

ATTACHMENT D
DRAFT TERM SHEET FOR PIER 43 ½ LEASE

Dated May 17, 2019

Tenant:	Golden Gate Scenic, a California corporation.
Proposed Project:	Golden Gate Scenic Steamship Corporation dba Red and White Fleet (further referred to as RWF), seeks a new long term lease at its existing location at Pier 43 ½ with the Port of San Francisco. Within the lease area RWF proposes to construct modifications to its water and shore side operations to enhance the business efficiency and the public experience. Upon execution of a new lease, RWF’s current lease will be terminated.
Premises:	<p>Parcel A will consist of approximately 6,220 square feet of Pier 43 ½ as identified on the attached drawing (hereinafter referred to as the “Shore side Area”).</p> <p>Parcel B will consist of approximately 31,467 square feet of submerged land to accommodate berthing as identified on the attached drawing (hereinafter referred to as the “Water side Area”).</p> <p>All square footage is subject to final measurement by the Port and shall consist of all square footage required for RWF’s operations.</p> <p>All business operations including ticketing, customer queuing, vessel berthing or any other activity including any required public access or regulatory requirements shall be provided for and conducted within the Premises.</p>
Use:	<p>Parcel A: Ticket sales to the public for vessel excursions and charters. Queuing and boarding customers to vessels doing business under RWF. Public access as required by any regulatory agency.</p> <p>Parcel B: Operations directly related to RWF vessel excursions and charters.</p> <p>All parcels: Retail sales that directly relate to RWF operations only such as food and beverage sales, photos and apparel.</p>
Term:	<p>Lease term shall be fifteen (15) years with two (5) year options to extend, at fair market value, to be exercised at RWF’s option.</p> <p>The parties acknowledge that prior to the expiration of the term RWF may seek an extension of the term to facilitate additional financing activities in support of its business and its obligations to maintain the property as set forth herein. The timing of such a request would be dependent on the specifics of the request and tenant’s business strategy, lender relationship and financial situation. Port agrees to consider in good faith such a request under the then-current laws and policies governing such lease extensions for the proposed use, subject to the approval of the Port Commission in its sole discretion.</p>
Commencement Date	The term and rent shall commence 30 days after full execution of the lease.

<p>Rent:</p>	<p>Rent shall be the greater of Guaranteed Monthly Base Rent or monthly Percentage Rent due.</p> <p>Initial Guaranteed Monthly Base Rent (“Base Rent”) shall be the monthly average of the 1st Quarter Percentage Rent reported in each of calendar years 2016-18 which equates to approximately \$42,768. On the fifth anniversary date, Base Rent shall be adjusted to the monthly average of the 1st Quarter’s reported percentage rent during the last three years of the prior five year period. Monthly Base rent shall be adjusted at the end of each subsequent five year period per the same methodology however in no event shall it be less the preceding 5 year period.</p> <p>In addition to the monthly Base Rent specified above, Tenant shall pay monthly Percentage Rent in an amount equal to the difference between (i) the percentage rent for such calendar month and (ii) the Base Rent for such calendar month for all Parcels, in any month in which the percentage rent exceeds the Base Rent.</p> <p>Percentage rent shall be equal to the total monthly:</p> <p>(i) 7.50% of Gross Ticket Revenue; Plus</p> <p>(ii) 8.00% of Gross Food and Beverage Revenue; Plus</p> <p>(iii) 8.00% of Gross Ancillary Revenue.</p> <p>Percentage Rent shall be fixed for the initial 10 years of the term. Every 5 years thereafter, Percentage Rent shall be reviewed for fair market value but in no event shall it be less than the percentage rent for prior period.</p>
<p>Utilities and Services:</p>	<p>RWF shall install and pay for all utility services, whether on or off the premises, including but not limited to electrical, water, sewer, garbage and trash collection, janitorial, extermination, telephone, and telecommunication and environmental services. Port shall allow RWF access to off-premises utility rooms or areas within the Port’s control to install its utilities or perform maintenance and repair as necessary.</p>
<p>Possessory Interest Taxes:</p>	<p>RWF shall be responsible for all Possessory Interest Taxes for its premises.</p>
<p>Maintenance and Repairs / Marginal Wharf and Substructure Responsibilities:</p>	<p>RWF is responsible for performing its own due diligence regarding the condition and suitability for the permitted uses of the Premises and the substructure beneath the proposed Premises, including the marginal wharf. Tenant shall at all times during the Term of this Lease, and at its sole cost and expense, maintain and repair in good and working order, condition and repair the Premises and all improvements and alterations.</p> <p>RWF shall provide the Port annual maintenance and inspections written reports. Every 5 years Tenant will prepare a site conditions survey report prepared and certified by a licensed engineer specializing in maritime structures. The report shall include but not limited to, the condition of the structures and improvements shore and water side, any repairs completed or any repairs or maintenance required. Within 90 days after submittal of the report, Tenant shall provide a written plan to complete any required repairs or preventative maintenance where necessary as determined by the Port Engineering Division.</p> <p>The Port shall have no maintenance and repair obligations for the Premises. Neither</p>

	<p>party shall be obligated for any dredging activities within or adjacent to the premises; provided that the parties anticipate that RWF will perform maintenance dredging activities as required to operate its excursion business (specific terms to be further defined in the lease and the Tenant’s Operation Plan and subject to all required permits and approvals).</p>
<p>Tenant Improvements:</p>	<p>As material consideration for the new lease, RWF agrees, at its sole cost and expense, to make certain alterations and improvements to the Premises generally as outlined on the attached Exhibit B. Tenant shall also make any necessary repairs to the substructure and marginal wharf where necessary as determined by the Port Engineering Division. RWF may submit Engineering reports for the Port’s consideration. RWF has estimated it will invest a minimum of approximately \$4.6 million dollars in hard and soft construction costs in the site and RWF acknowledges and agrees that the lease will provide no rent credits for this work or any future work. RWF will permit and construct the improvements in two phases, Phase I will consist primarily of improvements to the landside structures, substructure and wharf and Phase II will consist primarily of waterside improvements to the berth, floats and ramps. Improvements are further detailed in the attached Exhibit B.</p> <p>All Phase I improvements must be completed by RWF and approved by the Port no later than 2.5 years from the new lease commencement.</p> <p>All Phase II improvements will be completed by RWF and approved by the Port no later than 3.5 years from the completion of the sediment remediation activities performed and completed by PG&E and its contractors, to avoid conflicts with that remediation.</p>
<p>Permits:</p>	<p>RWF shall be responsible and for all securing all regulatory, environmental and building permits as required. Such permits include but are not limited to, permits from: Port Building division, the Bay Conservation and Development Commission (BCDC), Regional Water Quality Control Board (RWQCB) and U.S. Army Corps of Engineers (ACE). For any permits where the Tenant and Port will be co-permittee, RWF shall pay all costs associated with the permits. RWF must secure all required permits to enter the lease.</p>
<p>Financial Statements and Security Deposit:</p>	<p>RWF agrees to submit the most recent three years of audited financial statements for the Port’s review. Subject to satisfactory review of financial statements, RWF shall provide a cash security deposit upon lease execution in the amount equal to three months guaranteed base rent to be held as a security deposit throughout the term of the lease. Security Deposit shall be increased as necessary to equal three months of Base Rent throughout the term.</p>
<p>Operations Plan:</p>	<p>Prior to the Lease execution and subject to Port approval, RWF shall prepare an Operations Plan as a material part of the lease that will include the following:</p> <ul style="list-style-type: none"> • Quarterly ridership report that will provide aggregate passenger counts and total vessel excursions. • On site operations including safety guidelines, fueling protocol, environmental compliance, loudspeaker or music. • Tour bus oversight and customer queuing plan.

	<ul style="list-style-type: none"> • Proposed vessel schedule peak and non-peak. • Waste removal and management <p>The Operations Plan shall be modified or updated as needed and subject to Port approval.</p>
Community Outreach:	RWF shall be responsible for all community outreach effort regarding its proposed improvements and shall demonstrate it has done so prior to final Port approval of the lease. Community outreach includes working with the Fisherman’s Wharf Advisory Group (FWAG) and any other organizations with community interests in Northern Waterfront issues and activities.
Port Form:	Port standard form lease, including As Is, indemnity and exculpation, compliance with laws, insurance, hazardous materials, financial and construction guarantees, Operations Plan, maintenance and repair provisions, default and termination provisions and current City requirements including payment of prevailing wages, local hiring for tenant improvements and labor peace agreements for excursion vessel workers.

The terms listed above are intended solely as a preliminary expression of general terms of a lease and the definitive lease negotiated and executed between the parties will further define the terms stated in this Term Sheet and shall include representations, warranties, covenants, conditions, and other terms and provisions as agreed to between the parties.

The parties intend that Port shall have no contractual obligations to RWF with respect to the terms referred to herein unless and until the Port Commission and Board of Supervisors, if required, have approved a lease following review under the California Environmental Quality Act, and all applicable governmental approvals have been fully executed and delivered by the parties. The parties agree that this Term Sheet is not intended to create any agreement or obligation by Port to negotiate a definitive lease and imposes no duty whatsoever on Port to continue negotiations, including without limitation any obligation to negotiate in good faith or in any way other than at arms’ length. Prior to delivery of a definitive executed lease approved by the Port Commission, and without any liability, the parties may (1) propose different terms from those summarized herein, and/or (2) unilaterally terminate all negotiations.

If the terms of this Term Sheet are not approved by the Port Commission [and the Board of Supervisors, if required] through approval of the New Lease by October 15, 2019, this Term Sheet will terminate automatically, unless it is extended by written agreement signed by duly appointed representatives of both parties. The proposed Term Sheet shall automatically expire within one (1) year of its issuance unless mutually extended by both parties.

Attachments:

Exhibit A – Premises Plan

Exhibit B - Proposed Scope of Tenant Improvements

Exhibit C – Draft Term Sheet and Lease Provisions and Definitions

EXHIBIT A
PREMISES PLAN
To be inserted

EXHIBIT B
PROPOSED SCOPE OF TENANT IMPROVEMENTS

Summary of Site Improvements:

Phase I Shoreside Improvements

Project description for Phase I work:

1. Remove an approximately 430-square-foot ticket booth facility, two existing security gates, four planters, and associated improvements;
2. Install, use, and maintain in-kind three security gates at the location of the gangway landings;
3. Construct, use, and maintain in-kind an approximately 720-square-foot ticket booth facility;
4. Refurbish and maintain, in-kind an existing landmark sign (approximately 54 ft high), and refurbish or replace other interpretive, wayfinding and product signage;
5. Install, use and maintain two, approximately 375-square-foot translucent weather covers with interpretative signage and removable stanchion for queuing;
6. Install, use and maintain, three new benches and twelve down-lit bollards; and
7. Replace, use and maintain approximately 200 feet of handrail along the shoreline edge.

Detailed Description of Shoreside Improvements:

1. The existing ticket booth structure is approximately 430 sf and is proposed to be replaced with a 720 sf ticket booth facility. The slightly expanded and redesigned structure will include a four window ticket counter, a cash handling office, and a staff support room with space allocated for an employee restroom.
2. Pierside handrail: approximately 200 linear feet of handrail will be replaced.
3. Public Access: Queuing area and other public space redefined:
 - a. Interpretative, wayfinding, and product signage will be improved, subject to final BCDC plan review.
 - b. Refurbishment of historic tripod boat sign
 - c. Expand and improve the public access corridor to the Pier 43 Promenade public area north of the Franciscan from the west by providing more organizing queuing and limiting the number of structures at the site.

- d. Visitor experience improvements: The site circulation is being improved in response to variations in daily and seasonal use profiles. During low use times and when the vessel operation is closed, the site will be contiguous with the surrounding public access areas and will provide the following amenities: bench seating, down lighting, shade and rain shelter, interpretive signage, water's edge railing, and a beautified sense of place in Fisherman's Wharf consistent with the historic use and aesthetic of the location. During peak use times, the site will provide the above amenities as well as efficient and organized crowd management assuring a public access corridor. Further, visitors will be dispersed to both sides of the ticket booth reducing congestion.

Phase II Waterside Improvements in Bay

- In the Bay:
 1. Construct, use and maintain, in-kind a boat dock facility with the capacity to berth four vessels, consisting of:
- Float A: an approximately 1,600-square-foot float, four 30-inch-diameter steel float guide piles, a 38 ft by 6 ft gangway, a 12 ft by 15 ft concrete landing with five square 18" concrete piles, and a 28 ft by 6 ft aluminum walkway.
- Float B: an approximately 1,600-square-foot float, four 30-inch-diameter steel float guide piles, a 38 ft by 6 ft gangway, a 10 ft by 12 ft concrete landing with four square 18" concrete piles, and a 20 ft by 6 ft aluminum walkway.

Detailed Description of Water Side Improvements

1. **Floats:** Two steel floats will be renewed or newly constructed to the same dimensions as the existing floats (20' x 80'). The eastern float is proposed to be relocated approximately 40 feet to the east. The purpose of the relocation is to increase the center berth from one to two berths to achieve an overall capacity of 4 berths.
2. **Gangways:** Two newly constructed 38 ft x 6 ft aluminum gangways will be installed to connect the landings to the floats.
3. **Walkways:** A 28 ft x 6 ft aluminum walkway will be installed over the water along the NW pier face north of the ticket booth structure to create boarding gate access from the west side of the ticket booth. A 20 ft x 6 ft aluminum gangway will be installed between the fixed landing at the Gate C and the newly installed 10 ft x 12 ft concrete gangway landing.
4. **Pilings:** The eight 24" diameter steel guide piles holding the floats in position (four per float) will be replaced by eight 30" diameter steel piles. Four 24" diameter steel fender piles will be driven to separate the two center berths.
Nine 18" square new concrete piles will be installed for the new landings.
5. **Landings:** Install two concrete landings over the water, one 10' x 12' and one 12' x 15'. One will support the walkway at the eastern boarding gate (Gate C) and gangway to Float B, and one will support the walkway from the western side of the ticket booth (Gate A) and the gangway leading to Float A.

EXHIBIT C

DRAFT LEASE PROVISIONS AND DEFINITIONS

<p>Title to the Improvements</p>	<p>RWF will be responsible for the ongoing maintenance, repair and replacement of its improvements and title shall vest as follows(per the Port's standard lease):</p> <p>Improvements Part of Realty. Except as set forth in Section 0 below, all Alterations and Improvements constructed on or affixed to the Premises by or on behalf of Tenant shall become part of the realty owned by Port upon expiration or earlier termination of this Lease, and, shall, at the end of the Term, 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 1.4 (Surrender).</p> <p>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 1.4. 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.</p> <p>Removal of Non-Permitted Improvements. If Tenant constructs any Alterations or Improvements without Port's prior written consent or without complying with this Lease, 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 this Lease shall survive the expiration or earlier termination of this Lease.</p> <p>Surrender. Upon expiration or earlier termination of this Lease, Tenant shall surrender to Port the Premises in good order, condition, and</p>
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	<p>repair (except for ordinary wear and tear occurring after the last necessary maintenance made by Tenant and except for destruction or condemnation as further described in the Lease). Ordinary wear and tear shall not include any damage or deterioration that would have been prevented by proper maintenance by Tenant, or Tenant otherwise performing all of its obligations under this Lease. The Premises shall be surrendered clean, free of debris, waste, and Hazardous Materials, and free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this Lease and any other encumbrances created by Port. On or before the expiration or earlier termination of this Lease, Tenant at its sole cost shall remove from the Premises, and repair any damage caused by removal of, Tenant's Property, including any signage and Alterations and Improvements specified in Port's Notice of Removal. Except for those designated in Port's Notice of Removal, Alterations and Improvements shall remain in the Premises as Port property.</p> <p>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, Tenant shall continue to be responsible for the payment of Rent (as the same may be increased pursuant to the Lease as applicable) until the Premises is surrendered in accordance with these Sections, and Tenant shall Indemnify Port from and against any and all loss or liability resulting from delay by Tenant in so surrendering the Premises including, without limitation, any costs of Port to obtain possession of the Premises; any loss or liability resulting from any Claim against Port made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each instance, reasonable attorneys' fees and costs.</p> <p>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.</p>
Mortgage:	<p>Except with Port's express prior written consent, Tenant shall not (i) engage in any financing or other transaction creating any mortgage, deed of trust or similar security instrument upon Tenant's leasehold estate in the Premises or Tenant's interest in the Improvements under this Lease; or (ii) place or suffer to be placed upon Tenant's leasehold estate in the Premises or interest in the Improvements hereunder any lien or other encumbrance. Under no circumstance whatsoever shall Tenant place or suffer to be placed any lien or encumbrance on Port's fee interest in the land in connection with any financing permitted hereunder, or otherwise. Port shall not subordinate its interest in the Premises, nor its right to receive Rent, to any Mortgagee of Tenant. Any mortgage, deed of trust, encumbrance or lien not permitted by Port shall be deemed to be a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.</p>
Gross Receipts Definition:	<p>Gross Revenue will be defined per Port's standard lease language. No other deductions or offsets against Gross Revenue shall apply or be allowed.</p>

	<p>Tenant will report all sales on the Port's form Monthly and/or Annual Sales Reporting forms. In the event Port institutes electronic monthly reporting system, Tenant agrees to participate by submitting its reports electronically at the end of each month.</p> <p>"Gross Revenue" means, subject only to the exceptions explicitly provided in this Lease, all sales, payments, revenues, income, fees, rentals, receipts, proceeds and amounts of any kind whatsoever, whether for cash, credit or barter, received or receivable by Tenant or any other party from any business, use or occupation, or any combination thereof, transacted, arranged or performed, in whole or in part, on the Premises, including without limitation, all returns and refunds, employee meals, discounted and complimentary meals, beverages and services or similar benefits and/or goodwill, the total value, based on price, for the tickets, cover charges, merchandise and any other items and the operation of any event, including any Special Event or fundraising event, and catering or food delivery business conducted by, from or at the Premises (irrespective of where the orders therefor originated or are accepted and irrespective of where the food or beverages are consumed). Without exception, Gross Revenues shall be determined without reserve or deduction for failure or inability to collect (including, without limitation, spillage and waste) and without deduction or allowance for cost of goods sold or other costs, charges or expenses of purchasing or selling incurred by Tenant. No value added tax, no franchise or capital stock tax and no income, gross receipts or similar tax based upon income, profits or gross receipts as such shall be deducted from Gross Revenues.</p> <p>The following amounts shall be excluded from Gross Revenues provided that, Tenant provide to Port separate records to support such deductions or exclusions, as the case may be, and separate notations are made for same on Tenant's Monthly and Annual Statements: sums collected for any sales or excise tax imposed directly upon Tenant by any duly constituted governmental authority (but only if stated separately from the selling price of the goods, merchandise or services, and collected from customers, and in fact paid to the appropriate governmental authority for which they are collected).</p>
<p>Financing, Assignment, Subletting and Transfers:</p>	<p>Any mortgage, sale, assignment, sublease or other transfer of the lease shall require the prior written consent of the Port, in its reasonable discretion.</p> <p>RWF shall pay the Port 15% percent of the net transfer proceeds, upon the occurrence of a sale (or mortgage) of the lease.</p> <p>Sale. The following provisions apply to any Sale.</p> <p>Tenant must pay to Port fifteen percent (15%) of Tenant's Net Sale Proceeds as Port's Sale Participation, concurrently with and as a condition to the Sale Closing. If Tenant operates at multiple locations, then Port's Sale Participation will be calculated using only the Gross Sale Proceeds, Net Sale Proceeds, and Costs of Sale reasonably attributable to the Premises.</p> <p>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</p>

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.

If Tenant Completed construction of Site Improvements as of the Sale Closing, Net Sale Proceeds will be reduced by Tenant's Adjusted Basis, but only if Port previously approved Tenant's Certified Construction Costs as follows.

Within ninety (90) days after Completion of the Site Improvements, Tenant must deliver to Port a Construction Costs Report in form and content acceptable to Port in its reasonable discretion, accompanied by a CPA's agreed-upon procedures report prepared in accordance with AICPA standards for compliance attestation and specifying Port as an intended user. Port will notify Tenant in writing whether Port agrees or disagrees with Tenant's Construction Costs Report within ninety (90) days after receiving it. Port will have the right to inspect Tenant's Books and Records for the Construction Costs Report. Tenant must keep accurate Books and Records of all Construction until the later of two (2) years after Tenant's submission of its Construction Costs Report or six (6) months after any dispute regarding the Construction Costs has been resolved. Tenant's failure to submit a Construction Costs Report as and when required under this Section will be deemed a waiver of its right to make a reduction to Net Sale Proceeds.

For example, if: (i) Site Improvements have a Class Life of 30 years; (ii) Certified Construction Costs are \$5 million; (iii) Gross Sale Proceeds are \$9 million; (iv) Costs of Sale are \$200,000, leaving Net Sale Proceeds of \$8.8 million; and (v) the Closing Date is the 16th anniversary of the "placed in service" date of the Site Improvements, then Port's Sale Participation is \$945,000, as shown in the calculation below.

Gross Sale Proceeds: \$9,000,000

Costs of Sale: \$200,000

Net Sales Proceeds before Adjusted Basis reduction:
\$8,800,000

Certified Construction Costs of Improvements: \$5,000,000

Adjusted Basis (15/30 years unamortized): \$2,500,000

Net Sales Proceeds less Adjusted Basis: \$6,300,000

Port's Sale Participation @ 15% of adjusted Net Sales Proceeds:
\$945,000

Definitions:

"**Adjusted Basis**" means the value of the Certified Construction Costs of the Initial Improvements or the Subsequent Construction, to the extent unamortized on the Transfer Date. If Tenant made Initial Improvements or performed Subsequent Construction at the Premises, Tenant's Adjusted Basis may be deducted if Tenant previously complied with

	<p>Section 26.11(e)(Certified Construction Costs).</p> <p>"Certified Construction Costs" are Construction Costs that Port has approved through the procedures described in Section 21 of the lease.</p> <p>"Class Life" means the classification of and amortization period applicable to the Embarkation Site Improvements under Internal Revenue Code Section 168(e).</p> <p>"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 X of the lease. Costs of Sale exclude rents, taxes, or other income or expense items customarily prorated in connection with sales of real property.</p> <p>"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 Assignee to finance the Sale; and (c) the fair market value of any other non-cash consideration representing a portion of the purchase price.</p> <p>"Net Sale Proceeds" means Gross Sale Proceeds less Costs of Sale . If Tenant made Embarkation Site Improvements at the Premises, Tenant's Adjusted Basis may be deducted if Tenant previously complied with Section 21 of the lease.</p>
<p>Sea Level Rise:</p>	<p>At any time during the term of the Lease, the Chief Harbor Engineer may, in his or her sole discretion, determine that there is a need for Flood Mitigation Measures at the Premises or proximate to the Premises to protect the Premises from a significant risk of flooding or other damage resulting from sea level rise in order to protect public health and safety ("CHE Determination"). Tenant would be responsible for any costs associated with permitting, constructing and implementing any such Flood Mitigation Measures. Such Flood Mitigation Measures may include 1) temporary public access closures, sandbagging or similar temporary measures, 2) short perimeter flood walls or similar measures to address more frequent and serious flooding 3) any other reasonable measures available at the time. Flood Mitigation Measures do not include regional improvements such as breakwaters, levees or seawall improvements.</p> <p>If Chief Harbor Engineer determines that, despite any implemented or proposed Flood Mitigation Measures the conditions poses a threat to public health and safety, the Lease may be terminated by written notice from the Chief Harbor Engineer.</p>
<p>Earthquake Vulnerability:</p>	<p>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</p>

ago within the Bay and supports reclaimed land, or fill, and as a result is more vulnerable to seismic risk. Earthquake performance of reclaimed land is an issue for coastal communities worldwide. The *Seawall Earthquake Vulnerability Study of the Northern Waterfront Seawall, San Francisco, California July 2016* and information about Port and City's resiliency goals and plans and improvements can be found on the Port's website at: <http://sfport.com/seawall>. Tenant acknowledges that the facilities to be covered by this Lease are 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 herein and that the Seawall Project is a "Port program or project" as defined by this Lease. Further, Tenant represents and warrants to Port that Tenant has received and reviewed The *Seawall Earthquake Vulnerability Study of the Northern Waterfront Seawall, San Francisco, California July 2016* and information on the Port's website and that neither Port nor any of its agents have made, and Port hereby disclaims, any representations or warranties, express or implied, concerning 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.

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.