative or aggregate sale, transfer, assignment or hypothecation of fifty percent (50%) or more of any interest in the capital or profits of such partnership or association, or (3) the dissolution of the partnership or association.

As used herein, the term "Transfer" includes a transfer of any interest in this Lease held by any subtenant, assignee, or transferee. As used herein, a "Tenant Affiliate" shall mean (A) an entity that controls, is controlled by or is under common control with, Tenant, (B) an entity that

acquires all or substantially all of the business and assets of Tenant or a division thereof or results from a merger with Tenant or such a division, or (C) if Tenant is an individual, any designated beneficiary to Tenant's interest in this Lease in connection with the probate of Tenant's will. A party shall be deemed to "control" another party for purposes of the aforesaid definition only if the first party owns more than fifty percent (50%) of the stock or other beneficial interests of the second party. For purposes of Section 20, the term "Invitees" shall not include Tenant's licensees, assignees or subtenants and all agreements between Tenant and any of its licensees, assignees or subtenants are subject to Port's prior written approval as set forth in this Section 20.

20.2. Port's Consent Required. Tenant shall not, without the prior written consent of Port (which consent may not be unreasonably withheld), Transfer this Lease or the Premises. Any of the foregoing acts without consent shall be void. Notwithstanding the foregoing, Tenant shall have no Transfer right in the event (A) Tenant is in default under this Lease or there is an event then occurring which with the giving of notice or the passage of time, or both, would constitute a default hereunder, and (B) the proposed Transfer is an assignment or a sublease under a previous assignment or an existing sublease. All Transfers must be in full compliance with all of the terms and provisions of Section 20. Any Transfer of this Lease occurring without full compliance with all of the terms and conditions hereof shall constitute an incurable breach by Tenant and shall be voidable at the option of Port. Notwithstanding the foregoing, Tenant may Transfer this Lease or sublet any or all portions of the Premises to a Tenant Affiliate without obtaining the consent of Port by giving Port written notice of its intent thereof at least fifteen (15) business days before the proposed effective date of such transfer and copies of all documentation evidencing such Transfer within five (5) days after such Transfer to a Tenant Affiliate. For purposes of Section 20, Port shall not be deemed to have unreasonably withheld its consent in the event Port elects to recapture the space subject to the Transfer pursuant to Section 20.4(c) below.

20.3. Request for Transfer. Tenant shall give Port at least forty-five (45) days prior written notice of any desired Transfer (herein "Notice of Request to Transfer") and shall provide Port with the following information in writing: (a) the name, address, legal composition and ownership of the proposed transferee, (b) the current balance sheet and profit and loss statements (herein "financial statements") for the proposed transferee and for any other entity or person who is to be liable for Tenant's obligations under this Lease, such financial statements to be certified in writing to be true and correct and to be prepared in accordance with generally accepted accounting principles and to cover a period of three years prior to the proposed effective date of the Transfer (or for such shorter period as the proposed transferee or other person may have been in existence), (c) a full description of the terms and conditions of the proposed Transfer, including copies of any and all proposed sublease or assignment agreements or other documents and instruments concerning the proposed Transfer, (d) a description of the proposed use of the Premises by the proposed transferee, including any required or desired Alterations or Improvements to the Premises that may be undertaken by such transferee in order to facilitate its proposed use, (e) complete information regarding all payments to be made or other consideration to be given in connection with the Transfer; (f) a list of personal, business and credit references of the proposed transferee, (g) a current financial statement of Tenant, (h) a Pre-screening and Leasing Application, or other similar document, completed by the proposed transferee and delivered to Port, and (i) any other information, documentation or evidence as may be requested by Port, all in sufficient detail to enable Port to evaluate the proposed Transfer and the prospective transferee. Tenant's Notice of Request to Transfer shall not be deemed to have been served or given until such time as Tenant has provided Port with all information set forth hereinabove. Tenant shall immediately notify Port of any modifications to the proposed terms of the Transfer.

20.4. Port's Options.

Upon receiving a Notice of Request to Transfer, Port shall have the right to do any of the following:

(a) Port may consent to the proposed Transfer, subject to any reasonable conditions upon such Transfer, which conditions may include, without limitation: (1) that the proposed transferee expressly assume all obligations of Tenant under this Lease without, however, Port releasing Tenant therefrom; (2) that in the event this Lease is terminated prior to the expiration of any sublease, at the election of Port, such termination shall operate to terminate all existing subleases entered into by Tenant without further notice from Port; and (3) that the sublease or other Transfer agreement contain: (a) an indemnification clause and waiver of claims provisions in favor of Port and City identical to those contained in Section 19 above; (b) a clause requiring the proposed transferee to name "THE CITY AND COUNTY OF SAN FRANCISCO, THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, AGENTS EMPLOYEES AND REPRESENTATIVES" as additional insureds under all liability and other insurance policies; (c) a clause requiring the proposed transferee to acknowledge Port's right to demand increased insurance coverage to normal amounts consistent with the proposed transferee's business activities on the Premises; and (d) any other clause or provision specified in Section 20.5 below.

(b) Port may deny its consent to the proposed Transfer on any reasonable ground. Reasonable grounds shall include, without limitation, any one or more of the following: (i) that the proposed transferee's financial condition is or may become insufficient to support all of the financial and other obligations of this Lease; (ii) that the use to which the Premises will be put by the proposed transferee is inconsistent with the terms of this Lease or otherwise will materially and adversely affect any interest of Port; (iii) that the nature of the proposed transferee's intended or likely use of the Premises would involve an increased risk of the use, Release or mishandling of Hazardous Materials or otherwise increase the risk of fire or other casualty; (iv) that the business reputation or character of the proposed transferee or any of its affiliates is not reasonably acceptable to Port; (v) that the proposed transferee is not likely to conduct on the property a business of a quality substantially equal to that conducted by Tenant; or (vi) that Port has not received assurances acceptable to Port in its sole discretion that all past due amounts owing from Tenant to Port (if any) will be paid and all other defaults on the part of Tenant (if any) will be cured prior to the effectiveness of the proposed Transfer.

(c) Port may, to be exercised within thirty (30) days of receipt of all of the information and documents set forth in Section 20.3 above, to (i) terminate this Lease as of the commencement date stated in the proposed sublease or assignment, or (ii) sublease or take an assignment, as the case may be, from Tenant of the interest, or any portion thereof, in this Lease and/or the Premises that Tenant proposes to assign or sublease, on the same terms and conditions as stated in the proposed assignment or sublease agreement. In the event Port elects to exercise any of the options provided in this Section 20.4(c), then Port shall have the additional right to negotiate directly with Tenant's proposed assignee or subtenant and to enter into a direct lease or occupancy agreement with such party on such terms as shall be acceptable to Port in its sole and absolute discretion, and Tenant hereby waives any Claims against Port related thereto, including, without limitation, any Claims for any compensation or profit related to such lease or occupancy agreement.

Tenant shall have ninety (90) days from the date Port consents to the proposed Transfer to enter into an actual assignment or sublease agreement with the proposed transferee on the same terms and conditions presented to Port in the Notice of Request to Transfer. In the event Tenant and the proposed transferee fail to enter into an actual assignment or sublease agreement within such ninety (90) day period or Tenant desires to enter into such assignment or sublease agreement on terms and conditions materially more favorable to Tenant than those contained in the original Notice of Request to Transfer, then Tenant shall give Port a new Notice of Request to Transfer, which notice shall state the terms and conditions of such assignment or sublease

agreement and identify the proposed transferee, and Port shall again be entitled to elect any of the options set forth in Section 20.4(c) at any time within thirty (30) days after Port's receipt of such new Notice of Request to Transfer. Any rent or other consideration realized by Tenant under any such assignment or sublease agreement in excess of the Base Rent payable hereunder, shall be paid to Port in accordance with Section 20.6 below.

20.5. Required Provisions in Every Transfer Agreement. Each and every Transfer agreement shall contain the following provisions:

(a) An indemnification clause and waiver of claims provision identical to that set forth in Section 19 above. Each assignee or sublessee shall assume all obligations of Tenant under this Lease and shall be jointly and severally liable with Tenant for payment of Rent and performance of all terms, covenants and conditions to be performed by Tenant hereunder.

(b) A clause naming as additional insureds 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" and acknowledging Port's rights to demand increased coverage to normal amounts consistent with the subtenant's business activities on the Premises.

(c) A provision stating that if for any reason whatsoever this Lease and the leasehold of Tenant under this Lease are terminated, such termination shall operate to terminate all the existing subleases entered into by Tenant.

(d) A provision directing the subtenant to pay the Rent and other sums due under the Transfer agreement directly to Port upon receiving written notice from Port that Tenant is in default under this Lease with respect to the payment of Rent.

(e) A provision whereby each transferee expressly waives entitlement to any and all relocation assistance and benefits in connection with this Lease. Tenant shall indemnify Port for any and all Claims arising out of any relocation assistance or benefits payable by Port to any transferee.

(f) A provision identical to Section 20.10 below.

20.6. Excess Rent.

Tenant shall pay to Port immediately upon receipt thereof by Tenant, as Additional Rent, one hundred percent (100%) of all sums paid or payable to Tenant by the transferee in excess of the then existing Rent payable by Tenant attributable to the portion of the Premises being transferred, including without limitation, any rent and all other sums or other consideration received by Tenant as a result of the Transfer, in whatever form, less expenses (collectively, the "Subletting Expenses") for verifiable, reasonable and customary brokerage commissions incurred in connection with the Transfer and new tenant improvements to be made and/or paid by Tenant solely in connection with such Transfer, which Subletting Expenses shall be amortized on a straight-line basis without interest, over the term of such Transfer.

By way of example, if the term of the sublease equals five (5) years, the sublease rent equals \$5,000 per month, the current rent payable for such sublease space by Tenant equals \$3,000 per month, the total brokerage commission paid by Tenant equals \$15,000 and the cost of the new tenant improvements for the sublease space equals \$15,000, then the total amount of Additional Rent payable by Tenant to Port in connection with the sublease equals \$1,500 per month.

Total months during term of sublease:

5 years x 12 months = 60 months

Total Subletting Expenses:

\$15,000 + \$15,000 = \$30,000

Amortized cost of Subletting Expenses:

$$\$30,000/60 = \$500$$

Difference between rent paid by subtenant and rent paid by Tenant ("**Excess Rent**");

$$\$5,000 - \$3,000 = \$2,000$$

Difference between Excess Rent and amortized cost of Subletting Expenses:

$$\$2,000 - \$500 = \$1,500$$

Notwithstanding the foregoing, in the event this Lease is assigned in connection with a sale of Tenant's business, including the sale of Tenant's Property at the Premises and Tenant's goodwill, and the assignee will continue to operate the same business that Tenant operated at the Premises, then the sums payable by Tenant to Port pursuant to this Section 20.6 shall be limited to those amounts attributable to the value of Tenant's leasehold interest, but in no event less than the then current Rent, and shall not include amounts attributable to the value of Tenant's goodwill, as such amounts are determined by Port in Port's reasonable discretion.

20.7. Transfer Audit. Tenant agrees to make its books and records available to Port, or to any City auditor, or to any auditor or representative designated by Port (hereinafter collectively referred to as "**Port representative**"), for the purpose of examining said books and records to determine the accuracy of Tenant's reporting of the Subletting Expenses. Tenant shall cooperate with the Port representative during the course of any audit. Tenant shall keep such books and records for a period of no less than one (1) year after the Expiration Date and maintain them and/or make them available in San Francisco to Port's representative. If an audit reveals that Tenant has overstated the Subletting Expenses for the applicable assignment or sublease agreement, Tenant shall pay Port, promptly upon demand, the difference between the amount Tenant deducted for Subletting Expenses and the amount it should have deducted plus interest on such difference at the Interest Rate from the date such amount was due and payable to Port until the date Port is reimbursed by Tenant. Any under deductions revealed by an audit shall be credited towards the Base Rent payments due subsequent to the audit until credited in full.

20.8. No Further Amendment of Transfer Agreement; No Further Consent Implied. The assignment or sublease agreement, as the case may be, after approval by Port, shall not be amended without Port's prior written consent. A consent to one assignment, subletting, occupation or use by one person shall not be construed as a consent to a subsequent assignment, subletting, occupation or use by another. No interest in this Lease shall be assignable as to Tenant's interest by operation of Law without Port's written consent.

20.9. Fees for Review. Tenant shall reimburse Port for all costs, including without limitation attorney's fees, which are incurred by Port in connection with the review, investigation, processing, documentation and/or approval of any proposed Transfer.

20.10. No Release of Tenant. The acceptance by Port of Rent or other payment from any other person shall not be deemed to be a waiver by Port of any provision of this Lease or to be a consent to any subsequent Transfer or to be a release of Tenant from any obligation under this Lease. No Transfer of this Lease shall in any way diminish, impair or release any of the liabilities and obligations of Tenant, any guarantor or any other person liable for all or any portion of Tenant's obligations under this Lease. The joint and several liability of Tenant and Tenant's successors or transferees and the obligations of Tenant under this Lease shall not be discharged, released or impaired by any agreement by Port modifying any provision of this Lease or extending time for performance hereunder or by any waiver or failure of Port to enforce any obligations hereunder.

20.11. Assignment of Sublease Rents. Tenant immediately and irrevocably assigns to Port, as security for Tenant's obligations under this Lease, all of Tenant's interest in any rent from any Transfer of all or any part of the Premises; except that, until the occurrence of an act of default by Tenant, Tenant shall have the right to receive, collect and enjoy such rents. The assignee or subtenant shall pay the rent and other sums due under any Transfer agreement directly to Port upon receiving written notice from Port that Tenant is in default under this Lease with respect to the payment of Rent. In the event that, notwithstanding the giving of such notice, Tenant collects any rent or other sums from the assignee or subtenant, then Tenant shall hold such sums in trust for the benefit of Port and shall immediately forward the same to Port. Port's collection of such rent and other sums shall not constitute an acceptance by Port of attornment by such assignee or subtenant.

20.12. Acknowledgement. Tenant acknowledges and agrees that each of the rights of Port set forth in Section 20 is a reasonable limitation on Tenant's right to assign or sublet for purposes of California Civil Code Section 1951.4.

21. DEFAULT BY TENANT.

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

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

(b) abandonment or vacation of the Premises by Tenant; or

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

(d) failure by Tenant to execute and deliver to Port the estoppel certificate within the time period and in the manner required by Section 34 below, and Tenant's failure to cure the foregoing default within five (5) days following written notice from Port; or

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

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

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

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

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

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

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

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

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

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

22. PORT'S REMEDIES.

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

22.1. *Tenant's Right to Possession Not Terminated.*

Port has the remedy described in Section 1951.4 of the California Civil Code (a landlord may continue the lease in effect after a tenant's breach and abandonment and recover rent as it becomes due, if the tenant has the right to sublet and assign subject only to reasonable limitations) under which it may continue this Lease in full force and effect and Port may enforce all of its rights and remedies under this Lease, including the right to collect Rent when due. During the period Tenant is in default, Port may enter the Premises without terminating this Lease and relet them, or any part of them, to third parties for Tenant's account. Tenant shall be liable immediately to Port for all reasonable costs Port incurs in reletting the Premises, including, but not limited to, broker's commissions, expenses of remodeling the Premises required by the reletting and like costs. Reletting can be for a period shorter or longer than the remaining Term of this Lease, at such rents and on such other terms and conditions as City deems advisable. Tenant shall pay to Port the Rent due under this Lease on the dates the Rent is due, less the Rent Port receives from any reletting. In the event that Port shall elect to so relet, then rentals

received by Port from such reletting shall be applied in the following order: (i) to reasonable attorneys' fees incurred by Port as a result of a default and costs in the event suit is filed by Port to enforce such remedies; (ii) to the payment of any indebtedness other than Rent due hereunder from Tenant to Port; (iii) to the payment of any costs of maintaining, preserving, altering and preparing the Premises for subletting, the other costs of subletting, including but not limited to brokers' commissions, attorneys' fees and expenses of removal of Tenant's Personal Property, trade fixtures and Alterations; (iv) to the payment of Rent due and unpaid hereunder; (v) to the payment of future Rent and other sums payable by Tenant hereunder as the same may become due and payable hereunder; and (vi) the balance, if any, shall be paid to Tenant upon (but not before) expiration of the Term. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of Rent hereunder, be less than the Rent payable during the month by Tenant hereunder, then Tenant shall pay such deficiency to Port. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Port, as soon as ascertained, any costs and expenses incurred by Port in such reletting or in making such alterations and repairs not covered by the rentals received from such reletting. No act by Port allowed by this Section 22.1 shall terminate this Lease unless Port notifies Tenant that Port elects to terminate this Lease. After Tenant's default and for as long as Port does not terminate Tenant's right to possession of the Premises, if Tenant obtains Port's consent Tenant shall have the right to assign or sublet its interest in this Lease, but Tenant shall not be released from liability.

22.2. Termination of Tenant's Right to Possession.

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

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

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

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

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

The "worth at the time of award" of the amounts referred to in Sections 22.2(a) and 22.2(b) above shall be computed by allowing interest at an annual rate equal to the lesser of the Interest Rate or the maximum non-usurious rate Port is permitted by Law to charge. The "worth at the time of award" of the amount referred to in Section 22.2(c) above shall be computed by

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

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

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

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

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

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

22.8. Remedies Not Exclusive. The remedies set forth in Section 21 are not exclusive; they are cumulative and in addition to any and all other rights or remedies of Port now or later allowed by Law. Tenant's obligations hereunder shall survive any termination of this Lease.

23. LITIGATION EXPENSES; ATTORNEYS' FEES.

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

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

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

with approximately the same number of attorneys as employed by the Office of the City Attorney.

24. PORT'S ENTRY ON PREMISES.

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

24.2. General Entry.

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

- (a) To perform any necessary maintenance, repairs or restoration to the Premises, or to perform any services which Port has the right or obligation to perform;
- (b) To serve, post, or keep posted any notices required or allowed under the provisions of this Lease;
- (c) To post "For Lease" signs during the last six (6) months of the Term or during any period in which Tenant is in default;
- (d) To show the Premises to prospective real estate brokers, agents, buyers, or persons interested in an exchange, at any time during the Term; to show the Premises to prospective tenants during the last six (6) months of the Term, or during any period in which Tenant is in default;
- (e) If any excavation or other construction is undertaken or is about to be undertaken on any property or street adjacent to the Premises, to shore the foundations, footings or walls of the Premises and to erect scaffolding and protective barricades around and about the Premises as reasonably necessary in connection with such activities (but not so as to prevent or unreasonably restrict entry to the Premises), and to do any other act or thing necessary for the safety or preservation of the Premises during such excavation or other construction.
- (f) To obtain environmental samples and perform equipment and facility testing.

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

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

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

25. SURRENDER AND QUITCLAIM.

25.1. *Surrender.*

Upon expiration or earlier termination of this Lease, Tenant shall surrender to Port the Premises, the Initial Tenant Improvements and any Subsequent Alterations thereon in as good an order, condition, and repair as exists on the date of completion of the Initial Tenant Improvements (except for ordinary wear and tear occurring after the last necessary maintenance made by Tenant and except for destruction or condemnation as described in Sections 17 and 18 hereof). The Premises shall be surrendered free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this Lease and any other encumbrances created by Port. On or before the expiration or earlier termination of this Lease, Tenant shall remove (i) all of Tenant's Property, including any signage from the Premises, and repair any damage caused by such removal, and (ii) all Subsequent Alterations constructed by Tenant (unless Tenant was notified in writing by Port that such Subsequent Alterations may remain on the Premises upon Tenant's surrender of the Premises) and repair any damage caused by such removal. Any of Tenant's Property not so 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 damages resulting from Port's retention, removal and disposition of such property; provided, however, that Tenant shall remain liable to Port for all costs incurred in storing, removing and disposing of such abandoned property of Tenant. Tenant shall promptly remove such items and shall repair, at no cost to Port, any damage to the Premises or the Facility resulting from such removal, or if Tenant fails to repair, Port may do so, at Tenant's expense. All Subsequent Alterations except those which Port requires Tenant to remove shall remain in the Premises as the property of Port. Ordinary wear and tear shall not include any damage or deterioration that would have been prevented by maintenance by Tenant, or Tenant otherwise performing all of its obligations under this Lease.

If the Premises are not surrendered at the end of the Term or expiration of this Lease, and in accordance with the provisions of this Section 25.1, Tenant shall continue to be responsible for the payment of Rent (as determined pursuant to Section 26.2 below (Holdover) until the Premises are so surrendered in accordance with said Sections, and Tenant shall indemnify, defend and hold Port harmless from and against any and all loss or liability resulting from delay by Tenant in so surrendering the Premises, including, without limitation, any loss or liability resulting from any Claim against any succeeding tenant or prospective tenant founded on or resulting from losses to Port due to lost opportunities to lease any portion of the Premises to a succeeding tenant or prospective tenant, together with, in each case, reasonable attorneys' fees and costs.

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

Tenant's obligation under this Section 25.1 shall survive the expiration or earlier termination of this Lease.

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

26. HOLDING OVER.

26.1. *With Consent.*

Any holding over after the expiration of the Term with the prior written consent of Port shall not constitute a renewal hereof but shall be deemed a month-to-month tenancy and shall be upon each and every one of the terms, conditions and covenants of this Lease, except that the monthly Base Rent shall be equal to one hundred fifty percent (150%) of the monthly Base Rent payable in the month immediately preceding the expiration of this Lease. Either party may cancel said month-to-month tenancy upon thirty (30) days written notice to the other party. Notwithstanding the foregoing, in the event both Tenant and Port desire to enter into a new lease or extend the existing term of this Lease but have not yet executed such new lease or extension solely due to Port's delay to produce such document, then the monthly Base Rent during any such holdover period shall be equal to the higher of the: (a) Base Rent payable in the month immediately preceding the expiration of this Lease, or (b) the then current rate for the Facility approved by the Port Commission, together with any monthly charge of Additional Rent payable under this Lease.

Tenant shall indemnify, defend and hold Port harmless from and against any and all loss or liability resulting from delay by Tenant in so surrendering the Premises including, without limitation, any loss or liability resulting from any claim against Port made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

26.2. *Without Consent.*

Any holding over after the expiration of the Term without the prior written consent of Port shall not constitute a renewal hereof, but shall be deemed a month-to-month tenancy and upon each and every one of the terms, conditions and covenants of this Lease, except that the monthly Base Rent shall equal two hundred percent (200%) of the monthly Base Rent payable in the month immediately preceding the expiration of this Lease. Either party may cancel said month-to-month tenancy upon thirty (30) days written notice to the other party.

Tenant shall indemnify, defend and hold Port harmless from and against any and all loss or liability resulting from delay by Tenant in so surrendering the Premises including, without limitation, any loss or liability resulting from any claim against Port made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

27. MINERAL RESERVATION.

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

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

28. CITY REQUIREMENTS.

28.1. *Non Discrimination.*

(a) **Covenant Not to Discriminate.** In the performance of this Lease, Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race,

color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under this chapter or in retaliation for opposition to any practices forbidden under Chapter 12 of the San Francisco Administrative Code against any employee of Tenant, any City and County employee working with Tenant, any applicant for employment with Tenant, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant in the City and County of San Francisco.

(b) **Subleases and Other Contracts.** Tenant shall include in all subleases and other contracts relating to the Premises a non-discrimination clause applicable to such subtenant or other contractor in substantially the form of Section 28.1(a) above. In addition, Tenant shall incorporate by reference in all subleases and other contracts the provisions of Sections 12B.2 (a), 12B.2 (c)-(k) and 12C.3 of the San Francisco Administrative Code and shall require all subtenants and other contractors to comply such provisions. Tenant's failure to comply with the obligations in this Section 28.1(b) shall constitute a material breach of this Lease.

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

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

(e) **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Lease as though fully set forth herein. Tenant shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Tenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50.00 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

28.2. *Requiring Health Benefits for Covered Employees.*

Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q (Chapter 12Q), including the implementing regulations as the same may be amended or updated from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Lease as though fully set forth herein. The text of the HCAO is currently available on the web at www.sfgov.org. Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Chapter 12Q.

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

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

(c) Tenant understands and agrees that the failure to comply with the requirements of the HCAO shall constitute a material breach by Tenant of this Lease.

(d) If, within 30 days after receiving written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Tenant fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion, the City shall have the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

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

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

(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 requirements of the HCAO.

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

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

(j) Within five (5) business days of any request, Tenant shall provide the City with access to pertinent records relating to any Tenant's compliance with the HCAO. In addition, the City and its agents may conduct random audits of Tenant at any time during the Term. Tenant agrees to cooperate with City in connection with any such audit.

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

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

28.3. First Source Hiring.

The City has adopted a First Source Hiring Program (San Francisco Administrative Code Section 83.1 et. seq.) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions. Pursuant to Section 83.7(b) of the First Source Hiring Ordinance, the Port Commission has adopted a First Source Hiring Implementation and Monitoring Plan ("**Port Plan**") subject to approval by the First Source Hiring Administration. Tenant acknowledges receiving and reviewing the First Source Hiring Program. Under Section 83.9(d) of the First Source Hiring Program, compliance by an employer with the Port Plan is deemed to be compliance with the provisions of the First Source Hiring Ordinance.

Based on the foregoing Tenant agrees to comply with the Port Plan through compliance with all of the following measures:

(a) Tenant shall notify the City and County of San Francisco's Workforce Development System, Department of Human Services of all projected Entry Level Positions and the approximate date such positions will be available, by using the Job Survey Form provided by the Port of San Francisco. The Port will also provide the Tenant with a detailed instruction sheet summarizing the procedure prior to the commencement of this Lease. Tenant shall return the fully completed Job Survey Form to the Port within thirty (30) days after execution of this Lease by the Port and Tenant.

For purposes of this Lease the terms "Entry Level Position", "San Francisco Workforce Development System", "Qualified Economically Disadvantaged Individual", and "First Source Hiring Agreement" shall have the meaning provided in Section 83.4 of the San Francisco Administrative Code.

(b) Tenant shall notify the San Francisco Workforce Development System of all vacancies for existing or new Entry Level Positions on the Premises, during the Term, and shall offer the San Francisco Workforce Development System the first opportunity to provide Qualified Economically Disadvantaged Individuals for employment in these positions.

(c) Tenant shall not publicize or otherwise post such vacancies until the San Francisco Workforce Development System refers Qualified Economically Disadvantaged Individuals for employment in these positions or notifies Tenant that no Qualified Economically Disadvantaged Individuals are available for the particular vacancies. The San Francisco Workforce Development System shall respond to Tenant within ten (10) business days. After ten (10) business days, if the San Francisco Workforce Development System does not refer applicants, Tenant can advertise and fill Entry Level Positions outside of the City referral system.

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

Pursuant to Section 83.10 of the Ordinance, if upon administrative review, it is determined that Entry Level Positions were not made available to the San Francisco Workforce Development system for referral of Qualified Economically Disadvantaged Individuals, and Tenant does not remedy the violations, the Tenant shall be assessed a penalty in the amount of \$2,070.00 (or any other amount set forth in any subsequent amendment or update to the First Source Hiring Program) for every new hire for an Entry Level Position improperly withheld from the First Source Hiring process.

28.4. Resource-Efficient Facilities and Green Building Requirements. Tenant acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 710 relating to resource-efficient buildings and green building design

requirements. Tenant hereby agrees that it shall comply with all applicable provisions of such code sections.

28.5. Tobacco Products Advertising Ban. Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City, including the property which is the subject of this Lease. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

28.6. Pesticide Prohibition.

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

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

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

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

28.9. Preservative-Treated Wood Containing Arsenic. Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Tenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the

Department of Environment. This provision does not preclude Tenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "**saltwater immersion**" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

28.10. Notification of Limitations on Contributions.

Through its execution of this Lease, Tenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code (the "**Conduct Code**") which prohibits any person who contracts with the City for the selling or leasing any land or building to or from the City whenever such transaction would require the approval by a City elective officer or the board on which that City elective officer serves, from making a contribution to such an officer, or candidate for such an office, or committee controlled by such officer or candidate at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three (3) months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves.

San Francisco Ethics Commission Regulation 1.126-I provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

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

28.12. Conflicts of Interest. Through its execution of this Lease, Tenant acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Tenant becomes aware of any such fact during the Term Tenant shall immediately notify the Port.

28.13. Charter Provisions. This Lease is governed by and subject to the provisions of the Charter of the City and County of San Francisco.

28.14. Drug-Free Workplace. Tenant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City or Port premises. Tenant agrees that any violation of this prohibition by Tenant, its Agents or assigns shall be deemed a material breach of this Lease.

28.15. Wages and Working Conditions. Tenant agrees that any person performing labor in the construction of any Alterations or Improvements to the Premises, which Tenant provides under this Lease, shall be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the San Francisco Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California. Tenant shall include in any contract for

construction of such Alterations or Improvements a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Tenant shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing labor in the construction of such Alterations or Improvements to the Premises.

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

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

29. NOTICES.

Except as otherwise expressly provided in this Lease or by Law, any and all notices or communications required or permitted by this Lease or by Law to be served on, given to or delivered to either party by the other party shall be in writing and shall be given by one of the following methods: (a) delivering the notice in person, (b) sending the notice by United States Mail, first class, postage prepaid, or (c) sending the notice by nationally recognized overnight courier or mail, with postage prepaid, to the mailing address set forth in the Basic Lease Information. Subject to the restrictions set forth below and only for the convenience of the parties, copies of notices also may be given by telefacsimile to the telefacsimile number set forth in the Basic Lease Information. Either party may change such party's mailing address or telefacsimile number at any time by giving written notice of such change to the other party in the manner provided above at least ten (10) days prior to the effective date of the change.

All notices under this Lease shall be deemed to be duly served, given, delivered, made or communicated on the date personal delivery actually occurs or, if mailed, on the next business day following the date of deposit in the United States Mail or with the nationally recognized overnight courier. A person or party may not give official or binding notice by telefacsimile. Service of process at Tenant's address set forth in the Basic Lease Information or other address, notice of which is given in accordance with the terms of this Section, shall be valid and binding upon such party.

30. SIGNS. Tenant shall not have the right to place, construct or maintain any sign, decoration, video display, advertisement, awning, banner or other exterior decoration or notices on the Premises without Port's prior written consent. Any sign that Tenant is permitted to place, construct or maintain on the Premises shall comply with all Laws relating thereto, including but not limited to Port's Tenant Sign Guidelines and building permit requirements, and Tenant shall obtain all Regulatory Approvals required by such Laws. Port makes no representation with respect to Tenant's ability to obtain such Regulatory Approval. Tenant, at its sole cost and

expense, shall remove all signs placed by it on the Premises at the expiration or earlier termination of this Lease.

31. NO LIGHT, AIR OR VIEW EASEMENT. Any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Facility shall in no way affect this Lease or impose any liability on Port, entitle Tenant to any reduction of Base Rent or Additional Rent, or affect this Lease in any way or Tenant's obligations hereunder.

32. MISCELLANEOUS PROVISIONS.

32.1. California Law. This Lease shall be construed and interpreted in accordance with the Laws of the State of California and City's Charter and Port and Tenant hereby irrevocably consent to the jurisdiction and proper venue of such State and the City and County of San Francisco.

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

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

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

32.5. No Party Drafter; Captions. The provisions of this Lease shall be construed as a whole according to their common meaning and not strictly for or against any party in order to achieve the objectives and purposes of the parties. Any caption preceding the text of any section, paragraph or subsection or in the table of contents is included only for convenience of reference and shall be disregarded in the construction and interpretation of this Lease.

32.6. Singular, Plural, Gender. Whenever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, and vice versa.

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

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

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

32.10. Authority. If Tenant signs as a corporation or a partnership, each of the persons executing this Lease on behalf of Tenant does hereby covenant and warrant that Tenant is a duly

authorized and existing entity, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Tenant are authorized to do so. Upon Port's request, Tenant shall provide Port with evidence reasonably satisfactory to Port confirming the foregoing representations and warranties.

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

32.12. Attorneys' Fees. In the event of any action or proceeding in law or equity between Port and Tenant to enforce any provision of this Lease or to protect or establish any right or remedy of either party to this Lease, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees and costs of suit and, if such prevailing party shall recover judgment in any such action or proceeding, such costs, expenses and attorneys' fees shall be included in and as a part of such judgment. For purposes of this Lease, 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 professional experience who practice in San Francisco in law firms with approximately the same number of attorneys as employed by the Office of City Attorney.

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

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

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

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

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

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

32.19. Additional Written Agreement Required. Tenant expressly agrees and acknowledges that no officer, director, or employee of Port or City is authorized to offer or promise, nor is Port or the City required to honor, any offered or promised rent credit,

concession, abatement, or any other form of monetary consideration (individually and collectively, "Concession") without a written agreement executed by either the Executive Director of Port or the Deputy Director of Real Estate authorizing such Concession and, if applicable, certification of the Concession from the City's Controller.

33. LIMITATION ON DAMAGES.

33.1. No Recourse Beyond Value of Premises. Tenant agrees that Tenant will have no recourse with respect to, and Port shall not be liable for, any obligation of Port under this Lease, or for any claim based upon this Lease, except to the extent of the fair market value of Port's fee interest in the Premises (as encumbered by this Lease). Tenant's execution and delivery hereof and as part of the consideration for Port's obligations hereunder Tenant expressly waives all such liability. Under no circumstances shall Port, City, or their respective Agents be liable under any circumstances for any consequential, incidental or punitive damages.

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

34. TENANT ESTOPPEL CERTIFICATES.

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

35. RELOCATION OPTION.

Port may, at its expense, at any time during the Term, relocate Tenant from the Premises to reasonably comparable space ("Relocation Space") within the Facility or upon sixty (60) days' prior written notice to Tenant. From and after the date of the relocation, "Premises" shall refer to the Relocation Space into which Tenant has moved and the Base Rent and Tenant's Proportionate Share of Expenses, if any, shall be adjusted based on the rentable square footage of the Relocation Space. Port shall pay Tenant's reasonable costs for moving Tenant's Property and printing and distributing notices to Tenant's customers of Tenant's change of address and three (3) months supply of stationery showing the new address.

Notwithstanding the foregoing, in no event shall Port relocate Tenant to the Relocation Space during the last twelve (12) months of the Term.

36. SOLAR POWER.

At any time during the Term of this Lease, Port shall have the sole and absolute discretion to install, or cause another party to install, solar photovoltaic systems ("Solar System") on the roof of the Facility for the purpose of supplying power to the Facility. In the event the Solar System is installed on the roof of the Facility, Tenant shall enter into a power purchase agreement (or any other similar agreement) with the operator of the Solar System ("Solar Operator") and from and after the date the Solar System is operational, Tenant shall purchase a portion of its power from the Solar Operator in accordance with such power purchase agreement. The balance of power required by Tenant shall be purchased by Tenant from an energy provider within the general vicinity of the Facility ("Energy Provider"). The cost to Tenant on a per

kilowatt basis to purchase its power from the Solar Operator shall not be greater than the cost to Tenant on a per kilowatt basis to purchase energy from the Energy Provider.

37. REPRESENTATIONS AND WARRANTIES OF TENANT

Tenant represents, warrants and covenants to Port as follows, as of the date hereof and as of the Commencement Date:

(a) Valid Existence, Good Standing. Tenant is a non-profit corporation duly formed and validly existing under the laws of the State of California. Tenant has the requisite power and authority to own its property and conduct its business as presently conducted. Tenant is in good standing in the State of California.

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

(c) No Limitation on Ability to Perform. Nor applicable Law prohibits Tenant's entry into this Lease or its performance hereunder. No consent, authorization or approval of, and no notice to or filing with, any governmental authority, regulatory body or other Person is required for the due execution and delivery of this Lease by Tenant and Tenant's performance hereunder, except for consents, authorizations and approvals which have already been obtained, notices which have already been given and filings which have already been made. There are no undischarged judgments pending against Tenant, and Tenant has not received notice of the filing of any pending suit or proceedings against Tenant before any court, governmental agency, or arbitrator, which might materially adversely affect the enforceability of this Lease or the business, operations, assets or condition of Tenant.

(d) Valid Execution. The execution and delivery of this Lease and the performance by Tenant hereunder have been duly and validly authorized. When executed and delivered by Port and Tenant, this Lease will be a legal, valid and binding obligation of Tenant.

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

(f) Financial Matters. Except to the extent disclosed to Port in writing, (i) Tenant is not in default under, and has not received notice asserting that it is in default under, any agreement for borrowed money, (ii) Tenant has not filed a petition for relief under any chapter of the U.S. Bankruptcy Code, (iii) to Tenant's knowledge, no involuntary petition naming Tenant as debtor has been filed under any chapter of the U.S. Bankruptcy Code, and (iv) Tenant has not suffered any material adverse change to its financial condition that could reasonably effect its ability to perform its obligations under this Lease.

The representations and warranties herein shall survive any termination of this Lease.

38. TERMINATION OPTION.

Subject to the terms and conditions of this Section 38, Tenant shall have the option to terminate this Lease ("**Termination Option**") upon satisfaction of all the following terms and conditions:

(a) Port approves of the written evidence from a reputable environmental consultant reasonably acceptable to Port that the cost to abate lead-based paint and asbestos identified in *Schedules 1 and 3* or subsequently identified by Tenant or Port exceeds Two Hundred Fifty Thousand Dollars (\$250,000.00);

(b) Any and all damage to the Premises arising in connection Tenant's abatement of lead-based paint and asbestos has been promptly repaired;

(c) Tenant provides Port written notice ("**Termination Notice**") of its election to terminate no less than thirty (30) days prior to the proposed termination date ("**Proposed Termination Date**"); and

(d) If any Event of Default by Tenant is outstanding hereunder either at the time of Tenant's delivery of the Termination Notice or at any time prior to the Proposed Termination Date (or if any event shall have occurred which with the giving of notice or the passage of time or both would constitute such a default), then Port may elect by notice to Tenant to reject Tenant's exercise of the Termination Option, whereupon the Termination Option shall be null and void.

Upon termination of this Lease in accordance with the terms and conditions of this Section 38, other than the provisions that survive termination of this Lease, this Lease shall be deemed terminated as of the Proposed Termination Date.

39. FEMA DISCLOSURE NOTICE.

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

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

Because FEMA has not previously published a FIRM for the City, there are no identified SFHAs within the City's geographic boundaries. By June 2007, FEMA expects to complete a study of the San Francisco Bay that potentially may identify SFHAs affecting City property under the jurisdiction of the Port of San Francisco and other areas of the San Francisco waterfront, including, but not limited to, parts of Mission Bay, Hunter's Point Shipyard, Candlestick Point, and Treasure and Yerba Buena Islands. During the summer of 2007, FEMA expects to issue a preliminary FIRM for review and comment by the City. FEMA anticipates finalizing the FIRM in 2008. If FEMA does identify SFHAs along the City's shoreline in San Francisco Bay, such SFHAs would likely be designated "**A zones**" (areas subject to inundation by tidal surge) and "**V zones**" (areas subject to the additional hazards that accompany wave action).

FEMA prepares the FIRMs to support the National Flood Insurance Program ("**NFIP**"), a Federal program that enables property owners, businesses and residents in participating communities to purchase flood insurance backed by the Federal government. Participation in the NFIP is based on an agreement between the local government and the Federal government, which requires the local government to adopt and enforce a floodplain management ordinance to reduce future flood risks. As part of such a floodplain management ordinance, the local jurisdiction must impose significant restrictions on construction of new or substantially improved structures located in SFHAs and ban construction of certain new structures seaward of the mean high tide line, unless appropriate variances can be granted. Federally backed lenders must require the purchase of flood insurance for residential and commercial structures located in SFHAs. Otherwise, purchase of flood insurance is voluntary.

The City does not currently participate in the NFIP and is evaluating the benefits of future participation in the NFIP once FEMA publishes a FIRM for the City. If the City does not participate in the program, the Federal government would not require the City to enact the building code restrictions and/or prohibitions required by the NFIP, but the Federal government would withhold the following federal benefits from the City: (1) no San Francisco property

owner, business owner or resident, including without limitation, tenants of the Port of San Francisco, would be able to purchase flood insurance backed by the federal government, which is the primary source of reasonably-priced flood insurance (2) Federally backed loans for real property located within SFHAs, which must carry flood insurance, would be limited; (3) Federal grants for acquisition and construction purposes in SFHAs would be limited; and (4) in the event of a flood, property located within SFHAs would not be eligible for certain other federal loan or disaster assistance programs.

If the City does elect to participate in the NFIP, the City would be required to include in its floodplain management ordinance a requirement that any new construction or substantial improvement of structures in A zone or V zone SFHAs be elevated to certain prescribed heights or in some cases floodproofed, as well as a prohibition on any new construction or substantial improvement of structures seaward of mean high tide in V zone SFHAs. The NFIP regulations allow a local jurisdiction to issue variances to its floodplain management ordinance under certain narrow circumstances, without jeopardizing the local jurisdiction's eligibility in the NFIP. However, the particular projects that are granted variances by the local jurisdiction may be deemed ineligible for federally-backed flood insurance by FEMA.

Additional information on this matter can be found on FEMA's website at the following links:

<http://www.fema.gov/plan/prevent/fhm/index.shtm>

<http://www.fema.gov/business/nfip/index.shtm>

The legislation and regulations implementing the NFIP are located at 42 U.S.C. § 4001 et seq; 44 C.F.R. Parts 59-78, §§ 59.1-78.14.

In addition, FEMA publishes "Answers to Questions About the NFIP" and FEMA Publication 184 entitled "Mandatory Purchase of Flood Insurance Guidelines."

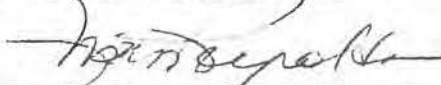
This disclosure is provided for information purposes only, and without representation or warranty of any kind by the City, including, without limitation, its Port, with regard to any of the matters discussed in this notice. Tenant is entirely responsible for investigating on its own the consequences of the potential inclusion of the Premises in any future FEMA designated SFHA and the consequences of the City's decision to participate or to not participate in the NFIP.

Tenant acknowledges and agrees that the City's participation or failure to participate in the NFIP shall not give rise to any rights, causes of action, or remedies under this Lease, including, but not limited to any termination or rent abatement right.


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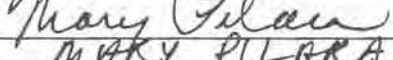
IN WITNESS WHEREOF, PORT and TENANT execute this Lease as of the last date set forth below.

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

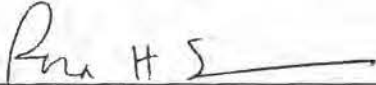
By: 
Name: SUSAN REYNOLDS
Title: DEPUTY DIRECTOR, REAL ESTATE
Date Signed: 10/26/07

TENANT: PILARA FAMILY FOUNDATION
A NEVADA CORPORATION

By: 
Name: ANDREW PILARA, JR
Title: PRESIDENT
Date Signed: _____

By: 
Name: MARY PILARA
Title: _____
Date Signed: _____

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

By: 
Deputy City Attorney

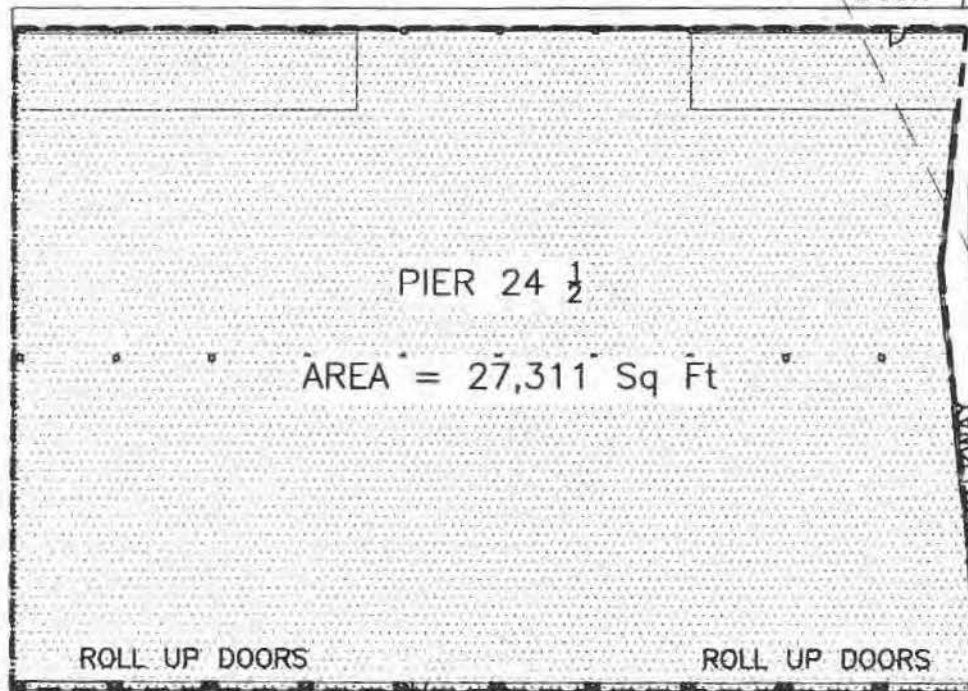
Lease Prepared By: Jeffrey A. Bauer, Senior Leasing Manager


(initial)

SAN FRANCISCO BAY



LOCATION PLAN
NO SCALE



GUARD
RAIL

INITIALS: PORT:

TENANT:

DATE:

EXHIBIT A

3.14.07

LEASE NO.

L-14414



SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING

TENANT

PILARA FAMILY
FOUNDATION

DRAWN BY: ECC

DATE: JUN 28, 2007

CHECKED BY: J. BAUER

SCALE: 1" = 30'

PLACE CODE NO.

SHEET NO.

1245-SHEDA

OF SHEETS

EXHIBIT A

DESCRIPTION OF PREMISES

[Attachment on following page]

EXHIBIT E

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

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

Background

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

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

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

Port of San Francisco Review Process – Overview

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

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

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

I. Pier and Bulkhead Wharf Substructures

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

Within this complex, the bulkhead wharf is an important feature. It is comprised of 23 individual sections that extend end to end throughout the historic district, adjacent and connected to the Seawall, which establishes the constructed edge of the waterfront between piers (see Figures 1 and 2). In addition, the bulkhead wharf plays an important role in defining the Embarcadero's urban form, which supports maritime, public access and commercial recreation/retail functions.

EXHIBIT C

TENANT ESTOPPEL CERTIFICATE

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

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

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

Dated: _____, 20__.

[Name of Tenant]

By:

Name: ANDREW PILARA, JR

Title:

PRESIDENT

EXHIBIT D

SECRETARY OF THE INTERIOR'S STANDARDS FOR THE TREATMENT OF HISTORIC PROPERTIES

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

EXHIBIT F WORK LETTER

This Work Letter sets forth Tenant's obligation to construct the Initial Tenant Improvements and shall be deemed part of the Lease.

1. GENERAL TERMS

1.1. Definitions. Initially capitalized terms used in this Work Letter have the meanings given them when first defined. Any initially capitalized words or acronyms used but not defined in this Work Letter shall have the same meanings as in the Lease.

1.2. Relationship between Work Letter and the Lease. This Work Letter governs Tenant's obligations to construct the Initial Tenant Improvements during the Core Improvements Construction Period and the Interior Improvements Construction Period or, in the event Tenant fails to complete such improvements by the Construction Period Expiration Dates, to such later date Port issues a Certificate of Completion for either the Core Improvements or Interior Improvements. This Work Letter addresses, among other matters, the scope of Tenant's obligations to design and construct the Initial Tenant Improvements, Tenant's obligations to obtain final approvals for the Initial Tenant Improvements, and the Schedule of Performance. Before the termination of this Work Letter, this Work Letter shall control in the event of any inconsistency between this Work Letter and the Lease. Upon expiry of this Work Letter, the Lease alone will govern the rights and obligations of the parties with respect to use and occupancy of the Premises.

1.3. Term. This Work Letter shall commence and become effective as of the Commencement Date and shall expire on the Interior Improvements Construction Period Expiration Date or such later date that Port issues a Certificate of Completion for the Interior Improvements.

1.4. Lease Provisions. The provisions of the Lease, except where clearly inconsistent or inapplicable to this Work Letter, are incorporated into this Work Letter.

1.5. Extensions by Port Upon the request of Tenant, Port's Executive Director may, by written instrument, extend the time for Tenant's performance of any term, covenant or condition of this Work Letter or permit the curing of any default of this Work Letter upon such terms and conditions as she or he determines appropriate, including but not limited to the time within which Tenant must perform such terms and/or conditions, provided, however, that any such extension or permissive curing of any particular default will not operate to release any of Tenant's obligations nor constitute a waiver of Port's rights with respect to any other term, covenant or condition of this Work Letter or any other default in, or breach of, this Work Letter or otherwise effect the time with respect to the extended date or other dates for performance hereunder.

2. CONSTRUCTION OF THE INITIAL TENANT IMPROVEMENTS

2.1. Tenant's Construction Obligations.

(a) Project Requirements. Tenant shall construct or cause to be constructed all of the Initial Tenant Improvements in compliance with the Construction Documents, which shall conform to and be in compliance with applicable requirements of (i) all Laws; (ii) this Work Letter, including the Scope of Development and Schematic Drawings; (iii) the City's Building Code as administered by Port or Port Building Code as applicable; (iv) required Regulatory Approvals; (v) the Waterfront Land Use Plan; (vi) the design approved by the Port Commission and, if required, the Planning Commission, pursuant to Section 240 of the Planning Code; and (vii) the Lease including without limitation Section 16 thereof. All such requirements are sometimes referred to collectively as the "Project Requirements."

(b) Scope of Development; Schedule of Performance. Tenant shall use commercially reasonable efforts to construct or cause to be constructed the Initial Tenant Improvements on the Premises within the times and in the manner set forth in this Work Letter and the scope of development comprised of the Schematic Drawings and the scope of development narrative document attached hereto as approved by the Port Commission at its public meeting of August 14, 2007 as *Attachment 1* (collectively, the "Scope of Development"). All construction with respect to the Initial Tenant Improvements shall be accomplished expeditiously, diligently and in accordance with good construction and engineering practices and applicable Laws. Tenant shall undertake commercially reasonable measures to minimize damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected by such work. Tenant, while performing any construction with respect to the Initial Tenant Improvements, shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining properties and improvements, or the risk of injury to members of the public, caused by or resulting from the performance of such construction.

(c) Costs; Private Development. Tenant shall bear all of the cost of construction of all Initial Tenant Improvements. Without limiting the foregoing, Tenant shall be responsible for performing all Premises preparation work necessary for construction of the Initial Tenant Improvements. Such preparation of the Premises shall include, among other things, asbestos and lead abatement investigation required for development or operation of the Initial Tenant Improvements, all structure and substructure work, disabled access improvements and public access improvements and tenant improvements.

2.2. Utilities. Tenant, at its sole expense, shall arrange for the provision and construction of all on-Premises utilities necessary to use the Premises for the Permitted Use. Tenant and Port shall coordinate, if necessary, with respect to installation of any off-Premises utility infrastructure and design of the Initial Tenant Improvements, including providing advance notice of trenching requirements, and coordinate any modification of utilities to any adjacent Port tenants or uses.

2.3. Submittals after Completion. Tenant shall furnish Port both design/permit drawings in their finalized form and "As-Built" Drawings, specifications and surveys with respect to the Premises (core and shell, and tenant improvements) within sixty (60) days after completion of the Core Improvements and the Interior Improvements respectively. If Tenant fails to provide such surveys and as-built plans and specifications to Port within such period of time, Port after giving notice to Tenant shall have the right, but not the obligation, to cause the preparation by an architect of Port's choice of final surveys and as-built plans and specifications, at Tenant's sole cost, to be paid by Tenant to Port within thirty (30) days after Port's request therefor.

2.4. Insurance. At all times during the construction of the Initial Tenant Improvements, in addition to the insurance required to be maintained by Tenant under the Lease, Tenant shall require Tenant's contractor to maintain (a) commercial general liability insurance with limits of not less than Five Million Dollars (\$5,000,000) combined single limit for bodily injury and property damage (including personal injury and death), and contractor's protective liability; and products and completed operations coverage in an amount not less than Five Hundred Thousand Dollars (\$500,000) per incident, One Million Dollars (\$1,000,000) in the aggregate; (b) comprehensive automobile liability insurance with a policy limit of not less than One Million Dollars (\$1,000,000) each accident for bodily injury and property damage, providing coverage at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, "any auto", and insuring against all loss in connection with the ownership, maintenance and operation of automotive equipment that is owned, hired or non-owned; (c) worker's compensation with statutory limits and employer's liability insurance with limits of not less than One Hundred Thousand Dollars (\$100,000) per accident, Five Hundred Thousand Dollars (\$500,000) aggregate disease coverage and One

Hundred Thousand Dollars (\$100,000) disease coverage per employee. Tenant shall cause Tenant's Agents (other than Tenant's contractor) to carry such insurance as shall be reasonably approved by Port taking into account the nature and scope of the work and industry custom and practice. In addition, Tenant shall carry "**Builder's All Risk**" insurance covering the construction of the Initial Tenant Improvements as set forth in the Lease. The liability insurance shall be written on an "**occurrence**" basis and shall name Port as additional insureds (by endorsement reasonably acceptable to Port). All of the insurance required to be carried by Tenant or Tenant's Agents hereunder shall provide that it is primary insurance, and not excess over or contributory with any other valid, existing, and applicable insurance in force for or on behalf of Port, shall provide that Port shall receive thirty (30) days' written notice from the insurer prior to any cancellation or change of coverage, and shall be placed with companies which are rated A-VIII or better by Best's Insurance Guide and licensed to business in the State of California. All deductibles and self-insured retentions under Tenant's policies are subject to Port's reasonable approval, and all insurance, except workers' compensation, maintained by Tenant's Agents shall preclude subrogation claims by the insurer against anyone insured thereunder. Tenant's compliance with the provisions of this Section 2.4 shall in no way limit Tenant's liability under any of the other provisions of this Work Letter or the Lease.

2.5. Performance Bond. At least five (5) business days prior to commencement of construction of the Initial Tenant Improvements, Tenant shall provide Port, at Tenant's sole cost and expense, a payment and performance bond substantially in the form attached hereto as **Attachment 2**, in a principal amount equal to one hundred fifty percent (150%) of the estimated costs of such Initial Tenant Improvements, to ensure Port against any liability for mechanics' and materialmen's liens, stop notices and to ensure completion of the work.

2.6. Compliance with Laws. At its sole cost and expense, Tenant shall comply (taking into account any variances or other deviations properly approved) with: (i) all Laws; (ii) all Regulatory Approvals which place requirements on the Initial Tenant Improvements; (iii) all requirements of all policies of insurance which may be applicable to the Premises as to the Initial Tenant Improvements or Tenant's Personal Property; and (iv) all other applicable Project Requirements. It is expressly understood and agreed that the performance required of Tenant by the preceding sentence shall include the obligation to make, at Tenant's sole cost and expense, all additions to, modifications of, and installations on the Premises which may be required by any Laws regulating the Premises or any insurance policies covering the Premises as to the Initial Tenant Improvements or Tenant's Personal Property. Tenant shall, promptly upon request, provide Port with reasonable evidence of compliance with Tenant's obligations under this Section.

2.7. Port and Other Governmental Permits. Tenant has the sole responsibility, at its sole cost and expense, for obtaining all necessary permits for the Initial Tenant Improvements and shall make application for such permits directly to the applicable Regulatory Agency; provided, however, that where Port is required to act as a co-permittee for any permit Tenant shall apply for such permit in accordance with Section 10.2 of the Lease.

2.8. Port Rights of Access. Without limiting the rights of Port in its regulatory capacity, Port and its Agents will have the right of access to the Premises to the extent reasonably necessary to carry out the purposes of this Work Letter, including, but not limited to, the inspection of the work being performed in constructing the Initial Tenant Improvements upon reasonable prior written notice to Tenant during regular business hours; provided, however, Port shall take such reasonable action necessary to minimize any interference with Tenant's construction activities. Port will provide Tenant promptly upon request with a copy of any written reports prepared by Port or its Agents with respect to the Initial Tenant Improvements under any such inspection, subject to withholding documents otherwise privileged or confidential. Port disclaims any warranties, representations and statements made in any such reports, will have no liability or responsibility with respect to any such warranties, representations and statements, and will not be estopped from taking any action (including, but

not limited to, later claiming that the construction of the Initial Tenant Improvements is defective, unauthorized or incomplete) nor be required to take any action as a result of any such inspection.

2.9. Construction Signs and Barriers. Tenant shall provide appropriate construction barriers, construction signs and a project sign or banner describing the Initial Tenant Improvements, and shall post the signs on the Premises during the period of construction. The size, design, test and location of such signs and the composition and appearance of any non-moveable construction barriers shall be submitted to Port for approval before installation pursuant to Port's sign policy, which approval may not be withheld unreasonably. Failure by Port to disapprove any such submission within forty-five (45) days after submittal of all documents required or requested by Port, will be deemed to be an approval.

3. PREPARATION AND APPROVAL OF PLANS

3.1. The Construction Documents.

(a) Definition of Construction Documents. The Construction Documents shall be as follows:

(i) "Schematic Drawings" for the Initial Tenant Improvements which shall generally include, without limitation, the following:

- (1) Perspective drawings sufficient to illustrate the Initial Tenant Improvements.
- (2) A site plan at appropriate scale showing relationships of the Initial Tenant Improvements with their respective uses, designating public access areas, open spaces, walkways, buildings, loading areas, streets, parking, and adjacent uses. Adjacent existing and proposed streets, piers, arcades and structures should also be shown.
- (3) Building plans, floor plans and elevations sufficient to describe the development proposal, the general architectural character, and the location and size of uses.
- (4) Building sections showing height relationships of those areas noted above.

(ii) "Preliminary Construction Documents" in sufficient detail and completeness to show that the Initial Tenant Improvements and the construction thereof shall comply with the Project Requirements, and which shall generally include, without limitation:

- (1) Premises plan(s) at appropriate scale showing the buildings, streets, boat docks, walkways, and other open spaces. All land uses shall be designated. All Premises development details and bounding streets, points of vehicular and pedestrian access shall be shown.
- (2) All building plans and elevations at appropriate scale.
- (3) Building sections showing all typical cross sections at appropriate scale.
- (4) Floor plans.
- (5) Preliminary interior improvement plans.
- (6) Plans for proposed public access areas showing details including but not limited to, walls, fences, railings, benches, bicycle racks, street furniture, markers, plaques, models, paving, exterior lighting, signs, and trash containers.
- (7) Outline specifications for materials, finishes and methods of construction.

- (8) Interior and Exterior Signage Plans.
- (9) Exterior lighting plans.
- (10) Material and color samples.
- (11) Roof plans showing all mechanical and other equipment.
- (12) Designation of each Improvement as either a Core

Improvement or an Interior Improvement.

(iii) **"Final Construction Documents"** which shall include all plans and specifications required under applicable codes to be submitted with an application for a Premises Permit.

(b) **Exclusion.** As used in this Work Letter **"Construction Documents"** do not mean any contracts between Tenant and any contractor, subcontractor, architect, engineer or consultant.

In preparing the Construction Documents, Tenant shall consider including energy conservation and other green building improvement measures including but not limited to solar panels, energy efficient light fixtures, Energy Star appliances and use of recycled materials for Interior Improvements.

3.2. *Scope of Tenant Submissions of Construction Documents.* The following provisions apply to all stages of Tenant's submission of Construction Documents. Each of the Construction Document stages is intended to constitute a further development and refinement from the previous stage. The elements of the Preliminary Construction Documents requiring Port's approval shall be in substantial conformance with the Schematic Drawings and the Scope of Development, and shall incorporate conditions, modifications and changes specified by Port or required as a condition of Regulatory Approvals as approved by Port. Preliminary Construction Documents shall be in sufficient detail and completeness to show that the Initial Tenant Improvements and the construction of the Initial Tenant Improvements will be in compliance with the Project Requirements and matters previously approved. The Final Construction Documents shall be a final development of, and be based upon and conform to, the approved Preliminary Construction Documents. The elements of the Final Construction Documents requiring Port approval shall incorporate conditions, modifications and changes required by Port for the approval of the Preliminary Construction Documents. The Final Construction Documents shall include all drawings, specifications and documents necessary for the Initial Tenant Improvements to be constructed and completed in accordance with this Work Letter.

3.3. *Construction Document Review Procedures.*

(a) **Method of Port Action/Prior Approvals.** Port shall approve, disapprove or approve conditionally the Construction Documents, in writing, in accordance with the Schedule of Performance, but, in any event, within ninety (90) days after submittal, so long as the applicable Construction Documents are properly submitted in accordance with the Schedule of Performance. If Port fails to either approve or disapprove within five (5) business days after Tenant's second written request made to Port after such ninety (90) day period, the applicable Construction Documents shall be deemed disapproved.

(b) **Timing of Port Disapproval/ Conditional Approval and Tenant Resubmission.** If Port disapproves of the Construction Documents in whole or in part, Port in the written disapproval shall state the reason or reasons and may recommend changes and make other recommendations. If Port conditionally approves the Construction Documents in whole or in part, the conditions shall be stated in writing and a time shall be stated for satisfying the conditions. Tenant shall make a resubmittal as expeditiously as possible. Tenant may continue

making resubmissions until the approval of the submissions or the time specified in any conditional approval.

3.4. Changes in Construction Documents.

(a) Approval of Changes in Construction Documents. Tenant shall not make or cause to be made any material changes in any Port-approved Construction Documents without Port's express written approval in its reasonable discretion as provided in Section 3.4(b) below. Prior to making any changes that Tenant considers to be non-material to any Port-approved Construction Documents, including, without limitation, substituting materials which are the architectural equivalent as to aesthetic appearance, quality, color, design and texture, Tenant shall notify Port in writing. If Port in its reasonable discretion determines that such noticed changes are material, then such changes shall be subject to Port's approval under Section 3.4(b). Port's determination of whether such changes are material will be conclusive. Without otherwise limiting the requirements of this Section 3.4(a), any changes that cost Fifty Thousand Dollars (\$50,000.00) or less in the aggregate and that would not otherwise affect the structural elements of the Initial Tenant Improvements shall be presumed to be non-material changes.

(b) Response. Tenant shall request in writing Port's approval in connection with all material changes to the Construction Documents. Port shall respond to Tenant in writing within thirty (30) days after receipt of Tenant's request. If Port fails to respond within five (5) business days after Tenant's second written request made to Port after the thirty (30) day period, such changes will be deemed disapproved.

3.5. Progress Meetings/Consultation. During the preparation of Construction Documents, Port staff and Tenant agree to hold regular progress meetings, as appropriate considering Tenant's Construction Document progress, to coordinate the preparation of, submission to, and review of Construction Documents by Port. Port staff and Tenant (and its applicable consultants) agree to communicate and consult informally as frequently as is reasonably necessary to assure that the formal submittal of any Construction Documents to Port can receive prompt and speedy consideration.

4. NO FORCE MAJEURE

4.1. Completion of Construction. Tenant shall use its best efforts to commence, prosecute and complete construction of the Initial Tenant Improvements by the dates set forth in the Schedule of Performance, and in any event shall Complete construction of the Core Improvements no later than nine (9) months and the Interior Improvements no later than twelve (12) months following the Commencement Date. During the Construction Period, Tenant shall submit written progress reports to City, in form and detail as may be required reasonably by Port, but at least on a monthly basis.

4.2. No Force Majeure. Tenant's obligation to Complete construction of the Initial Tenant Improvements as set forth in Section 4.1 above shall be final and absolute and shall not be subject to Force Majeure, Port delays, Regulatory Approval delays or any other delays.

4.3. Port's Remedy for Tenant's Failure to Timely Complete Construction.

In the event Tenant fails to complete the Core Improvements in a manner sufficient to cause Port to issue a Certificate of Completion for the Core Improvements by the date that is One Hundred Eighty (180) days from the Commencement Date, Tenant shall pay to Port an amount equaling Two Hundred Dollars (\$200.00) amount per day commencing on the date that is One Hundred Eighty (180) days from the Commencement Date and shall continue at such rate until Port has issued a Certificate of Completion for the Core Improvement notwithstanding the Base Rent that would otherwise be payable for such period. In the event Tenant fails to complete the Interior Improvements in a manner sufficient to cause Port to issue a Certificate of Completion Interior Improvements by the date that is Three Hundred Sixty-Five (365) days from the Commencement Date, Tenant shall pay to Port an amount equaling Fifty Dollars (\$50.00) per day commencing

on the date that is Three Hundred Sixty-Five (365) days from the Commencement Date and shall continue at such rate until Port has issued a Certificate of Completion for the Interior Improvements notwithstanding the Base Rent that would otherwise be payable for such period. Under no circumstances shall these deadlines be extended due to Force Majeure, Port delays or other reasons.

THE PARTIES HAVE AGREED THAT PORT'S ACTUAL DAMAGES IN THE EVENT OF TENANT'S FAILURE TO COMPLETE CONSTRUCTION OF THE REQUIRED IMPROVEMENTS BY THE DATES SPECIFIED ABOVE WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THEY HAVE AGREED UPON THE SUM SPECIFIED ABOVE, AFTER NEGOTIATION, AS THEIR REASONABLE ESTIMATE OF PORT'S DAMAGES IN SUCH EVENT.

TENANT 

PORT 

5. CERTIFICATE OF COMPLETION

5.1. *Certificate of Completion.*

(a) Issuance Process.

(i) Before issuance by Port of a Certificate of Completion for the Core Improvements, Tenant may not occupy the Premises except for construction purposes under this Work Letter or the Lease.

(ii) After Tenant has Completed the construction of the Core Improvements or the Interior Improvements as the case may be in accordance with all the provisions of this Work Letter, including, but not limited to, the Project Requirements, Tenant may request a Certificate of Completion for the Core Improvements or the Interior Improvements in writing. Port shall act on Tenant's request within sixty (60) days of receipt.

(iii) Port's issuance of any Certificate of Completion does not relieve Tenant or any other Person from any obligations to secure or comply with any Regulatory Approval of any agency (including Port) that may be required for the occupancy or operation of the Initial Tenant Improvements.

(b) ***Condition to Approval.*** If there remain uncompleted (i) finishing details, minor omissions, decorations and mechanical adjustments of the type normally found on an architectural "punch list", (ii) landscaping, (iii) exterior finishes (to the extent Tenant can demonstrate to Port's reasonable satisfaction that such exterior finishes would be damaged during the course of later construction of Interior Improvements), or (iv) any other item that Port approves in writing in its sole and absolute discretion (collectively "Deferred Items"), Port may reasonably condition approval upon provision of security or other assurances in form, substance and amount satisfactory to Port that all the Deferred Items will be completed in a timely fashion. Such security may include a letter of credit (in a form and issued by an institution acceptable to Port) in the amount of one hundred ten percent (110%) of the cost of completion of the Deferred Items as reasonably determined by Port. The obligations set forth in this subsection shall survive a termination of the Lease.

(c) ***Definition of Completed.*** For purposes of this Work Letter and Port's issuance of a Certificate of Completion in accordance with the provisions of Section 5.1(a), "Completed" means completion by Tenant of all aspects of the Core Improvements or the Interior Improvements as the case may be in accordance with the Project Requirements, and in compliance with all Regulatory Approvals needed for the occupancy and development of the Project or provision of security satisfactory to Port for Deferred Items under Section 5.1(b), and issuance of applicable certificates of occupancy for all of the Initial Tenant Improvements.

6. TERMINATION OF LEASE

6.1. Plans and Data. If the Lease terminates as a result of an Event of Default by Tenant before Completion of the Initial Tenant Improvements, Tenant shall assign and deliver to Port (without cost to Port) any and all copies of reports in its possession regarding the Premises and all Construction Documents in the possession of or prepared for Tenant, for the contracting of the Initial Tenant Improvements within thirty (30) days after written demand from Port. Port may use said reports and Construction Documents for any purpose whatsoever relating to the Premises; provided, however, Port shall release Tenant and Tenant's contractor, architect, engineer, agents, employees and other consultants from any Losses arising out of Port's use of such reports and Construction Documents except to the extent such contractor, architect, engineer, agent, employee or other consultant is retained by Port to complete the Initial Tenant Improvements. Tenant shall include in all contracts and authorizations for services pertaining to the planning and design of the Initial Tenant Improvements an express agreement by the Person performing such services that Port may use such reports or Construction Documents as provided in this Section 6.1 without compensation or payment from Port in the event such reports or Construction.

Documents are delivered to Port under the provisions of this Section 6.1, provided that Port agrees (i) not to remove the name of the preparer of such reports of Construction Documents without the preparer's written permission or (ii) to remove it at their written request.

6.2. Return of Premises. If the Lease terminates during the Construction Period due to an Event of Default by Tenant, Tenant shall, at its sole expense and as promptly as practicable, return the Premises to Port in a safe condition, and unless otherwise requested by Port, shall promptly remove all Improvements, loose building materials and debris present at the Premises resulting from Tenant's construction activities. In the event that Tenant is required to return the Premises as aforesaid, Tenant shall obtain those permits customary and necessary to enter upon the Premises in order to complete such work and shall otherwise comply with applicable Law. In such event, Port shall cooperate with Tenant in Tenant's efforts to obtain such permits, provided that Port will not be required to expend any money or undertake any obligations in connection therewith. The provisions of this Section shall survive any termination of the Lease.

ATTACHMENTS

ATTACHMENT 1	NARRATIVE PORTION OF SCOPE OF DEVELOPMENT
ATTACHMENT 2	FORM OF PERFORMANCE BOND & PAYMENT (LABOR AND MATERIAL) BOND

PIER 24 THE EMBARCADERO

Enclosed Area	27,000
Mezzanine	0
Total	27,000

Construction	Minimum Work to Occupy Immediately
FF&E	Fixtures, Finishes and Equipment

CSI	Category of Work	Quantity	Unit	Unit Price	Construction	FF&E	Total	Comment
1000	General Conditions/Temp Construction							
	Construction	\$ 2,290,000	amnt	6%	\$ 137,400		\$ 137,400	
	Tenant/FF&E	\$ 270,000	amnt	6%		\$ 16,200	\$ 16,200	
	Temporary Power	\$ 5	mon	\$ 5,000.00	\$ 25,000		\$ 25,000	
	Permit fees							
	Construction	\$ 2,290,000	amnt	2%	\$ 45,800		\$ 45,800	
	Tenant/FF&E	\$ 270,000	amnt	2%		\$ 5,400	\$ 5,400	
	Scaffolding							
	Core and shell							
	Exterior				\$ 15,000		\$ 15,000	
	Interior				\$ 10,000		\$ 10,000	
	Tenant Work							
	Exterior	1	bgt	\$ 5,000			\$ 5,000	
	Interior	1	bgt	\$ 5,000			\$ 5,000	
					\$ 233,200	\$ 28,600	\$ 259,800	
2000	Demolition hard and soft							Interiors and for BB work
	Abate hazardous materials	27,000	sf	\$ 2.00	\$ 54,000		\$ 54,000	
	Interiors and misc. for BB work	27,000	sf	\$ 1.00	\$ 27,000		\$ 27,000	
	Demolish roll down doors	3	ea	\$ 1,000.00	\$ 3,000		\$ 3,000	
	Demolish roof membrane	28,000	sf	\$ 1.00	\$ 28,000		\$ 28,000	
	Demolish asphalt paving	27,000	sf	\$ 1.50	\$ 40,500		\$ 40,500	
	Demo and excavate for utilities	1	bgt	\$ 30,000.00	\$ 30,000		\$ 30,000	
	For tenant access and improvements	1	bgt	\$ 2,500.00		\$ 2,500	\$ 2,500	
					\$ 182,500	\$ 2,500	\$ 185,000	
2100	Site Utilities							
	Budget new water service POC	1	bgt	\$ 40,000.00	\$ 40,000		\$ 40,000	
	Budget new fire water service	1	bgt	\$ 50,000.00	\$ 50,000		\$ 50,000	Includes conn. To existing risers 100' 6"
	Budget gas service POC	1	bgt	\$ 40,000.00	\$ 40,000		\$ 40,000	
	Budge new electrical	1	bgt	\$ 50,000.00	\$ 50,000		\$ 50,000	
	Budget data/cable service	1	bgt	\$ 15,000.00	\$ 15,000		\$ 15,000	
					\$ 195,000		\$ 195,000	
2400	Substructure							
	Repair split piles	9	ea	\$ 5,000.00	\$ 45,000		\$ 45,000	Advise that previous design for repair of piles
	Repair rotten piles	5	ea	\$ 5,000.00	\$ 25,000		\$ 25,000	and substructure beam inadequate. Budget price
	Repair rotten cap beam	4	ea	\$ 10,000.00	\$ 40,000		\$ 40,000	included recommended by marine contractor
	Repair offset piles	4	ea	\$ 1,000.00	\$ 4,000		\$ 4,000	for concrete repair solution
	Budget other misc repairs	1	bgt	\$ 25,000.00	\$ 25,000		\$ 25,000	
					\$ 139,000		\$ 139,000	

CSI	Category of Work	Quantity	Unit	Unit Price	Construction	FF&E	Total	Comment
3000	Concrete							
	Floor fill	27,000	sf	\$ 1.50	\$ 40,500		\$ 40,500	
	Patch sidewalks	600	sf	\$ 25.00	\$ 15,000		\$ 15,000	
	Misc. concrete	1	bgt		\$ 5,000		\$ 5,000	
	Handicap ramps	1	loc	\$ 50,000.00	\$ 50,000		\$ 50,000	
	Stairs to ramp landing	1	bgt		\$ 5,000		\$ 5,000	
							\$ -	
					\$ 116,500	\$ -	\$ 116,500	
4000	Masonry							
	Kitchen stone counters	30	lf	\$ 200.00		\$ 6,000	\$ 6,000	
					\$ -	\$ 6,000	\$ 6,000	
5000	Structural Steel, stairs and handrails							
	Core and Shell							
	Horizontal clerestory bracing	1	bgt	\$ 25,000.00	\$ 25,000		\$ 25,000	
	Miscellaneous Metals				\$ 10,000	\$ 5,000	\$ 15,000	
	Support roll-up doors minimum plan	1	bgt	\$ 1,500.00	\$ 1,500		\$ 1,500	
	Exit stairs and hand rail to street	2	loc	\$ 5,000.00	\$ 10,000		\$ 10,000	
	Handrails at handicap ramps	75	lf	\$ 200.00	\$ 15,000		\$ 15,000	
	Stair at ramp handrails	1	bgt	\$ 3,000.00	\$ 3,000		\$ 3,000	
	Tenant's Work							
	Inserts for movable panels	75	ea	\$ 100.00		\$ 7,500	\$ 7,500	
	Misc metal for mechanical and other	1	bgt	\$ 5,000.00	\$ 5,000		\$ 5,000	
					\$ 69,500	\$ 12,800	\$ 82,300	
6000	Carpentry							
	Core and Shell							
	Temporary construction, safety...	1	bgt	\$ 10,000.00	\$ 10,000		\$ 10,000	
	Construct new openings	1	bgt	\$ 10,000.00	\$ 10,000		\$ 10,000	
	Floor diaphragm	27,000	sf	\$ 2.00	\$ 54,000		\$ 54,000	
	Roof diaphragm	27,000	sf	\$ 2.50	\$ 67,500		\$ 67,500	
	Shear walls 300 LF 15' tall	4,500	sf	\$ 8.00	\$ 36,000		\$ 36,000	
	Tenant Work							
	Tenant backing, safety...	1	bgt	\$ 7,500.00		\$ 7,500	\$ 7,500	
	Kitchen cabinetry	20	lf	\$ 1,000.00		\$ 20,000	\$ 20,000	
	Office furniture	excl'd	ea	\$ 3,000.00				
	Archive shelving	excl'd	lf	\$ 50.00				
	Curatorial Credenza	excl'd	lf	\$ 600.00				
	Closet pole and shelf	16	lf	\$ 150.00		\$ 2,400	\$ 2,400	
	Reception						\$ -	
	Library/office	excl'd						
					\$ 177,500	\$ 29,900	\$ 207,400	
7000	Waterproofing and Insulation							
	Core and Shell							
	New Roof w/ Insulation	28,000	sf	\$ 7	\$ 196,000		\$ 196,000	
	Flashing	1	bgt	\$ 10,000	\$ 10,000		\$ 10,000	
	Floor membrane	24,000	sf	\$ 2	\$ 48,000		\$ 48,000	
	Exterior wall Insulation	15,600	sf	\$ 1.50	\$ 23,400		\$ 23,400	
	Tenant Work							
	Insulation Acoustic	1.00	bgt	\$ 5,000	\$ 5,000		\$ 5,000	
							\$ -	
					\$ 282,400	\$ -	\$ 282,400	

CSI	Category of Work	Quantity	Unit	Unit Price	Construction	FF&E	Total	Comment
8000	Doors and Windows							
	Core and Shell							
	Double Exit	2	ea	\$ 3,000.00	\$ 6,000		\$ 6,000	
	Single Exit	-	ea	\$ 2,000.00	\$ -		\$ -	
	Roll up Doors	2	ea	\$ 5,000.00	\$ 10,000		\$ 10,000	7 to be fixed in Closed position
	Glazed rollup doors	1	ea	\$ 15,000.00	\$ 15,000		\$ 15,000	
	Glazing/Repair	1	bgt	\$ 15,000.00	\$ 15,000		\$ 15,000	
	Storefront							
	Store front doors						\$ -	
	Repair steel sash	1	bgt	\$ 5,000.00	\$ 5,000		\$ 5,000	
	Tenant Work						\$ -	
	Pairs of doors	2	pr	\$ 3,000.00	\$ 6,000		\$ 6,000	
	Single tenant	3	ea	\$ 2,000.00	\$ 6,000		\$ 6,000	
	Sliding							
	New windows	200	sf	\$ 100.00	\$ 20,000		\$ 20,000	
	Roof vent window treatment	900	sf	\$ 15.00		\$ 13,500	\$ 13,500	
	Entry	100	sf	\$ 100.00	\$ 10,000		\$ 10,000	
					\$ 93,000	\$ 13,500	\$ 106,500	
9000	Drywall, Plaster and Finishes							
	Core and Shell							
	Elastomeric exterior	17,000	sf	\$ 2.50	\$ 42,500		\$ 42,500	
	Paint windows	20	ea	\$ 500.00	\$ 10,000		\$ 10,000	
	Exit corridor							
	Demising wall							
	Rock interior	15,000	sf	\$ 2.00	\$ 30,000		\$ 30,000	
	Plaster entry soffit	320		\$ 20.00	\$ 6,400		\$ 6,400	
	Plaster patch new openings	1	bgt	\$ 7,500.00	\$ 7,500		\$ 7,500	
	Misc Plaster Construction						\$ -	
	Paint base building Interior	1	bgt	\$ 12,000.00	\$ 12,000		\$ 12,000	Limited areas
	Paint Trusses	1	bgt	\$ 24,000.00	\$ 24,000		\$ 24,000	
	Tenant Work							
	Feature walls	300	sf	\$ 10.00		\$ 3,000	\$ 3,000	
	Misc. walls	1,500	sf	\$ 6.00	\$ 9,000		\$ 9,000	
	Library Walls	1,000	sf	\$ 6.00	\$ 6,000		\$ 6,000	
	Library Ceiling	500	sf	\$ 5.00	\$ 2,500		\$ 2,500	
	Paint	1	bgt	\$ 12,000.00	\$ 12,000		\$ 12,000	Limited areas
	Sealing and Caulking	1	bgt	\$ 5,000.00	\$ 5,000		\$ 5,000	
	Flooring	1	bgt	\$ 20,000.00	\$ 20,000		\$ 20,000	Limited areas
					\$ 186,900	\$ 3,000	\$ 189,900	
10000	Specialties and signage							
	Tenant work							
	Signage and graphics							
	Kitchen appliances	1	bgt	\$ 15,000.00		\$ 15,000	\$ 15,000	Basics
						\$ 15,000	\$ 15,000	

CSI	Category of Work	Quantity	Unit	Unit Price	Construction	FF&E	Total	Comment
11000	Special Equipment							
	Tenant work							
	Modular display walls	10	ea	\$ 1,000.00		\$ 10,000	\$ 10,000	
	Storage units	2	ea	\$ 7,500.00		\$ 15,000	\$ 15,000	
	Video Equipment	none						
	Rear Projection Screens	none						
						\$ 25,000	\$ 25,000	
12000	Not Used							
13000	Allowances and Special Construction							
	Core and Shell							
	Utility Closets	2	bgt	\$ 4,000.00	\$ 8,000		\$ 8,000	
	Mechanical Room	1	bgt	\$ 7,500.00	\$ 7,500		\$ 7,500	
	Electrical Room	1	bgt	\$ 5,000.00	\$ 5,000		\$ -	
	Restrooms (fixtures in plumbing)	1	bgt	\$ 25,000.00	\$ 25,000		\$ 25,000	One single occupancy
	Tenant Work						\$ -	
	Hanging Equipment	1	bgt	\$ 15,000.00		\$ 15,000	\$ 15,000	
					\$ 45,500	\$ 15,000	\$ 60,500	
15000	Plumbing/Mechanical							
	Core and Shell							
	Roof drains	12	ea	\$ 1,500.00	\$ 18,000		\$ 18,000	
	Rain water leaders	400	lf	\$ 40.00	\$ 16,000		\$ 16,000	
	Bathroom Plumbing	4	fix	\$ 3,000.00	\$ 12,000		\$ 12,000	
	Sprinkler and Distribution	27,000	sf	\$ 1.75	\$ 47,250		\$ 47,250	
	Core mechanical and Distribution	27,000	sf	\$ 7.50	\$ 202,500		\$ 202,500	
	Vents and Louvers	1	bgt	\$ 10,000.00	\$ 10,000		\$ 10,000	
	Add Ceiling Fans	10	ea	\$ 2,500.00	\$ 25,000		\$ 25,000	
	Tenant Work						\$ -	
	Kitchen	1	bgt	\$ 15,000.00		\$ 15,000	\$ 15,000	
	Other	1	bgt	\$ 5,000.00		\$ 5,000	\$ 5,000	
					\$ 330,750	\$ 20,000	\$ 350,750	
16000	Electrical							
	Core and Shell							
	Base Building Service	27,000	sf	\$ 2.00	\$ 54,000		\$ 54,000	
	Base building Electrical	27,000	sf	\$ 1.00	\$ 27,000		\$ 27,000	
	Life Safety	27,000	sf	\$ 1.00	\$ 27,000		\$ 27,000	
	Tenant Work						\$ -	
	Power and Light	1	bgt	\$ 75,000.00	\$ 75,000		\$ 75,000	
	Life safety	27,000	sf	\$ 1.00	\$ 27,000		\$ 27,000	
	Lighting Control	none					\$ -	
	Tele Data	1	bgt	\$ 15,000.00		\$ 15,000	\$ 15,000	
	Music Intercom	none					\$ -	
	Security	27,000	sf	\$ 1.00		\$ 27,000	\$ 27,000	
					\$ 210,000	\$ 42,000	\$ 252,000	
	Subtotal				2,260,750	211,000	2,466,750	
	Fee				90,430	8,440	98,870	
	GRT				7,054	658	7,696	
	Contingency 5%				117,912	11,005	128,656	
	Subtotal, Construction				2,476,146	231,103	2,701,772	

Soft Costs

Consultants

CSI	Category of Work	Quantity	Unit	Unit Price	Construction	FF&E	Total	Comment
	Architectural	1	bgt	\$ 40,000.00	\$ 40,000		\$ 40,000	
	Structural	1	bgt	\$ 25,000.00	\$ 25,000		\$ 25,000	
	M E P F S	1	bgt	\$ 25,000.00	\$ 25,000		\$ 25,000	
	Marine	1	bgt	\$ 10,000.00	\$ 10,000		\$ 10,000	
	Civil/Survey	1	bgt	\$ 7,500.00	\$ 7,500		\$ 7,500	
	Waterproofing	1	bgt	\$ 7,500.00	\$ 7,500		\$ 7,500	
	Historic	1	bgt	\$ 5,000.00	\$ 5,000		\$ 5,000	
	Environmental	1	bgt	\$ 5,000.00	\$ 5,000		\$ 5,000	
	Construction Administration						\$ -	
	Architectural	20	wks	\$ 750.00	\$ 15,000		\$ 15,000	
	Structural	20	wks	\$ 500.00	\$ 10,000		\$ 10,000	
	Testing and Inspection						\$ -	
	Third Party Inspections	1	bgt	\$ 20,000.00	\$ 20,000		\$ 20,000	
	Abatement Testing and Clearance	1	bgt	\$ 15,000.00	\$ 15,000		\$ 15,000	
	Permits							
	Street use	1	bgt	\$ 2,500.00	\$ 2,500		\$ 2,500	
	Encroachment	1	bgt	\$ 5,000.00	\$ 5,000		\$ 5,000	
	Utilities							
	PG&E Application and Engineering Fees	1	bgt	\$ 30,000.00	\$ 30,000		\$ 30,000	
	Insurance							
	Builders Risk	2,700,000	bgt	1%	\$ 27,000		\$ 27,000	
	Legal							
	Lease	1	bgt	\$ 10,000.00	\$ 10,000		\$ 10,000	
	Other	1	bgt	\$ 5,000.00	\$ 5,000		\$ 5,000	
Subtotal Soft Costs							\$ 264,600	
Development Contingency							\$ 200,000	
Total Estimated Project Cost							\$ 3,166,272	

**ATTACHMENT 2 FORM OF PERFORMANCE BOND &
PAYMENT (LABOR AND MATERIAL) BOND**

KNOW ALL MEN BY THESE PRESENTS, THAT WHEREAS, _____ has awarded to:

hereinafter designated as the "**Principal**", a Contract, dated _____ for
_____.

WHEREAS, said Principal is required under the terms of said Contract to furnish a Bond for the faithful performance of said Contract; and to furnish a separate Bond for the payment of any materials, provisions, or other supplies, used in, upon, for or about the performance of the Work contracted to be done;

NOW, THEREFORE, we the Principal and

as Surety, are firmly bound unto _____, the City and County of San Francisco acting by and through the San Francisco Port Commission in the penal sum of

(PERFORMANCE BOND)

(PAYMENT BOND)

and

lawful money of the United States for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally firmly by these presents for a performance bond and an equal and separate penal sum for a separate payment bond. The conditions of this obligation is such that if the said principal does well and faithfully performs all the conditions and covenants of said Contract, according to the true intent and meaning thereof, upon its part to be kept and performed, then the above obligation is to be null and void, otherwise to remain in full force and effect.

(PERFORMANCE BOND)

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bounden Principal, its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the said Contract, including the provisions for liquidated damages in the said Contract, any changes, additions or alterations thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless _____, the City and County of San Francisco acting by and through the San Francisco Port Commission, and their respective officers and agents, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

(PAYMENT BOND)

THE CONDITION OF THIS OBLIGATION IS SUCH, that if said principal, its heirs, executors, administrators, successors or assigns, of its subcontractor or subcontractors, shall fail to pay for any materials, provisions, or other supplies, used in, upon, for or about the performance of the Work contracted to be done, or for any work or labor thereon of any kind, or for amounts due the Unemployment Insurance Act with respect to such work or labor, then the surety of this Bond will pay for same, in an amount not exceeding the sum specified in this Bond, and in case suit is brought upon this Bond will also pay a reasonable attorney's fee, to be fixed by the Court. This Bond shall inure to the benefit of _____ and any and all persons, companies, corporations, political subdivisions and state agencies, entitled to file claims under the provisions of California Civil Code section 3247 et sequitur

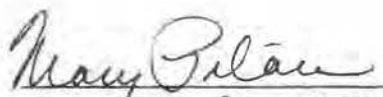
And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or the Specifications accompanying the same and no inadvertent overpayment of progress payments shall in any way affect its obligations on these Bonds, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work or to the Specifications or of any inadvertent overpayment of progress payments.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their seal this ____ day of _____, 200__, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Approved as to form:
Dennis J. Herrera
City Attorney

By: _____
Deputy City Attorney

Principal: _____
By: 
Name: ANDREW PILARA, JR
Title: PRESIDENT

Surety:
By: 
Name: MARY PILARA
Title: _____

SCHEDULE 1

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

[Attachment on following page(s)]

**NOTICE TO EMPLOYEES,
OWNERS, LESSEES, SUBLESSEES, AGENTS AND CONTRACTORS**

ASBESTOS IN BUILDINGS

**FOR: Pier 24 Annex
FOR PERIOD ENDING: March 2005**

It is the responsibility of the master tenant to provide this notice to any subtenant within their leasehold.

In January of 1989, Assembly Bill 3713 was signed into law and added to the California Health and Safety Code. This bill provides for written notice to employees concerning specific matters related to working in a building with asbestos containing construction materials. It applies to building built before 1979 where the owner knows that the building contains asbestos-containing materials; it does not require that a building be surveyed to determine the presence of asbestos.

WHAT IS ASBESTOS?

Asbestos is a naturally occurring group of fibrous minerals which have been used extensively in public buildings, apartment buildings and homes. Asbestos was incorporated into pipe insulation, acoustic plaster, acoustic tile, duct and furnace insulation, floor tiles, textiles and hundreds of other building materials. In most City buildings, asbestos is located in insulation on piping systems, acoustic plaster on ceilings, acoustic ceiling tiles, vinyl asbestos floor tiles, and structural fireproofing.

This notification includes the results of any air monitoring or bulk sampling for asbestos that has been conducted in your building during the previous calendar quarter. (This notice may also include older information of asbestos samples, for your information.)

WHY IS ASBESTOS HAZARDOUS?

Asbestos is a concern because of the potential health risks associated with breathing asbestos fibers. It is important for you to know that most people with asbestos-related diseases were asbestos workers before 1972. These workers were repeatedly exposed to high levels of asbestos each working day with little or no protection. Asbestos workers today are required to follow specific work practices and wear appropriate protection to minimize exposure.

Significant exposure to asbestos fibers can lead to asbestosis and certain forms of cancer. Asbestosis is one of the many dust-related lung diseases. It is associated with chronic exposure to relatively high levels of asbestos and is characterized by the permanent deposition of asbestos fibers in the respiratory tract. The earliest and most prominent clinical finding, breathlessness upon exertion, rarely becomes apparent until at least a decade of exposure.

In addition to asbestosis, the association of asbestos and lung cancer has been well established over the past two decades. Scientists have studied insulation and shipyard workers who were exposed to HIGH AIRBORNE LEVELS of asbestos. These studies indicated that asbestos workers were about five times as likely to get lung cancer as non-asbestos workers who did not smoke. Asbestos workers who also smoke were found to be at much greater risk (about 50 times) of dying of lung cancer than non-smoking non-asbestos workers. Mesothelioma, a rare form of cancer of the chest or abdominal cavity, occurs among occupational groups exposed to certain types of asbestos.

ASBESTOS SAMPLING RESULTS

A summary of the results of recent asbestos bulk sampling or air monitoring is attached to this notice.

A variety of exposure standards and health action levels have been established for various purposes:

The Occupational Safety and Health Administration (OSHA) asbestos standards (Title 29 of the Code of Federal Regulations), which apply to employees who actually work with asbestos, mandate a permissible exposure limit (PEL) of 0.1 fibers per cubic centimeter of air (f/cc) determined as an 8 hour time weighted average (TWA) and an excursion limit of 1 f/cc as a 30 minute TWA. When employees are exposed at these levels, OSHA and Cal/OSHA (Title 8 of the California Code of Regulations) require medical monitoring and other control methods.

The Environmental Protection Agency (EPA) has recommended a "clearance level" for asbestos of 0.01 f/cc, as measured by phase contrast microscopy (PCM). If measured by the transmission electron microscopy (TEM) method described in 40 CFR Part 763, the Asbestos Hazard Emergency Response Act (AHERA), the clearance level is either 0.02 structure/cc or 70 structures per square millimeter of filter (s/mm²). This means that once an operation involving asbestos (such as removal) is complete, the area is "safe" for re-occupancy as long as the asbestos air concentrations are less than or equal to the "clearance level". These same levels have also been adopted in the California Education Code (Section 494200.7) as the school abatement clearance level.

The state of California has an additional requirement relating to disclosure of the presence of asbestos. Proposition 65, which was voted into law by the state citizens, basically requires posting of area where anyone is exposed to a carcinogen at a level where there is a significant risk of cancer. The California Health and Welfare Agency has established this level at 100 fibers of asbestos per day.

GENERAL PROCEDURES AND HANDLING RESTRICTIONS

As you can see, the concern is with asbestos fibers in the air. When asbestos materials are in good condition, it is unlikely that fibers will be released into the air, unless the asbestos materials are damaged or disturbed. Asbestos-containing materials must not be disturbed so that fibers do not get into the air. Do not cut into, drill into, nail, or pin anything onto, sand, move bump, rub against or otherwise disturb any asbestos containing materials. If you should discover any damaged asbestos-containing material, do not touch it; do not attempt to clean it up. Contact your supervisor or property manager immediately and report the situation.

City employees required to enter areas and perform work activities that might involve the disturbance of asbestos materials have been trained in the proper procedures to minimize exposure. Work that requires major disturbances of asbestos materials (such as removal) is performed under specifications which include work practice procedures, removal techniques, clean up and clearance air sampling.

If any construction, maintenance, or remodeling is conducted in an area of the building where there is the potential for employees to come in contact with, or release or disturb asbestos containing building materials, it is required that the area be posted with a clear and conspicuous warning sign. The warning sign must read:

**"CAUTION. ASBESTOS
CANCER AND LUNG DISEASE HAZARD
DO NOT DISTURB WITHOUT PROPER TRAINING AND EQUIPMENT"**

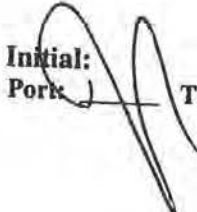



Much of this information may be new to you. If you have questions about asbestos, you may call the Department of Public Health Toxic Substances Control Program at 252-3800 to answer your questions.

This written announcement fulfills the asbestos notification requirement of Division 20, Chapter 10.4, Section 25915 of the California Health and Safety Code (Assembly Bill 3713).

SITE SPECIFIC INFORMATION

The following pages are a summary of asbestos bulk sampling or air monitoring results that have been conducted at Pier 24 Annex. Copies of the full sampling report(s) are available for review and photocopying at the Port of San Francisco Environmental Health and Safety Office (Pier 1, S.F.) between the hours of 8 a.m. and 5 p.m. The asbestos coordinator for this building is Tim Felton who can be reached at (415) 274-0582.

Building: Pier 24 Annex			
Survey Date	Room or Area	Contents of Survey/ Description of ACM	Handling Procedures and Restrictions
2/11/98	Building	Comprehensive survey conducted by RGA Environmental found asbestos containing material in the silver seam cement on the roof at the upper and lower roof interface (10% chrysotile), and in the roof penetration mastic around the upper roof vents (10% chrysotile). (RGA 2/11/98)	The asbestos-containing materials found on the roof should be abated prior to building renovation if the roof is going to be impacted. A contractor licensed to perform asbestos-related work should conduct all abatement work.

Initial:  
 Port:  Tenant: 

SCHEDULE 2

SUBSTRUCTURE REPORT(S)

[Attachment on following page(s)]

SCHEDULE 3

PORT'S BASELINE LEAD-BASED PAINT AND ASBESTOS STUDY

**SUMMARY REPORT:
PRE-RENOVATION HAZARDOUS MATERIALS
SURVEY
PORT OF SF PIER 24 ANNEX
SAN FRANCISCO, CA**



PREPARED FOR:

**SAN FRANCISCO DEPARTMENT OF PUBLIC WORKS
SITE ASSESSMENT & REMEDIATION
1680 MISSION STREET
SAN FRANCISCO, CA 94103**

PREPARED BY:

SCA

ENVIRONMENTAL, INC.

**165 10TH STREET, SUITE 100
SAN FRANCISCO, CA 94103
TEL: (415) 703-8490, x226
FAX: (415) 703-0701**

SCA PROJECT NO.: B-8459

JULY 2007

**SUMMARY REPORT
PRE-RENOVATION HAZARDOUS MATERIALS SURVEY
PORT OF SF PIER 24 ANNEX
SAN FRANCISCO, CALIFORNIA 94102**

CONDUCTED FOR

**ROBERTO AGUIRRE
SAN FRANCISCO DEPARTMENT OF PUBLIC WORKS
SITE ASSESSMENT AND REMEDIATION
1680 MISSION STREET
SAN FRANCISCO, CA 94103**

JULY 2007

SCA PROJECT NO. B-8459

PREPARED BY:

**SUGI HARTO, CSST, EIT
ENVIRONMENTAL SCIENTIST**

REVIEWED BY:

**CHUCK SIU, CAC, PE, CIH
PRESIDENT**

**SCA ENVIRONMENTAL, INC.
165 10TH STREET, SUITE 100
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FAX: (415) 703-0701**

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Attachments

1. Material Matrix Report (for Asbestos)
2. Laboratory Reports
3. Field Data Sheets
4. Sample Location Diagrams

1.0 Executive Summary

This report summarizes the results of a survey for lead-based paint, asbestos-containing construction materials, and associated environmental hazards, at the Pier 24 Annex in San Francisco, CA. The survey was conducted on June 20, 2007.

Asbestos-containing materials identified in the property are summarized below:

Sample ID	Description	Asbestos?
Asbestos Containing Materials (confirmed by testing)		
RFMA S-5-1,2,3	Black/gray roofing mastics along upper and lower roof perimeters	Yes
CAULK-6-1	Yellow painted caulking around window perimeter	
Presumed Asbestos Containing Materials		
LiConc-AAA	Lightweight concrete (topslab) suspected present between roofing and roof deck	Assumed
VAPBAR-AAA	Vapor barrier possibly under concrete slab	

Prior to any renovations or demolition, the National Emission Standard for Hazardous Air Pollutants (NESHAP) mandated by the Environmental Protection Agency (EPA) and locally enforced by the Bay Area Air Quality Management District (BAAQMD) require:

1. Building be inspected for asbestos-containing materials; and
2. Materials subject to damage or which will be made friable should be removed.

Most of representative paint samples collected in the Property were found to be above the HUD definition for lead-based paints (5000 ppm) and dust control procedures are required throughout the demolition/renovation of painted elements to comply with the Cal/OSHA regulations under 8 CCR 1532.1.

2.0 Introduction

This report summarizes the results of a pre-renovation survey conducted at the Pier 24 Annex in San Francisco, California, on June 20, 2007. The purpose of the survey was to determine the presence of regulated and/or potentially hazardous building materials in the building, which will be converted into an art storage facility. Materials addressed in the survey include:

- Asbestos-containing materials (ACM);
- Lead in paints;
- Polychlorinated biphenyls (PCB); and
- Fluorescent light bulbs containing mercury.

Individuals involved in the project, and their technical certifications, included:

SCA Staff	Role	Certifications
Chuck Siu, PE, CIH, CAC	Principal	<ul style="list-style-type: none">▪ Certified Asbestos Consultant (CAC #92-0098);▪ Certified Lead Inspector/Assessor, Project Designer & Project Monitor (DHS #I/D/M-851);▪ Professional (Civil) Engineer (PE #C59672), since 1979; and▪ Certified Industrial Hygienist (CIH #CP2697).
Sugi Harto, EIT, CSST, DHS Assessor	Environmental Scientist	<ul style="list-style-type: none">▪ Cal/OSHA Certified Site Surveillance Technician (CSST #99-2600);▪ Certified Lead Inspector/Assessor (DHS #I-7845); and▪ Radiation Safety Specialist (Niton XRF), 1999.

The following contract laboratories provided analytical services for the project:

Laboratory	Analysis Type	Accreditation
ALSF Laboratories, Inc., San Francisco, CA	Polarized Light Microscopy (PLM) Asbestos Analysis	<ul style="list-style-type: none">▪ National Voluntary Laboratory Accreditation Program (NVLAP); and▪ California Environmental Laboratory Accreditation Program (ELAP).
ATEM Laboratory, Berkeley, CA	Atomic Absorption Spectroscopy (AA) Lead Analysis	<ul style="list-style-type: none">▪ National Voluntary Laboratory Accreditation Program (NVLAP); and▪ California Environmental Laboratory Accreditation Program (ELAP).

The property is a single story building with approximately 23,000 SF of usable space. The exterior walls are stucco (the side facing Embarcadero) and wood panels (the other three sides). Interior finishes include painted concrete floors, wood walls and ceiling.

The property has operable windows. No heating, cooling and domestic hot water systems were observed in the property.

3.0 Methodology

3.1 Asbestos-Containing Materials

Asbestos sampling was performed in a fashion designed to minimize exposure of the surveyor or Subject Property occupants to airborne asbestos fibers. Samples were typically removed from the substrate utilizing a knife, the sample material was then placed into an airtight plastic vial. The vial's exterior was labeled with a unique sample I.D. The vial was then stored in a plastic bag.

Samples of suspect materials were collected using triplicate sampling procedures. Under these procedures, the first sample is analyzed. If it tests positive for asbestos (>1%), the analysis is suspended for further samples of that material. If the first sample tests only trace positive (between 0.1 to 1%), or negative, then the second and third samples are analyzed sequentially, in order to determine the possible presence of asbestos. If all three samples test negative, the material is considered as non-asbestos. If one or more samples test "trace" positive (<1%), the material is considered to be trace positive. If one or more samples are positive for asbestos, the material is considered positive.

Certain materials, such as gypsum board systems, are frequently non-homogeneous in content. For such materials, multiple samples were gathered at various points in the Subject Area, with all samples analyzed to determine the possible presence of asbestos.

All asbestos samples collected were submitted to ALSF Laboratories, Inc., for analysis by polarized light microscopy with dispersion staining (DS/PLM). The Bay Area Air Quality Management District's (BAAQMD), the Federal Environmental Protection Agency's (EPA), and California Environmental Protection Agency's (Cal/EPA) regulations all specify the DS/PLM method.

3.2 Lead-Containing Paints

Lead sampling was performed in a fashion designed to minimize exposure of the surveyor or Subject Property occupants. Samples were typically removed from the substrate utilizing a knife, the sample material was then placed into an airtight plastic vial. The vial's exterior was labeled with a unique sample I.D. The vial was then stored in a plastic bag.

All lead samples collected were submitted to Asbestos TEM Lab, for analysis by Atomic Absorption Spectroscopy per EPA Method 3050A Digestion/7420 Analysis.

Most paints contained measurable amounts of lead. For the purpose of complying with the Cal/OSHA lead in construction regulation (8 CCR 1532.1), SCA recommends that all coated surfaces be considered to contain some lead. The aforementioned regulation contains requirements for lead air monitoring, work practices, respiratory protection, etc., that are triggered by the presence of even very low levels of lead. In addition, based on the California Total Threshold Level Concentration (TTLC) hazardous waste standard, the paints may be classified as hazardous wastes. Additional sampling and analysis for leachable lead content by the Contractor or Consultant during demolition will be required for waste characterization.

3.3 Polychlorinated Biphenyls

PCB-containing ballasts in fluorescent light fixtures can be identified by visually examining the ballasts in a representative number of light fixtures. The ballast manufacturing industry has taken the active step of labeling new non-PCB containing ballasts, so that any ballast not labeled as non-PCB can reasonably be assumed to contain PCB.

3.4 Mercury-Containing Items

Fluorescent lamps, which contain mercury, would be visually observed. Mercury is a neurotoxin and a hazardous waste, and Cal/EPA currently regulates its disposal.

4.0 Applicable Standards

4.1 Asbestos-Containing Materials

ACM is defined by EPA regulations as those substances containing greater than 1% asbestos. The BAAQMD and the Cal/EPA provide local enforcement of these regulations. Friable ACM with greater than 1% asbestos needs to be disposed of as asbestos waste.

Prior to renovation of a Building, the BAAQMD requires abatement of friable ACM, as well as non-friable ACM that may become friable during renovation (practically, this means all non-friable ACM).

Federal Occupational Safety and Health Administrations (OSHA) regulations, locally enforced by CAL/OSHA, define ACM as substances that contain greater than 1% asbestos. Cal/OSHA also mandates special training, medical exams, personal protective equipment and record keeping for employees working with ACM. If a material contains less than 1% asbestos but more than 0.1% asbestos, the material may be disposed of as non-ACM, but the Cal/OSHA requirements would still have to be followed regarding workers' protection and Contractor licensing.

"Trace" materials are currently regulated in California and require the following:

- Removal using wet methods;
- Prohibition of removal using abrasive saws or methods which would aerosolize the material;
- Prompt clean-up of the impacted zone, using HEPA-filtered vacuums, as applicable;
- Employer registration by Cal/OSHA for removal quantities exceeding 100 sq. ft. per year; and
- Cal/OSHA Carcinogen Registration by the Demolition or Abatement Contractor impacting such materials.

4.2 Lead-Containing Paints

Since elemental lead is a suspect carcinogen and known teratogen and neurotoxin in high doses, lead-containing materials need to be identified prior to the on-set of demolition activities. Using combinations of engineering controls and personal protective equipment, lead-containing materials can be removed safely. Several sources of applicable standards are listed as follows:

1. Lead exposures in the workplace are regulated by Cal/OSHA, which has certain regulatory requirements for identifying and controlling potential lead exposures. Currently applicable regulations for the construction industry have been adopted by Cal/OSHA (8 CCR 1532.1) from the Federal OSHA regulations. The current OSHA 8-hour Permissible Exposure Level (PEL) for lead is 50 $\mu\text{g}/\text{m}^3$.
2. Current EPA and Cal/EPA regulations do not require LBP to be removed prior to demolition, unless loose and peeling. Provided that the paints are securely adhered to the substrates (i.e., non-flaking or non-peeling), disposal of intact demolition debris can generally be handled in California as non-hazardous and non-RCRA waste.

In California, loose and peeling LBP or other wastes require characterization and testing for leachability. Disposal requirements are as follows:

- a. If the Total Threshold Level Concentration (TTL) is <50 ppm, it is considered non-RCRA, non-hazardous waste since it is impossible to exceed the WET test limit of 5 mg/l using the 10 to 1 ratio.
- b. If the TTL is <350 ppm and the WET test is <5 mg/l then the waste has low leachability and is classified non-RCRA non-hazardous waste.
- c. If the TTL is >350 ppm and the WET test is <5 mg/l then it again has low leachability and is classified as non-RCRA, non-hazardous waste.
- d. If the TTL is >350 ppm and the WET test results are >5 mg/l, then the TCLP must be run. Then if the TCLP is >5 mg/l the waste must be stabilized and if <5-mg/l stabilization is not required. Whether stabilized or not, both conditions are classified as RCRA hazardous waste.

3. The major definitions of LBP or lead-coated surfaces are listed as follows:

- a. HUD defines LBP as paint that contains either $\geq 0.5\%$ by weight of lead, or $\geq 1 \text{ mg/cm}^2$.
- b. Consumer Product Safety Commission (CPSC) prohibits the manufacturing of paint that contains more than 600 ppm (0.06%) of lead.

Given the myriad of confusing definitions and regulations, this report uses the HUD's definition for the purpose of identifications, but compliance to Cal/OSHA's Construction Lead Standard is required for all paints with any measurable lead content.

4. Lead is on the "Proposition 65" list, given its toxic potential in causing reproductive hazards.
5. The California Department of Health Services (DHS) requires the use of Certified Lead Workers and Supervisors for lead abatement projects at public Buildings with a greater than 20 years expected life or whenever work is completed specifically to abate Lead-Based paints as defined by HUD. The DHS certification requirements do not apply to industrial sites; however, dust controls and personnel protection are still required under 17 CCR Section 35001 through 36100.

4.3 PCB Ballasts and Mercury-Containing Items

Cal/EPA regulates disposal of both materials. To reduce liability concerns, many building owners opt to have PCB ballasts incinerated, with a record of destruction generated. A slightly less expensive approach involves recycling of the components (and incineration of the small amount of PCB's separately). However, this method may pose liability concerns for Building Owners.

Mercury lamps are best treated by recycling.

5.0 Results and Conclusions

5.1 Asbestos

The detailed results (including quantities found in each location) of the asbestos survey are shown in the Material Matrix Report in Attachment 1. Asbestos-sample locations are shown on drawings included as Attachment 4.

Asbestos sampling results are summarized below:

Sample ID	Description	Asbestos?
Asbestos Containing Materials (confirmed by testing)		
RFMAS-5-1,2,3	Black/gray roofing mastics along upper and lower roof perimeters	Yes
CAULK-6-1	Yellow painted caulking around window perimeter	
Presumed Asbestos Containing Materials		
LiConc-AAA	Lightweight concrete (topslab) suspected present between roofing and roof deck	Assumed
VAPBAR-AAA	Vapor barrier possibly under concrete slab	
Non-asbestos materials based on testing or visual observation		
FLPANT-1-1,2,3	Paint on concrete floor	No
PUTTY-2-1,2,3	Interior window putty, no putty was observed on the exterior side of the windows	
STUCCO-3-1,2,3	White painted stucco exterior wall	
RFAG-4-1,2,3	Asphalt and gravel roofing materials	
PAINT-7-1,2,3	Paint on exterior wood wall panels	
WOOD-NNN	Wood columns, beams and ceiling panels	

5.2 Lead-Containing Paints

Lead paint sample results are tabulated below:

Sample ID	Description	Location	Lead (ppm)	Condition
BE-1	Beige metal rolled up door	Interior	260000	Peeling (P)
BE-2	Beige metal drain pipe		340000	P
BE-3	Beige wood column ⁽¹⁾		220000	Intact (I)
OW-4	Off white wood column		150000	I
BE-5	Beige wood wall		330000	I
GY-6	Gray concrete floor		5000	P
BE-7	Beige concrete floor		7600	P
YE-8	Yellow concrete floor		5500	P
RF-9	Asphalt and gravel roof	Roof	140	I
RF-10	Asphalt and gravel roof		100	I
YE-11	Yellow metal window		76000	P
OW-12	Off-white stucco wall	Exterior	930	P
GY-13	Gray metal ladder (access to the roof)		42000	P
GY-14	Gray wood wall		310000	P
GY-15	Gray metal rolled up door		350000	P
GY-16	Gray wood wall		200000	P

Most paint sample results were found to be above the HUD definition for lead-based paints (5000 ppm) and dust control procedures are required demolition/renovation of painted elements to comply with the Cal/OSHA regulations under 8 CCR 1532.1. **All paints, glazes, coatings, shall be treated as having a lead content greater than 600 ppm requiring dust control procedures in compliance with 8 CCR 1532.1.**

None of the applicable regulations require removal of lead paint prior to renovation if the paints are securely adhered to the substrates (i.e., non-flaking or non-peeling). Disposal of the demolition debris in this case can be handled as non-hazardous and non-RCRA waste after the loose and flaking paints have been removed, as long as demolition practices do not compromise worker safety.

Conventional demolition techniques should be employed for all painted surfaces with the Contractor complying with applicable OSHA and Cal/OSHA statutes regarding:

- Worker awareness training;
- Exposure monitoring, as needed;
- Medical examinations, which may include blood lead level testing; and
- Establishing a written respiratory protection program.

5.4 Polychlorinated Biphenyls

No lighting ballast was observed in the property.

5.5 Mercury-Containing Items

No fluorescent tube was observed in the property. SCA did not observe mercury-containing thermostats during the survey.

6.0 Limitations and Exclusions

SCA warrants that this survey was performed using due care and state of the art techniques. Beyond this, SCA does not warrant or guarantee the survey. Despite the care exercised, some materials may not have been identified, or may have been incompletely identified. This condition may occur due to renovations or original construction practices that concealed older materials, and/or visually similar materials with different compositions.

This document is not a stand-alone document; abatement of materials is recommended to be completed under the oversight and design of an AHERA-accredited Project Designer and Certified Asbestos Consultant. Although due care is exercised in the course of the survey, concealed materials may be found in the course of performing the abatement or demolition; a contingency budget should be included in any cost estimates by SCA to cover unexpected conditions.

Attachment 1

Material Matrix Report

Asbestos Material Matrix Report
 SFDPW Pier 24 Annex
 SCA Project No.: B-8459
 Updated: 6/27/07

SFDPW Pier 24 Annex Pre-Renovation Survey			LOCATIONS			
Sample ID	Description	Asbestos?	Interior	Exterior	Roof	
Asbestos Containing Materials (confirmed by testing)						
RFMAS-5-1,2,3	Black/gray roofing mastics along upper and lower roof perimeters	Yes			1000 LF	
CAULK-6-1	Yellow painted caulking around window perimeter				10 SF	
Presumed Asbestos Containing Materials						
LtConc-AAA	Lightweight concrete (topslab) suspected present between roofing and roof deck	Assumed			23000 SF	
VAPBAR-AAA	Vapor barrier possibly under concrete slab		23000 SF			
Non-asbestos materials based on testing or visual observation						
FLPANT-1-1,2,3	Paint on concrete floor	No	PNQ			
PULTY-2-1,2,3	Interior window putty, no putty was observed on the exterior side of the windows		PNQ			
STUCCO-3-1,2,3	White painted stucco exterior wall			PNQ		
RFAG-4-1,2,3	Asphalt and gravel roofing materials				PNQ	
PAINT-7-1,2,3	Paint on exterior wood wall panels			PNQ		
WOOD-NNN	Wood columns, beams and ceiling panels		PNQ			

Footnotes:

PNQ = Present, Not Quantified

Attachment 2

Laboratory Results



POLARIZED LIGHT MICROSCOPY ANALYSIS FOR ASBESTOS CONTENT

Client: SCA ENVIRONMENTAL, INC.
165 10TH STREET, SUITE 100
SAN FRANCISCO, CA 94103

Report Number: UF2013
Date: JUNE 22, 2007
Analyst: OLGA KIST
Date Analyzed: JUNE 22, 2007
Sample Collector: SUGI HARTO
Collection Date: JUNE 20, 2007
2 Sample(s) containing Asbestos

Project No.: B-8459
Project Name: SFDPW PIER 24 ANNEX

18 Sample(s) Analyzed		ASBESTOS	NONASBESTOS
19 Sample(s) Received 6/20/07 13:30		Type and %	Other Fibers (%)
Sample #	Location / Description		Balance
1 FLPNT-1-1	A) WHITE PAINT B) BLACK TAR AND GRAVEL	NONE DETECTED NONE DETECTED	ASPHALT, SILI, SYN, CARB, MISC. CELL 5-10
2 FLPNT-1-2	A) YELLOW PAINT B) BLACK TAR AND GRAVEL	NONE DETECTED NONE DETECTED	SPICULES <1 / ASPHALT, SILI, SYN, DIATOMS, MISC. CELL 5-10
3 FLPNT-1-3	A) YELLOW PAINT B) BLACK TAR AND GRAVEL	NONE DETECTED NONE DETECTED	ASPHALT, SILI, SYN, CARB, MISC. CELL 10-15
4 PUTTY-2-1	A) ORANGE/WHITE PAINTS B) GRAY PUTTY	NONE DETECTED NONE DETECTED	CARB, BINDER, SYN, MISC.
5 PUTTY-2-2	A) ORANGE/WHITE PAINTS B) GRAY PUTTY	NONE DETECTED NONE DETECTED	CARB, BINDER, SYN, MISC.
6 PUTTY-2-3	A) ORANGE/WHITE PAINTS B) GRAY PUTTY	NONE DETECTED NONE DETECTED	GL <1 / CARB, BINDER, SYN, MISC.
7 RFAG-4-1	A) BLACK SURFACE TAR B) BLACK FELTS (3) AND TAR	NONE DETECTED NONE DETECTED	ASPHALT, SILI, MISC. CELL, SYN, HAIR 40-50
8 RFAG-4-2	A) BLACK SURFACE TAR B) BLACK FELTS (7) AND TAR ON WOOD FIBERS	NONE DETECTED NONE DETECTED	ASPHALT, SILI, MISC. CELL, SYN, HAIR 40-50
9 RFAG-4-3	A) BLACK GRAVEL AND TAR SURFACE B) BLACK FELTS (4) AND TAR ON WOOD FIBERS	NONE DETECTED NONE DETECTED	ASPHALT, SILI, MISC. CELL, SYN, HAIR 30-40

ASBESTOS TYPES

CHRY: Chrysotile
AMOS: Amosite
CROC: Crocidolite
TREM: Tremolite/Actinolite
ANTH: Anthophyllite

NONASBESTOS

CELL: Cellulose
GL: Fiberglass/Mineral Wool
SYN: Synthetic
CARB: Carbonates
SILI: Mixed Silicates
POLY: Polyethylene
FTALC: Fibrous Talc
FGYP: Fibrous Gypsum
FELD: Feldspar
CASI: Calcium Silicates

Bulk samples analyzed in accordance with "Method for the Determination of Asbestos in Bulk Building Materials" EPA 600/R-93/116, July 1993. The detection limit is 1%. Quantitation of asbestos is by calibrated visual estimation. Analytical Labs San Francisco, Inc. (ALSF) is recognized under the National Laboratory Accreditation Program for satisfactory compliance with criteria established in Title 15, Part 7 code of Federal Regulations and accredited for bulk asbestos fiber analysis (NVLAP lab code: 101909-0). Asbestos fibers less than 0.2 microns cannot be resolved by light microscope. This report must not be reproduced except in full, without the written approval of ALSF and pertains only to the samples analyzed.

AUTHORIZED SIGNATURE

DATE 6/25/07

467 Potrero Avenue, San Francisco, CA 94110 (415) 552-4595 FAX 552-0730



ANALYTICAL LABS SAN FRANCISCO INC.

POLARIZED LIGHT MICROSCOPY ANALYSIS FOR ASBESTOS CONTENT

Client: SCA ENVIRONMENTAL, INC.
165 10TH STREET, SUITE 100
SAN FRANCISCO, CA 94103

Report Number: UF2013
Date: JUNE 22, 2007
Analyst: OLGA KIST

Date Analyzed: JUNE 22, 2007
Sample Collector: SUGI HARTO
Collection Date: JUNE 20, 2007

Project No.: B-8459
Project Name: SFPDW PIER 24 ANNEX

2 Sample(s) containing Asbestos

18 Sample(s) Analyzed		ASBESTOS	NONASBESTOS
19 Sample(s) Received 6/20/07 13:30		Type and %	Other Fibers (%)
Sample #	Location / Description		Balance
10 RFMAS-5-1	A) BLACK SURFACE TAR B) GRAY GRAVEL AND TAR C) BLACK TAR AND FELT D) MINOR SILVER AND WHITE PAINTS	NONE DETECTED NONE DETECTED NONE DETECTED NONE DETECTED	ASPHALT, SILI, MISC. CELL, HAIR, SYN 30-40
11. RFMAS-5-2	A) WHITE-BLACK ACM SURFACE TAR W/ MINOR PINK PAINT B) BLACK TAR AND GRAVEL	CHRY5 5-15 NONE DETECTED	ASPHALT, SILI, MISC.
12 RFMAS-5-3	NOT ANALYZED		
13 CAULK-6-1	OFF-WHITE-PAINTED ACM TAR	CHRY5 5-15	ASPHALT, SILI, MISC.
14 PAINT-7-1	A) WHITE/GRAY PAINTS B) GRAY PUTTY C) WHITE PUTTY WITH WOOD FIBER DEBRIS	NONE DETECTED NONE DETECTED NONE DETECTED	CARB, SILI, BINDER, SYN, MISC. CELL 1-3
15 PAINT-7-2	A) WHITE/GRAY PAINTS B) WHITE PUTTY WITH WOOD FIBERS	NONE DETECTED NONE DETECTED	ASPHALT, SILI, MISC. CELL 1-3
16. PAINT-7-3	A) WHITE/GRAY PAINTS B) WHITE PUTTY WITH WOOD FIBERS	NONE DETECTED NONE DETECTED	CARB, SILI, BINDER, SYN, MISC. CELL 1-3
17. STUCCO-3-1	OFF-WHITE PAINT ON TOP SURFACE B) OFF-WHITE/YELLOW PAINT ON EDGE C) TAN CAULK D) TAN CONCRETE	NONE DETECTED NONE DETECTED NONE DETECTED NONE DETECTED	SILI, MICA, SYN, MISC.

ASBESTOS TYPES

CHRY5: Chrysotile
AMOS: Amosite
CROC: Crocidolite
TREM: Tremolite/Actinolite
ANTH: Anthophyllite

NONASBESTOS

CELL: Cellulose
GL: Fiberglass/Mineral Wool
SYN: Synthetic
CARB: Carbonates
SILI: Mixed Silicates
POLY: Polyethylene
FTALC: Fibrous Talc
FGYP: Fibrous Gypsum
FELD: Feldspar
CASI: Calcium Silicates

Bulk samples analyzed in accordance with "Method for the Determination of Asbestos in Bulk Building Materials" EPA/600/R-93/116, July 1993. The detection limit is 1%. Quantitation of asbestos is by calibrated visual estimation. Analytical Labs San Francisco, Inc. (ALSF) is recognized under the National Laboratory Accreditation Program for satisfactory compliance with criteria established in Title 15, Part 7 code of Federal Regulations and accredited for bulk asbestos fiber analysis (NVLAP lab code: 101909-0). Asbestos fibers less than 0.2 microns cannot be resolved by light microscope. This report must not be reproduced except in full, without the written approval of ALSF and pertains only to the samples analyzed.

AUTHORIZED SIGNATURE

DATE

6/25/07

467 Potrero Avenue, San Francisco, CA 94110 (415) 552-4595 FAX 552-0730



POLARIZED LIGHT MICROSCOPY ANALYSIS FOR ASBESTOS CONTENT

Client: SCA ENVIRONMENTAL, INC.
165 10TH STREET, SUITE 100
SAN FRANCISCO, CA 94103

Report Number: UF2013
Date: JUNE 22, 2007
Analyst: OLGA KIST
Date Analyzed: JUNE 22, 2007
Sample Collector: SUGI HARTO
Collection Date: JUNE 20, 2007
2 Sample(s) containing Asbestos

Project No.: B-8459
Project Name: SFDPW PIER 24 ANNEX

18 Sample(s) Analyzed		ASBESTOS	NONASBESTOS
19 Sample(s) Received 6/20/07 13:30		Type and %	Other Fibers (%)
Sample #	Location / Description		Balance
18 STUCCO-3-2	A) OFF-WHITE NEW PAINT	NONE DETECTED	SILI, CARB, FLYASH, SYN, MISC.
	B) OFF-WHITE/ORANGE PAINTS (TOP)	NONE DETECTED	
	C) TAN PAINT	NONE DETECTED	
	D) WHITE COMPOUND ON EDGE	NONE DETECTED	
	E) GRAY CONCRETE	NONE DETECTED	
19 STUCCO-3-3	A) OFF-WHITE/GRAY PAINTS	NONE DETECTED	SILI, CARB, SYN, FLYASH, MISC.
	B) GRAY CONCRETE	NONE DETECTED	

061807 LABORATORY BLANK (1866 GLASS FIBERS)

ASBESTOS TYPES

CHRY: Chrysotile
AMOS: Amosite
CROC: Crocidolite
TREM: Tremolite/Actinolite
ANTH: Anthophyllite

NONE DETECTED

NONASBESTOS

CELL: Cellulose
GL: Fiberglass/Mineral Wool
SYN: Synthetic
CARB: Carbonates
SILI: Mixed Silicates
POLY: Polyethylene
FTALC: Fibrous Talc
FGYP: Fibrous Gypsum
FELD: Feldspar
CASI: Calcium Silicates

Bulk samples analyzed in accordance with "Method for the Determination of Asbestos in Bulk Building Materials" EPA/600/R-93/116, July 1993. The detection limit is 1%. Quantitation of asbestos is by calibrated visual estimation. Analytical Labs San Francisco, Inc. (ALSF) is recognized under the National Laboratory Accreditation Program for satisfactory compliance with criteria established in Title 15, Part 7 code of Federal Regulations and accredited for bulk asbestos fiber analysis (NVLAP lab code: 101909-0). Asbestos fibers less than 0.2 microns cannot be resolved by light microscope. This report must not be reproduced except in full, without the written approval of ALSF and pertains only to the samples analyzed.

AUTHORIZED SIGNATURE

DATE 6/25/07

467 Potrero Avenue, San Francisco, CA 94110 (415) 552-4595 FAX 552-0730

ATOMIC ABSORPTION SPECTROSCOPY SOLID WASTE METALS ANALYSIS REPORT EPA 3050A Digestion / EPA 7420 Analysis Methods

Page: 1 of 2

Contact: Sugi Harto		Samples Submitted: 16		Report No.: 063297		
Address: SCA Environmental, Inc. - Main Office		Samples Analyzed: 16		Date Submitted: Jun-22-07		
334 19th Street		Job Site / No. SFDPW Pier 24 Annex		Date Reported: Jun-25-07		
Oakland, CA 94612		B-8459				
SAMPLE ID	METAL	SAMPLE RESULT	DETECTION LIMIT	LOCATION / DESCRIPTION		
BE-1 Lab ID # 606-05356-001	Pb	260000 mg/kg 26.000 %	39 mg/kg 0.004 %	<u>Sampling Date</u> Jun-20-07	<u>Analysis Date</u> Jun-25-07	<u>Analyzed Weight (g)</u> 0.2567
BE-2 Lab ID # 606-05356-002	Pb	340000 mg/kg 34.000 %	45 mg/kg 0.005 %	<u>Sampling Date</u> Jun-20-07	<u>Analysis Date</u> Jun-25-07	<u>Analyzed Weight (g)</u> 0.2211
BE-3 Lab ID # 606-05356-003	Pb	220000 mg/kg 22.000 %	53 mg/kg 0.005 %	<u>Sampling Date</u> Jun-20-07	<u>Analysis Date</u> Jun-25-07	<u>Analyzed Weight (g)</u> 0.1882
OW-4 Lab ID # 606-05356-004	Ph	150000 mg/kg 15.000 %	50 mg/kg 0.005 %	<u>Sampling Date</u> Jun-20-07	<u>Analysis Date</u> Jun-25-07	<u>Analyzed Weight (g)</u> 0.2013
BE-5 Lab ID # 606-05356-005	Pb	330000 mg/kg 33.000 %	44 mg/kg 0.004 %	<u>Sampling Date</u> Jun-20-07	<u>Analysis Date</u> Jun-25-07	<u>Analyzed Weight (g)</u> 0.2284
GV-6 Lab ID # 606-05356-006	Pb	5000 mg/kg 0.500 %	47 mg/kg 0.005 %	<u>Sampling Date</u> Jun-20-07	<u>Analysis Date</u> Jun-25-07	<u>Analyzed Weight (g)</u> 0.2115
BE-7 Lab ID # 606-05356-007	Pb	7600 mg/kg 0.760 %	43 mg/kg 0.004 %	<u>Sampling Date</u> Jun-20-07	<u>Analysis Date</u> Jun-25-07	<u>Analyzed Weight (g)</u> 0.2338
YC-8 Lab ID # 606-05356-008	Pb	5500 mg/kg 0.550 %	48 mg/kg 0.005 %	<u>Sampling Date</u> Jun-20-07	<u>Analysis Date</u> Jun-25-07	<u>Analyzed Weight (g)</u> 0.2091
RF-9 Lab ID # 606-05356-009	Pb	140 mg/kg 0.014 %	9.9 mg/kg 0.001 %	<u>Sampling Date</u> Jun-20-07	<u>Analysis Date</u> Jun-25-07	<u>Analyzed Weight (g)</u> 1.0108
RF-10 Lab ID # 606-05356-010	Pb	100 mg/kg 0.010 %	8.3 mg/kg 0.001 %	<u>Sampling Date</u> Jun-20-07	<u>Analysis Date</u> Jun-25-07	<u>Analyzed Weight (g)</u> 1.1997

µg - micrograms 1% = 10,000 ppm 1ppm = 1 mg/Kg Detection Limit is calculated based on LSU

Lab QC Reviewer

Analyst

ATOMIC ABSORPTION SPECTROSCOPY SOLID WASTE METALS ANALYSIS REPORT EPA 3050A Digestion / EPA 7420 Analysis Methods

Page: 2 of 2

Contact: Sugi Harto		Samples Submitted: 16		Report No.: 063297		
Address: SCA Environmental, Inc. - Main Office		Samples Analyzed: 16		Date Submitted: Jun-22-07		
334 19th Street		Job Site / No. SFDPW Pier 24 Annex		Date Reported: Jun-25-07		
Oakland, CA 94612		B-8459				
SAMPLE ID	METAL	SAMPLE RESULT	DETECTION LIMIT	LOCATION / DESCRIPTION		
YG-11	Pb	76000 mg/kg 7.600 %	39 mg/kg 0.004 %	<u>Sampling Date</u> Jun-20-07	<u>Analysis Date</u> Jun-25-07	<u>Analyzed Weight (g)</u> 0.259
Lab ID # 606-05356-011						
OW-12	Pb	930 mg/kg 0.093 %	49 mg/kg 0.005 %	<u>Sampling Date</u> Jun-20-07	<u>Analysis Date</u> Jun-25-07	<u>Analyzed Weight (g)</u> 0.2053
Lab ID # 606-05356-012						
GY-13	Pb	42000 mg/kg 4.200 %	63 mg/kg 0.006 %	<u>Sampling Date</u> Jun-20-07	<u>Analysis Date</u> Jun-25-07	<u>Analyzed Weight (g)</u> 0.158
Lab ID # 606-05356-013						
GY-14	Pb	310000 mg/kg 31.000 %	49 mg/kg 0.005 %	<u>Sampling Date</u> Jun-20-07	<u>Analysis Date</u> Jun-25-07	<u>Analyzed Weight (g)</u> 0.2042
Lab ID # 606-05356-014						
GY-15	Pb	350000 mg/kg 35.000 %	41 mg/kg 0.004 %	<u>Sampling Date</u> Jun-20-07	<u>Analysis Date</u> Jun-25-07	<u>Analyzed Weight (g)</u> 0.2467
Lab ID # 606-05356-015						
GY-16	Pb	200000 mg/kg 20.000 %	48 mg/kg 0.005 %	<u>Sampling Date</u> Jun-20-07	<u>Analysis Date</u> Jun-25-07	<u>Analyzed Weight (g)</u> 0.2063
Lab ID # 606-05356-016						
Lab ID #				<u>Sampling Date</u>	<u>Analysis Date</u>	<u>Analyzed Weight (g)</u>
Lab ID #				<u>Sampling Date</u>	<u>Analysis Date</u>	<u>Analyzed Weight (g)</u>
Lab ID #				<u>Sampling Date</u>	<u>Analysis Date</u>	<u>Analyzed Weight (g)</u>
Lab ID #				<u>Sampling Date</u>	<u>Analysis Date</u>	<u>Analyzed Weight (g)</u>

µg - micrograms 1% = 10,000 ppm 1ppm = 1 mg/kg Detection Limit is calculated based on LSU

Lab QC Reviewer

Analyst

<input checked="" type="checkbox"/> 334 19th STREET OAKLAND, CA 94612 (510) 645-6200 FAX 839-6200		SCA ENVIRONMENTAL, INC. - CHAIN OF CUSTODY FORM SCA PROJECT NO.: <u>B3459</u> SCA CONTACT: <u>Suej 1-610</u> CONTACT'S TEL: <u>(510) 202-3334</u> CONTACT'S FAX: <u>(510) 202-3334</u> CONTACT'S EMAIL: <u>sharto@scs-enviro.com</u>			
<input type="checkbox"/> 165 18th Street, Ste 100 SF, CA 94103 (415) 703-8500 FAX 703-0701	<input checked="" type="checkbox"/> Lab Analytical Labs SF Asbestos TEM Labs EMLAB	Address 467 Potrero Ave., SF, CA 94110 630 Bancroft Way, Berkeley, CA 94710 1150 Bayhill Drive, San Bruno, CA 94066	Tel (415) 652-4595 (510) 704-8930 (866) 888-6653	Fax (415) 552-0730 (510) 704-8429 (650) 829-5852	LAB REP NOTIFIED: _____ NOTIFICATION DATE/TIME: _____ AIRBILL/FLIGHT NO.: _____ SHIPPER REFERENCE I.D.: _____ ESTIMATED ARRIVAL DATE: _____ EST. ARRIVAL TIME: _____
<input type="checkbox"/> 5777 W. Century Blvd, Ste 1055 LA, CA 90045 (310) 258-0460 FAX 258-0260	Courier: <input type="checkbox"/> Fed Ex <input type="checkbox"/> UPS <input checked="" type="checkbox"/> <u>Deliver</u>				

CIRCLE APPLICABLE ITEMS

Analysis:	TEM	PCM	<u>BUK</u>	Lead
Method	AMERA EPA (I)	NIOSH 7400	<u>PLM/DS</u>	AA, ICP
Reference	EPA (II) NIOSH 7402	OSHA REF	<u>XRD</u>	
Media	0.45µ 0.8µ MCEF PC			
Collected On:	<u>6/20/07</u>	Results Due:	<u>6/25/07</u>	<u>17:00</u> AM/PM

CHAIN OF CUSTODY

	# OF SAMPLES	SIGNATURE	ORGANIZATION	DATE	TIME
Sent By:	<u>SM</u>	<u>[Signature]</u>	<u>SCA</u>	<u>6/20/07</u>	
Rec'd by Lab:	<u>19</u>	<u>[Signature]</u>	<u>ALSF</u>	<u>-1</u>	<u>1:30</u>
Rec'd by Analyst:	<u>19</u>	<u>[Signature]</u>	<u>"</u>	<u>"</u>	<u>"</u>
Comments:	<u>- Don't analyze blank.</u> <u>- Call Suej @ 202 3334 w/ results.</u>				

CROSS OUT NON-APPLICABLE ITEMS

	SAMPLE ID	LITERS	
Inside	FLPNT-1-1,2,3		<u>UF2013</u>
	PVTY-2-1,2,3		<u>-1,2,3</u>
	RFAG-4-1,2,3		<u>4,5,6</u>
	RFMS-5-1,2,3		<u>7,8,9</u>
	CAULK-6-1		<u>10,11,12</u>
Blank	PAINT-7-1,2,3	<u>na</u>	<u>13</u>
	STUCCO-3-1,2,3	<u>na</u>	<u>14,15,16</u>
Outside			<u>17,18,19</u>

INSTRUCTIONS TO LAB:

- Call / Page / Fax to confirm receipt of this notification. Fill in blanks below:
Analyst's Name: _____ Home Tel: _____
Emergency Contact Tel/Pager/Phone Tel: _____
- Call / Page SCA's contact to acknowledge receipt of samples.
- Analyze samples by PCM only.
- Analyze inside samples by PCM first; if any sample >0.01 Dec, contact SCA.
- If all samples are <0.01 Dec, proceed with items 6, 7 or 8, as noted.
- Analyze inside samples only; stop if the mean is expected to be >70 sit/hm², contact SCA before analyzing the outside samples and blanks.
- Analyze all samples, including outside samples and blanks.
- Analyze by TEM only the inside air sample with the highest PCM result.
- FAX results AND this sheet to:
☐ (510) 839-6200 ☐ (310) 258-0260 ☐ (415) 703-0701
- Serial analysis; stop at first positive (>1%); first trace (<0.1%); except sheetrock and plaster samples.
- Analyze and report all bulk sample layers, unless otherwise indicated.
- Report all results including trace (<1% CH). Do not point count.
- Do NOT Mail Hardcopy Report.
- Email PDF report, COC & invoice to sharto@scs-enviro.com

ACCOUNTING INFORMATION

(lab to complete items with ✓)

✓ LABORATORY: ALSF
 ✓ LAB REPORT #: UF201 3
 ✓ INVOICE #: 2106.06
 ✓ # OF SAMPLES ANALYZED: 18
 ✓ BILLABLE TURNAROUND TIME (HRS): _____
 ✓ \$ PER ANALYSIS: 13.50
 ✓ TOTAL TO BE INVOICED \$ 243.00
 APPROVED BY (SCA's Contact): SHarto; 6/27/07
 SCA's Contact: Send approved COC to recg.
 SCA Acctg: Send approved DPW COC's to ALSF
 COMMENTS: _____

Field tech: complete in field; Approving staff: review & submit

Analysis	Qty	TAT	Supplies/Equipment	Qty
TEM			Hi-Vol (3040)	
PCM	<u>19</u>	<u>30</u>	Lo-Vol (3020)	
PLM (bulk)	<u>22</u>	<u>30</u>	TEM/Pb cassettes (3520)	
Lead Air			PCM cassettes (3500)	
Lead Bulk			Bulk sampling supplies (3710)	<u>22-16</u>

SCA ENVIRONMENTAL, INC. - CHAIN OF CUSTODY FORM

334 19th STREET
OAKLAND, CA 94612
(510) 643-6200 FAX 839-6200

SCA PROJECT NO: B 84 SCA CONTACT: Sugi Hart CONTACT'S TEL: (510) 282-1334 CONTACT'S PAGER: ()

165 10th Street, Ste 100
SF, CA 94103
(415) 703-5500 FAX 703-8701

5777 W. Century Blvd, Ste 1055
LA, CA 90045
(310) 258-0460 FAX 258-0260

Lab Address Tel Fax
Analytical Labs SF 457 Polero Ave., SF, CA 94110 (415) 552-4595 (415) 552-0730
Asbestos TEM Labs 630 Bancroft Way, Berkeley, CA 94710 (510) 704-8930 (510) 704-8428
AESL Enviro Lab 800 North Mary Street, Tempe, AZ 85281 (480) 868-7171 (480) 394-0188

Courier: ☐ Fed Ex ☐ UPS ☒ pickup

LAB REF NOTIFIED: NOTIFICATION DATE/TIME: / /
AIRBILL/FLIGHT NO.: SHIPPER REFERENCE ID.:
ESTIMATED ARRIVAL DATE: EST. ARRIVAL TIME: / /

CIRCLE APPLICABLE ITEMS

Analysis:	TEM	PCM	BULK	<u>Lead Air</u>
Method	AHERA EPA (I)	NIOSH 7400	PLM/DS	
Reference	EPA (II) NIOSH 7402	OSHA REF	XRD	
Media	0.45µ 0.8µ MCEF PC			
Collected On:	<u>6/20/07</u>	Results Due:	<u>6/26/07</u>	<u>10:00 AM/PM</u>

CHAIN OF CUSTODY

	# OF SAMPLES	SIGNATURE	ORGANIZATION	DATE	TIME
Sent By: <u>St1</u>	<u>16</u>	<u>[Signature]</u>	<u>SCA</u>	<u>6/21/07</u>	
Rec'd by Lab:	<u>16</u>	<u>[Signature]</u>	<u>ATEM</u>	<u>6/22/07</u>	<u>11 AM</u>
Rec'd by Analyst:					
Comments:	<u>- Don't analyze blank 1.</u> <u>- Call Sugi @ 282-5534 w/ results.</u>				

CROSS OUT NON-APPLICABLE ITEMS

	SAMPLE ID	LITERS	RESULTS
- Inside	BE-1	GY-14	
	BE-2	GY-15	
	BE-3	GY-16	
	OW-4		
	BE-5		
- Blank	GY-6	11A	
	BE-7	11A	
	YG-8	11A	
	RF-9		
	RF-10		
- Outside	YG-11		
	OW-12		
	GY-13		

INSTRUCTIONS TO LAB:

- ☐ 1. Call / Page / Fax to confirm receipt of this notification. Fill in blanks below:
Analyst's Name: _____ Home Tel: _____
Emergency Contact Tel/Pager/Home Tel: _____
- ☐ 2. Call / Page SCA's contact to acknowledge receipt of samples.
- ☐ 3. Analyze samples by PCM only.
- ☐ 4. Analyze inside samples by PCM first; if any sample >0.01 f/cc, contact SCA.
- ☐ 5. If all samples are <0.01 f/cc, proceed with items 6, 7 or 8, as noted.
- ☐ 6. Analyze inside samples only; stop if the mean is expected to be >70 surface f/2, contact SCA before analyzing the outside samples and blanks.
- ☐ 7. Analyze all samples, including outside samples and blanks.
- ☐ 8. Analyze by TEM only the inside air sample with the highest PCM result.
- ☒ 9. FAX results AND this sheet to:
☒ (310) 839-6200 ☐ (310) 258-0260 ☐ (415) 703-0701
- ☐ 10. Serial analysis; stop at first positive (>1%); first trace (<0.1%); except asbestos and plaster samples.
- ☒ 11. Analyze and report all bulk sample layers, unless otherwise indicated.
- ☒ 12. Report all results including tests (<1% CH). Do not point count.
- ☐ 13. Do NOT Mail Hardcopy Report

ACCOUNTING INFORMATION

(lab to complete items with ✓)

✓ LABORATORY: ATEM

✓ LAB REPORT #: 63297

✓ INVOICE #: 88010

✓ # OF SAMPLES ANALYZED: 16

✓ BILLABLE TURNAROUND TIME (HRS): 48 hrs

✓ \$ PER ANALYSIS: 12

✓ TOTAL TO BE INVOICED \$ 192.00

APPROVED BY (SCA's Contact): St1

SCA's Contact: Send approved COC to Acctg.

SCA Acctg: Send approved DPW COC's to ALSF

COMMENTS: _____

Field tech: complete in field; Approving staff: review & submit

Analysis	Qty	TAT	Supplies/Equipment	Qty
TEM			Hi-Vol (3040)	
PCM			Lo-Vol (3020)	
PLM (bulk)			TEM/Pb cassettes (3520)	
Lead Air			PCM cassettes (3500)	
Lead Bulk	<u>16</u>	<u>2 days</u>	Bulk sampling supplies (3710)	<u>16</u>

Attachment 3

Field Data Sheets

BLDG NAME: <u>SFPW Pier 29 Annex</u>				SCA Environmental, Inc. Asb Material/Sampling Data Sheet			
BLDG NO: <table border="1" style="display: inline-table; width: 100px; height: 20px;"></table>		DEPT CODE: <table border="1" style="display: inline-table; width: 100px; height: 20px;"></table>		Date Inspected: <u>5/16/00</u>		Page <u>1</u> of <u>2</u>	
PROJECT NO. <u>B81459</u>				Inspected By: <u>SH</u>			

Sample ID (Include BLDG no.)			Sample Location Data			Material Comments (Building wide)	
HOMOGENEOUS MATERIAL ID	Linked Material No	Sample Type B Sub-D No	Functional Space		Room or Space Number	OWG ID	
			Space/Room Type	Floor Level			
ELPNIT	01011	01	N2	01	Per 04		Base / gray / yellowed paint on corner photo
WILLY	001	01	N2	01	Window		Window putty - - (36x4) x 3 - (36x4) x 10 - (36x4) x 9 - (36x4) x 2 x 2
VAPBND	001		M101		Interior		Vapor barrier under concrete slab (180x126)
WOOD	001						Wood beam column wall and ceiling panel
REFG	004	01	01	01	RF Roof		Roof asphalt and gravel (100x126)
ZTFPLAS	004	01	01	01	RF Roof		Black / gray roofing materials (100x2 + 125x2 + 180x2 + 30) =
CAULK	006	01	RF	RF	Roof		yellow painted caulk around window perimeter (± 55 ft)
PAINT	007	01	01	01	Roof		gray paint on x1 work panel wall

Comments: (please number each comment and reference above)	
<u>STCCO 003 12.2.94</u>	

BLDG NAME: Per SPDPW Per 24 Annex

BLDG NO: Date Inspected: 0/20/07

DEPT CODE: Inspected By: SCA (S M)

PROJECT NO. 804 E 9

Page 1 of 1

USNS for this Building

LEAD
Material/Sampling Data
Sheet

Sample Identification				Sample Location Data										Condition							
Color	Sequential No.	Sub-No.	ARF-X AA-X TLCCT	Sample Type	Typical Substrate Component	Typical Substrate Material	Functional Space		Coordinates			ht ft	K-SHELL	L-SHELL	TIME (secs.)	DEPTH INDEX	CONF INTERVAL	Intact	Peeling	Chipped	Comment #
							Space	Space or	Distance to wall or column line												
							Room	Room	N/S	E/W											
							Type	Flur	Type	from column line #	from column line #	ft									
BE	01			A	Door	Metal	MT 01		Plor 24				260000	ppm			X			(1)	
BE	02				Drain pipe	Metal	7 01		Annex				340000	ppm			X				
BE	03				Column	Wood	7 01						220000	ppm			X			(2)	
UV	04				Wall		7 01						150000	ppm			X				
BE	05				Wall		7 01						330000	ppm			X			(2)	
GY	06				Floor	Concrete	7 01						5000	ppm			X				
BE	07				Floor		7 01						7600	ppm			X				
VE	08				Floor		7 01						5500	ppm			X				
BE	09				Roof	Asphalt	7 01						140	ppm			X				
BE	10				Roof		7 01						100	ppm			X				
YE	11				Window	Metal	7 01						76000	ppm			X				
UV	12				Wall	Stucco	7 01						930	ppm			X				
GY	13				Staircase	Metal	7 01						42000	ppm			X				
GY	14				Wall	Wood	7 01						310000	ppm			X				
GY	15				Roofing	Metal	7 01						350000	ppm			X				
GY	16				Wall	Wood	7 01						200000	ppm			X				

Comments. (please number each comment and reference above)

- (1) Rolled up door
(2) Similar data on wood beams.

Color ID: BK=black CW=off-white TN=tan GY=gray BR=brown YW=yellow PE=purple PK=pink
BL=blue BE=beige WH=white GR=green RD=red CR=cream OE=orange CN=crimson

PORT OF SAN FRANCISCO

MEMORANDUM

TO: Port Deputy Directors

DATE: April 26, 2002

FROM: Ed Byrne

SUBJECT: Pier 24 Annex - Rapid Structure Evaluation

cc: Nita Mizushima

Ed Bubnis

U. Prasad

P. Williamson

In accordance with the Port's Facility Assessment Notification Protocol, this message transmits to you the Rapid Structural Assessment for the Pier 24 Annex superstructure and substructure. This site inspection and evaluation were requested by the Real Estate Department for a potential future use of the facility. Unfortunately, this facility needs further detailed evaluation and repair before it can be re-occupied. Following are the Rapid Assessment Forms for the building superstructure and the substructure. Following those forms and photos is a drawing showing the damage to the substructure. The drawing's keynote items 1 through 4 and the rotted building columns would need to be repaired prior to re-occupancy.

Since this facility is not occupied there is no immediate action required by Port Staff. As noted on the rapid evaluation sheets, this facility requires detailed evaluation and repair prior to re-occupancy. The facility should be repaired in the near future to avoid possible collapse due to the deteriorated condition of major structural framing elements.

PORT OF SAN FRANCISCO

BUILDING RAPID EVALUATION SAFETY ASSESSMENT FORM

Building Description: Name: Pier 24 Annex Location: Pier 24-26 Connecting Wharf No. of Stories: 1 Construction: Wood XX Concrete Steel Masonry Combination Support: Over Water XX On Land Occupancy: Commercial Office Industrial Assembly Residential Emergency Serv. Other XX (Unoccupied)	Overall Rating: INSPECTED (Green) REQUIRES REVIEW (Yellow) XX UNSAFE (RED) Inspector Name: EFB Affiliation: Port Inspection Date (M/D/Y): 04/23/02 Time: 2:00 PM
--	---

Condition Assessment

Condition	Yes	No	More Review Needed	Comments
1) Collapse, partial collapse, off foundation		X		Two column bases significantly deteriorated and require repair.
2) Major building element significantly damaged	X			
3) Severe cracking of walls, obvious distress		X		
4) Parapet or other falling hazard		X		
5) Severe ground or slope movement present		X		
6) Other hazard present		X		

Recommendations:

<input type="checkbox"/>	No further action required
<input checked="" type="checkbox"/>	Detailed Structural evaluation required: Detailed evaluation needs to be performed prior to re-occupancy of this facility.
<input type="checkbox"/>	Detailed Geotechnical evaluation required:
<input type="checkbox"/>	Barricades required in the following areas:
<input type="checkbox"/>	

Comments:

Exiting needs to be investigated and substructure requires detailed evaluation and repair prior to re-occupancy.

Photos Available: Yes X No

Pilara Family Foundation Pier 24 Photography New Lease with the Port of SF

Board of Supervisors
Budget & Finance Committee
September 8, 2021

Presented By: Michael Martin,
Assistant Port Director



Pilara Family Foundation Background

- Nonprofit corporation operating Pier 24 Photography, a location for storage, display and limited public access to the nonprofit's photography collection
- Entered Lease L-14414 for Pier 24 Annex in 2007
- Performed approximately \$14 million of improvements, with approximately \$8.5 million of which verified as substructure, core and shell improvements



Pier 24 Photography

Pilara Family Foundation Background

- Lease expired in November 2017; parties negotiated for two years to address delinquent rent and extend term
- After the Port issued 30 day notice in December 2019, parties made one more attempt at a settlement and the Port Commission approved the Settlement and New Lease on March 10, 2020
- Because the new lease includes an operating requirement, the parties agreed to delay submission of the new lease for Board of Supervisors consideration until the Covid-19-related health orders allowed for the facility to reopen to the public



Pier 24 Photography

Port Commission-Approved Settlement Agreement

- Conditioned on entry of new lease (note: Board of Supervisors approval is required for the form of lease before the Port can execute it and the proposed settlement agreement)
- Acknowledges the \$5.5 million in remaining unamortized but verified substructure core and shell costs as rent credits to address rent delinquency from November 2017 to present
- Pays Port's attorney's fees

Proposed New Lease Terms

- Rent: set at the Port's current parameter rate (\$3.40/sf per month)
- Rent Credits:
 - Tenant may take remaining \$5.5 million of unamortized substructure, core and shell costs as rent credits (net of amounts used to address delinquent rent under settlement agreement)
 - Tenant may apply rent credits equivalent to \$3.21/sf per month, leaving a payment of \$0.19/sf or \$5,735.31 per month
- Term: Expires when rent credits are exhausted
- Extension Proposal: Port invites an extension proposal based on further capital improvements, if tenant completes and submits facility condition report and feasibility study for seismic upgrades to remove occupancy restriction
- Lease Provisions: Generally in accordance with Port form lease, with following exceptions
 - No "Port program or project" termination right, as with prior lease
 - Additional tenant termination rights
 - Retain security deposit on hand from prior lease
 - Transfers at Port's sole discretion

Port Staff Recommendation

Port staff believes that the proposed settlement and lease package achieves the following goals

- Continuation of Tenant's public-oriented operations at Pier 24 Annex
- Rent terms reflective of the current market and current facility condition
- Establishment of a path to negotiate further lease term in exchange for beneficial improvements that improve public safety and allow for more visitors to enjoy the collection
- Resolution of the parties' claims while avoiding costly litigation

For these reasons Port staff recommends approval of the resolution by the Board of Supervisors



San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 . Fax: 415.252.3112

ethics.commission@sfgov.org . www.sfethics.org

Received On:

File #: 210813

Bid/RFP #:

Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

1. FILING INFORMATION

TYPE OF FILING	DATE OF ORIGINAL FILING (for amendment only)
Original	
AMENDMENT DESCRIPTION – Explain reason for amendment	

2. CITY ELECTIVE OFFICE OR BOARD

OFFICE OR BOARD	NAME OF CITY ELECTIVE OFFICER
Board of Supervisors	Members

3. FILER'S CONTACT

NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Angela Calvillo	415-554-5184
FULL DEPARTMENT NAME	EMAIL
Office of the Clerk of the Board	Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT

NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Boris Delepine	415-274-0443
FULL DEPARTMENT NAME	DEPARTMENT CONTACT EMAIL
PRT Port of San Francisco	boris.delepine@sfport.com

5. CONTRACTOR	
NAME OF CONTRACTOR Pilara Family Foundation	TELEPHONE NUMBER 415-512-7424
STREET ADDRESS (including City, State and Zip Code) Pier 24, The Embarcadero, San Francisco, CA 94105	EMAIL chirs@pier24.com

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S) 	ORIGINAL BID/RFP NUMBER 	FILE NUMBER (If applicable) 210813
DESCRIPTION OF AMOUNT OF CONTRACT \$92,857.40		
NATURE OF THE CONTRACT (Please describe) Resolution authorizing a new lease between the Port of San Francisco and for the premises located at Pier 24 Annex on The Embarcadero for a term of approximately three years and ten months to commence following Board approval at a monthly rent of \$92,857.40 with a monthly rent credit of \$87,122.09 in respect of previously completed capital improvements to the property.		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Pilara	Andrew	CEO
2	Pilara	Mary	CEO
3	Fone	Gail	CFO
4	McCall	Christopher	Other Principal Officer
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9. AFFILIATES AND SUBCONTRACTORS

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#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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9. AFFILIATES AND SUBCONTRACTORS

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#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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☐ Check this box if you need to include additional names. Please submit a separate form with complete information. Select "Supplemental" for filing type.

10. VERIFICATION

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK	DATE SIGNED
BOS Clerk of the Board	