

EXHIBIT [X]  
Proposed Form of Lease



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

---

**LEASE NO. L-**

**BY AND BETWEEN**

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

**AND**

**[TENANT]**

**PORTIONS OF PIER 68 AND PIER 70 AND SWL 349**

**ELAINE FORBES  
EXECUTIVE DIRECTOR**

**SAN FRANCISCO PORT COMMISSION**

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

## TABLE OF CONTENTS

	<u>Page</u>
1. REPRESENTATIONS AND WARRANTIES OF TENANT .....	1
2. DEMISE.....	2
3. DEFINITIONS.....	2
4. PREMISES; AS-IS CONDITION .....	10
4.1. Premises .....	10
4.2. As-Is Condition.....	11
4.3. Accessibility Inspection Disclosure.....	11
4.4. No Right to Encroach.....	11
4.5. Proximity of Development Project .....	12
4.6. No Light, Air or View Easement .....	12
4.7. Unique Nature of Premises .....	12
4.8. Port's Rights Regarding Premises .....	13
5. CONTINUOUS OPERATIONS.....	13
5.1. Continuous Operations.....	13
5.2. Promotion of the Facility .....	13
5.3. Vessel Utilization Report.....	13
5.4. Master Plan .....	13
6. TERM OF LEASE; TERMINATION BY PORT .....	13
6.1. Term.....	13
6.2. Termination Rights .....	13
6.3. Waiver of Relocation Benefits.....	14
7. RENT .....	14
7.1. Minimum Rent .....	14
7.2. Participation Rent.....	14
7.3. Rent Adjustments.....	15
7.4. No Joint Venture .....	15
7.5. Audit .....	15
7.6. Default Interest.....	16
7.7. Late Charges/Habitual Late Payer .....	16

7.8.	Returned Checks .....	16
7.9.	Net Lease .....	16
7.10.	Additional Charges .....	17
8.	<b>SPECIFIC TENANT OBLIGATIONS.....</b>	<b>17</b>
8.1.	Building Conditions .....	17
8.2.	Cranes .....	17
8.3.	Drydocks.....	17
9.	<b>REQUIRED FINANCIAL ASSURANCES.....</b>	<b>18</b>
9.1.	Security Deposit.....	18
9.2.	Environmental Oversight Deposit.....	18
9.3.	Environmental Assurances.....	19
10.	<b>USE OF THE PREMISES .....</b>	<b>19</b>
10.1.	Permitted Use.....	19
10.2.	Prohibited Use.....	19
10.3.	Notice of Prohibited Use Charge .....	20
11.	<b>COMPLIANCE WITH LAWS AND REGULATIONS .....</b>	<b>21</b>
12.	<b>PORT ACTING AS OWNER OF PROPERTY; REGULATORY APPROVALS; COMPLIANCE WITH CITY'S RISK MANAGER'S REQUIREMENTS.....</b>	<b>21</b>
12.1.	Port Acting as Owner of Property.....	21
12.2.	Regulatory Approvals .....	21
12.3.	Compliance with City's Risk Manager's Requirements .....	22
13.	<b>MAINTENANCE AND REPAIRS .....</b>	<b>22</b>
13.1.	Tenant's General Maintenance and Repair Obligations.....	22
13.2.	Port's Equipment .....	23
13.3.	Modification/Removal/Disposition of Port's Equipment .....	23
13.4.	Port's Right to Inspect; Annual Inspections .....	24
13.5.	Port's Right to Repair .....	24
13.6.	Dredging .....	25
14.	<b>UTILITIES AND SERVICES .....</b>	<b>26</b>
14.1.	Utilities.....	26
14.2.	Electric Capacity.....	27
14.3.	Shoreside Power.....	27
14.4.	On-Site Renewable Energy.....	28

14.5.	Services .....	28
15.	IMPROVEMENTS AND ALTERATIONS .....	28
15.1.	Port Consent Required .....	28
15.2.	Construction Requirements.....	29
15.3.	Union Iron Works Historic District .....	30
15.4.	Improvements Part of Realty .....	30
15.5.	Removal of Improvements.....	31
15.6.	Removal of Non-Permitted Improvements .....	31
15.7.	All-Gender Toilet Facilities .....	31
15.8.	Signs.....	31
15.9.	Port's Alterations.....	31
16.	LIENS .....	32
17.	HAZARDOUS MATERIALS .....	32
17.1.	Requirements for Handling.....	32
17.2.	Tenant Responsibility .....	32
17.3.	Tenant's Environmental Condition Notification Requirements .....	32
17.4.	Requirement to Remediate.....	34
17.5.	Port's Right to Audit .....	34
17.6.	Notification of Asbestos .....	34
17.7.	Notification of Lead.....	35
17.8.	Storm Water Pollution Prevention .....	35
17.9.	Presence of Hazardous Materials.....	36
17.10.	Survival .....	36
18.	INSURANCE.....	36
18.1.	Required Insurance Coverage .....	36
18.2.	Claims-Made Policies .....	38
18.3.	Annual Aggregate Limits.....	38
18.4.	Payment of Premiums .....	38
18.5.	Waiver of Subrogation Rights .....	38
18.6.	General Insurance Matters .....	39
19.	DAMAGE AND DESTRUCTION.....	39
19.1.	Damage and Destruction.....	39
19.2.	Waiver.....	40

20.	EMINENT DOMAIN .....	40
	20.1. General.....	40
	20.2. Partial Takings .....	40
	20.3. Taking of the Facility.....	40
	20.4. Temporary Takings.....	41
	20.5. Award; Waiver; Termination of Lease; Rent.....	41
21.	ENVIRONMENTAL REQUIREMENTS .....	41
	21.1. Water Conservation Plan .....	41
	21.2. Wastewater and Under-Pier Utility Maintenance Plan.....	41
	21.3. Performance Energy Benchmarking of Buildings .....	41
	21.4. Green Demolition.....	42
	21.5. Sharing of Hazardous Materials Information .....	42
22.	INDEMNITY AND EXCULPATION .....	42
	22.1. General Indemnity .....	42
	22.2. Hazardous Materials Indemnity.....	42
	22.3. Scope of Indemnities.....	43
	22.4. Exculpation and Waiver.....	43
	22.5. Survival.....	44
23.	ASSIGNMENT AND SUBLETTING .....	44
	23.1. Transfers .....	44
	23.2. Sublease .....	45
	23.3. Sale.....	45
	23.4. Transfer Agreement Requirements.....	46
	23.5. Notice to Port .....	47
	23.6. Transfer Audit.....	47
	23.7. Acknowledgement .....	47
	23.8. Transfer Definitions .....	47
24.	DEFAULT BY TENANT.....	47
25.	PORT'S REMEDIES .....	49
	25.1. Tenant's Right to Possession Not Terminated .....	49
	25.2. Termination of Tenant's Right to Possession.....	50
	25.3. Appointment of Receiver .....	50
	25.4. Port's Right to Cure Tenant's Default .....	50

25.5.	No Accord and Satisfaction .....	51
25.6.	Waiver of Redemption .....	51
25.7.	Habitual Late Payer.....	51
25.8.	Remedies Not Exclusive.....	51
26.	LITIGATION EXPENSES; ATTORNEYS' FEES .....	51
26.1.	Litigation Expenses.....	51
26.2.	Appeals .....	51
26.3.	City Attorney .....	51
27.	PORT'S ENTRY ON PREMISES .....	51
27.1.	Entry for Inspection .....	51
27.2.	General Entry .....	51
27.3.	Emergency Entry .....	52
27.4.	No Liability.....	52
27.5.	Nondisturbance .....	52
28.	SURRENDER AND QUITCLAIM.....	52
28.1.	Surrender.....	52
28.2.	Quitclaim.....	53
28.3.	Abandoned Property .....	53
28.4.	Survival.....	53
29.	HOLDING OVER .....	53
29.1.	Terms of Holdover Tenancy .....	53
29.2.	With Consent .....	54
29.3.	Without Consent .....	54
29.4.	Renewal Letter of Credit.....	54
30.	MINERAL RESERVATION.....	54
31.	CITY AND PORT REQUIREMENTS .....	54
31.1.	Nondiscrimination.....	54
31.2.	Requiring Health Benefits for Covered Employees.....	55
31.3.	First Source Hiring.....	56
31.4.	Local Business Enterprises .....	56
31.5.	Resource-Efficient Facilities and Green Building Requirements .....	56
31.6.	Prohibition of Tobacco Sales and Advertising .....	56
31.7.	Prohibition of Alcoholic Beverages Advertising.....	57

31.8.	Graffiti Removal .....	57
31.9.	Restrictions on the Use of Pesticides .....	57
31.10.	MacBride Principles Northern Ireland.....	58
31.11.	Tropical Hardwood and Virgin Redwood Ban .....	58
31.12.	Preservative-Treated Wood Containing Arsenic .....	58
31.13.	Notification of Limitations on Contributions .....	58
31.14.	Sunshine Ordinance .....	59
31.15.	Conflicts of Interest.....	59
31.16.	Drug-Free Workplace .....	59
31.17.	Prevailing Wages and Working Conditions.....	59
31.18.	Public Transit Information.....	60
31.19.	Food Service and Packaging Waste Reduction Ordinance.....	60
31.20.	Consideration Of Criminal History In Hiring And Employment Decisions.....	60
31.21.	Local Hire .....	61
31.22.	San Francisco Bottled Water Ordinance.....	61
31.23.	Southern Waterfront Community Benefits and Beautification Policy .....	61
31.24.	Local Truckers .....	62
31.25.	Vending Machines; Nutritional Standards and Calorie Labeling Requirements; Offerings .....	62
32.	TAXES AND ASSESSMENTS .....	63
32.1.	Payment of Taxes.....	63
32.2.	Possessory Interest Tax.....	63
33.	NOTICES.....	63
34.	MISCELLANEOUS PROVISIONS.....	64
34.1.	California Law .....	64
34.2.	Entire Agreement .....	64
34.3.	Amendments .....	64
34.4.	Severability .....	64
34.5.	Interpretation of Lease .....	64
34.6.	Successors .....	65
34.7.	Real Estate Broker's Fees.....	65
34.8.	Counterparts .....	65
34.9.	Authority .....	65

34.10.	No Implied Waiver .....	65
34.11.	Time is of Essence .....	66
34.12.	Cumulative Remedies .....	66
34.13.	Survival of Indemnities.....	66
34.14.	Relationship of the Parties .....	66
34.15.	No Recording.....	66
34.16.	Additional Written Agreement Required.....	66
35.	LIMITATION ON DAMAGES .....	66
35.1.	No Recourse Beyond Value of Facility .....	66
35.2.	Non-Liability of City Officials, Employees and Agents .....	66
35.3.	Limitation on Port's Liability Upon Transfer .....	66
36.	TENANT ESTOPPEL CERTIFICATES .....	67

**EXHIBITS AND SCHEDULES**

<b>EXHIBIT A</b>	<b>DESCRIPTION OF PREMISES AND BUILDING INVENTORY</b>
<b>EXHIBIT B</b>	<b>COMMENCEMENT DATE AND EXPIRATION DATE MEMORANDUM</b>
<b>EXHIBIT C</b>	<b>ORTON DEVELOPMENT, INC. LICENSE FOR PORT-FUNDED SHIPYARD PROJECTS</b>
<b>EXHIBIT D</b>	<b>PORT-APPROVED OPERATIONS PLAN</b>
<b>EXHIBIT E</b>	<b>PORT'S EQUIPMENT LIST AND LOCATION MAP</b>
<b>EXHIBIT F</b>	<b>LIST OF REPORTS AND ACKNOWLEDGEMENT OF RECEIPT</b>
<b>EXHIBIT G</b>	<b>WORKFORCE DEVELOPMENT PROGRAM</b>
<b>EXHIBIT H</b>	<b>VEHICULAR CIRCULATION AND PARKING PLAN</b>
<b>EXHIBIT I</b>	<b>VESSEL UTILIZATION REPORT FORM</b>
<b>EXHIBIT J</b>	<b>TENANT'S MASTER PLAN</b>
<b>EXHIBIT K</b>	<b>SHORESIDE POWER REPORTING FORMS</b>
<b>EXHIBIT L</b>	<b>SUMMARY OF SECRETARY'S STANDARDS</b>
<b>EXHIBIT M</b>	<b>ESTOPPEL CERTIFICATE</b>
<b>SCHEDULE 1</b>	<b>LOCATION AND IDENTIFICATION NUMBERS OF PCB OIL-CONTAINING EQUIPMENT</b>
<b>SCHEDULE 2</b>	<b>PIER 68-70 SHIPYARD FACILITY CONDITION SURVEY: HIGH-VALUE EQUIPMENT INVENTORY – MOFFATT &amp; NICHOL  AGS JOINT VENTURE (JULY 21, 2017)</b>
<b>SCHEDULE 3</b>	<b>FEMA DISCLOSURE NOTICE</b>



**BASIC LEASE INFORMATION**

1. <i>Lease Date:</i>	
2. <i>Lease Number:</i>	L-
3. <i>Landlord or Port:</i>	<b>City and County of San Francisco</b> , a municipal corporation, operating by and through the <b>San Francisco Port Commission</b>
4. <i>Landlord's Address:</i>	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Director of Maritime  Telephone: (415) 274-0400 Facsimile: (415) 274-0494
5. <i>Tenant:</i>	
6. <i>Tenant's Main Contact Person and Mailing Address:</i>	
7. <i>Tenant's Billing Contact and Address:</i>	
8. <i>Tenant's Emergency Contact and Address:</i>	
9. <i>Tenant's Insurance Contact and Address:</i>	
10. <i>Tenant's Parking Contact and Address:</i>	
11. <i>Contact Information for Tenant's Agent for Service of Process:</i>	
12. <i>Commencement Date; Expiration Date; Term:</i>	[TBD] 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 <b>Exhibit B</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.

<p><i>13. Premises:</i></p>	<p>The Premises consists of the following, as more particularly described in <b>Exhibit A</b>.</p> <p>[TBD based on negotiation with the selected Respondent]</p> <p>The Premises shall exclude the first floor of Building 108.</p>
<p><i>14. Reservation of Rights:</i></p>	<p>This Lease and Tenant’s rights hereunder are subject to the following reserved rights:</p> <ol style="list-style-type: none"> <li>1. all matters of record with respect to the Premises, all existing liens, encumbrances, charges, conditions, covenants, easements, restrictions, and rights-of-way;</li> <li>2. the right of Port and City (and their Agents) to enter the Premises upon reasonable prior written notice to Tenant to inspect, maintain, repair and restore or remove the sewer (in the approximate location as shown on <b>Exhibit A</b> for informational purposes only) and to conduct other reasonably necessary work in order to address safety and/or preservation of the sewer;</li> <li>3. the right of Port and City (and their Agents) to enter the Premises upon reasonable prior written notice to Tenant to construct, install, inspect, maintain, repair and restore or remove the utilities infrastructure and equipment on the first floor of Building 108 and to conduct other reasonably necessary work in order to address safety and/or preservation of such infrastructure;</li> <li>4. the right of Port and City (and their Agents), including without limitation, Orton Development, Inc., to enter the Premises upon reasonable prior written notice to Tenant to carry out the Port-funded Shipyard Electrification Project as defined and described below.</li> <li>5. the right of Port and City (and their Agents), including without limitation, Orton Development, Inc., to enter the Premises upon reasonable prior written notice to Tenant to perform demolition, maintenance and repairs to facilities and buildings on the Premises as more specifically described in <b>Exhibit C</b>.</li> <li>6. the right of Port and City (and their Agents) to enter the Premises upon reasonable prior written notice to Tenant to perform dredging as more specifically described in Section 13.6(b).</li> </ol> <p>In no event will the activities conducted under this provision 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 and Tenant hereby waives any and all Claims against Port, City and their Agents arising out of any inconvenience or disturbance from the activities.</p>
<p><i>15. Permitted Use:</i></p>	<p>The Premises shall be used for day-to-day shipbuilding, ship repair and other fabrication consistent with marine</p>

	<p>repair/construction operations on a twenty-four (24) hour seven (7) day a week basis and for such uses that are ancillary, associated with and support such operations, including related non-retail commercial, industrial and/or maritime uses. Tenant shall seek Port's prior written consent for any material new or modified uses. If Port approves such material new or modified uses, Port may impose reasonable conditions on such uses. Material new or modified uses include: a new non-maritime related business; a use that would require further environmental review; a new or modified use requiring new infrastructure, equipment and/or buildings; a new or modified use that poses potential new environmental risks; and a new or modified use that would significantly impact Tenant's Gross Revenues.</p>
<p><i>16. Operations Plan:</i></p>	<p>All Permitted Uses must be performed in compliance with an operations plan approved by the Port which describes major operations at the Premises, including operations requiring Handling Hazardous Materials; applicable environmental/regulatory requirements, protocols and best management practices; and a series of appendices that includes a consolidation of operational best management practices, pertinent Port rules and regulations, and additional supporting documents. The Port-Approved Operations Plan ("<b>Operations Plan</b>") is attached hereto as <i>Exhibit D</i> and is hereby incorporated. Failure to comply with the Operations Plan is a material breach of this Lease. Port may, from time to time, review the Operations Plan and make recommendations for revisions. All revisions to the Operations Plan, whether initiated by Port or Tenant, are subject to Port approval, in its sole discretion.</p>
<p><i>17. Port-funded Shipyard Electrification Project:</i></p>	<p>Port provides the following information without representation or warranty and makes no guarantee about the availability of Utilities throughout the Term. An electrical system upgrade and power grid separation project is underway and will be completed in early spring of 2018 (estimated) ("<b>Port-funded Shipyard Electrification Project</b>"). Under the anticipated scope of work, all PCB-oil containing equipment will be replaced and power will be re-routed throughout the Premises. The Port-funded Shipyard Electrification Project is being carried out by Orton Development, Inc. and its contractors and agents under License No. 15140 attached hereto as <i>Exhibit C</i>. This Lease and Tenant's rights hereunder are subject to Orton Development, Inc.'s rights under the license. Until the replacement of the PCB-containing equipment, Tenant is solely responsible for its maintenance and repair. A list of the PCB-oil containing equipment at the Premises is attached hereto as <i>Schedule 1</i>.</p>

<p>18. <i>Access to Electricity Infrastructure in Building 102:</i></p>	<p>In connection with this Lease, Port hereby grants to Tenant the right to enter the basement of Building 102 for the sole purpose of operating, repairing and maintaining electric utility infrastructure (including meters, transformers and other switchgear) located in the basement of Building 102 which serve the Premises. This right includes access to the associated utility trench. Except in the case of an emergency, Tenant must provide advance written notice to Port and any Port tenant or licensee of Building 102 and the trench of Tenant’s proposed scope of work and schedule and must use commercially reasonable efforts to coordinate with such tenant or licensee to minimize disruption and inconvenience.</p>
<p>19. <i>Personal Property and Equipment</i></p>	<p>The prior operator of the Shipyard abandoned significant personal property and equipment which remain on the Premises as of the Commencement Date and may be made available for use by Tenant. If Tenant uses such personal property, except as otherwise provided in this Lease, Tenant shall maintain, repair and replace in good and working order, condition and repair all such personal property. <b>Schedule 2</b> contains an inventory of significant items of personal property abandoned by the former operator.</p>
<p>20. <i>Port’s Equipment:</i></p>	<p>As part of this Lease, Tenant will lease equipment owned by Port, including without limitation the following major items of equipment integral to Tenant’s Permitted Uses: “Drydock #2”; Drydock Eureka; Cranes #1, #2, #6, #27, #31, #33 and #35; and the Shoreside Power System. Port’s Equipment is shown on <b>Exhibit E</b>. The conditions of the drydocks is described in the reports titled: Dry Dock #2 Structural Assessment Report – GHD   Telamon Joint Venture &amp; Collins Engineers (August 2017) and Dry Dock Eureka Structural Assessment Report – GHD   Telamon Joint Venture &amp; Collins Engineers (June 2017), copies of which have been delivered to or made available to Tenant.</p>
<p>21. <i>Rent:</i></p>	<p>[To be negotiated based on selected Respondent’s proposal]</p>
<p>22. <i>Financial Guarantees:</i></p>	<p>This Lease requires the following financial guarantees:  Security Deposit  Environmental Performance Deposit and Environmental Oversight Deposit (Port Commission Resolution 07-81)  Performance Guarantees for business plan through minimum net worth requirements, corporate guarantee or similar mechanism(s)</p>
<p>23. <i>Capital Investment in Buildings and Port’s Equipment:</i></p>	<p>This Lease will document requirements for capital investment to renew, replace and revitalize buildings and</p>

	<p>Port's Equipment as negotiated based on the selected Respondent's submittals and plans.</p>
<p><i>24. Premises, Maintenance and Repair Obligations:</i></p>	<p>Tenant is solely responsible for maintenance and repair of all buildings, infrastructure, substructure and Utilities located or serving the Premises.</p> <p>Prior to the Commencement Date, Port, at its cost, conducted an inspection to evaluate the conditions of the Premises' buildings, marine structures, floating dry docks, and utility systems. The inspections documented existing conditions of the Premises' infrastructure and made recommendations for repairs and improvements where deficiencies were noted. The conditions of the buildings, marine structures, floating dry docks, and utility systems are described in the following reports, copies of which have been delivered to or made available to Tenant: Pier 68/70 Building Condition: 2017 Addendum to the 2015 Assessment – Moffatt &amp; Nichol  AGS Joint Venture (July 21, 2017); Building 6, Pier 70, Port of San Francisco Update of Structural &amp; Geotechnical Condition Assessment – COWI   OLMM Joint Venture &amp; GTC Inc. (March 23, 2017); Pier 70 Building Condition Assessment – DCI+SDE Engineers (February 13, 2015); Pier 68-70 Shipyard Facility Condition Survey: Civil Site Utilities Report – Moffatt &amp; Nichol  AGS Joint Venture (July 21, 2017); Pier 68-70 Shipyard Facility Condition Survey: Electrical Power Systems – Moffatt &amp; Nichol  AGS Joint Venture &amp; HRA Consulting Engineers (August 9, 2017); Pier 68-70 Shipyard Facility Condition Survey: High-Value Equipment Inventory – Moffatt &amp; Nichol  AGS Joint Venture (July 21, 2017); Pier 68-70 Shipyard Facility Condition Survey: Marine Structures – Moffatt &amp; Nichol  AGS Joint Venture (July 21, 2017) and Pier 68-70 Shipyard Facility Condition Survey: Mechanical Site Utilities – Moffatt &amp; Nichol  AGS Joint Venture &amp; HRA Consulting Engineers (July 31, 2017).</p> <p>No less frequently than every five (5) years, at Tenant's sole cost, Port (or its Agents) shall conduct a similar facilities condition survey of the Premises including all buildings, infrastructure, substructure and Utilities located thereon. Tenant, at its cost, shall perform any maintenance and repairs identified by the report which are Tenant's obligation under this Lease.</p>
<p><i>25. Maintenance and Repair Obligations for Port's Equipment:</i></p>	<p>Tenant is solely responsible for maintenance and repair of Port's Equipment and any personal property used by Tenant as needed to sustain commercial viability and support of shipyard operations for the useful life of the equipment or personal property as the case may be.</p> <p>[Specific obligations and performance objectives are set forth in Section [ ] and will be based on negotiation of the selected Respondent's submittals and plans.]</p>

<p>26. <i>Continuous Operations:</i></p>	<p>The parties agree and acknowledge that one of Port’s primary objectives in entering this Lease is for Tenant to generate and maintain continuous job opportunities at the Shipyard. In furtherance of that goal, Tenant agrees to: ensure that the Premises is used continuously during the Term for the Permitted Use; maintain sufficient personnel and equipment to meet or exceed the performance goals of its business plan; promote use of the shipyard and cooperate with Port in such promotion; solicit new business; and maintain a high level of customer service. The parties agree that the requirements of this Section are material and Port would not have entered into this Lease absent such commitments by Tenant.</p> <p>[Reporting on performance standard and objectives to be negotiated based on the selected Respondent’s proposal and associated plan submissions]</p>
<p>27. <i>Community Benefits:</i></p>	<p>This Lease will provide for the following:</p> <p><u>Workforce Development Program:</u> Tenant’s Workforce Development Program is attached hereto as <b><i>Exhibit G</i></b>.</p> <p><u>Master Planning:</u> Tenant will cooperate with Port in its planning and implementation of the Port’s Pier 70 Master Plan. Tenant shall submit to Port a planning document for the Premises describing its long range planning and anticipated changes to building programs and business operations during the Term. Tenant shall update its Master Plan upon Port’s request to describe changes to its operations or other specific issues requested by Port. Tenant is encouraged to participate in Port’s utility master planning for Pier 70.</p> <p><u>Vehicular Circulation and Parking Plan:</u> Tenant has provided the attached Vehicular Circulation and Parking Plan (<b><i>Exhibit H</i></b>) which describes Tenant’s current on- and off-Premises parking needs, uses, circulation and anticipated needs for employee, contractors, vendors and customers.</p> <p><u>Good Neighbor Policies:</u> The Parties acknowledge that the nature of Tenant’s ship repair operations might generate noise and lights which can be heard or seen outside of the Premises. The Parties also acknowledge that the anticipated commercial and residential developments planned for Pier 70, and more specifically to the immediate south of the Premises, will bring visitors, residents and customers to Pier 70. In order to address potential issues that might arise, the parties agree to cooperate with each other, Port’s developers and other interested parties on developing good neighbor strategies to minimize the potential impacts of noise, sound, and light from Tenant’s operations during certain periods of the day and week. Such strategies might include Tenant’s advance community notice of when higher than usual noise, sound, or light are anticipated and</p>

	developers' mitigation of potential impacts through site and building design, orientation and soundproofing.
28. <i>Flood Risk and Sea Level Rise:</i>	[Placeholder]
29. <i>Pier 70 Risk Management Plan</i>	Tenant is advised that there is a Risk Management Plan for Pier 70 due to existing Hazardous Materials contamination in soils at the Pier 70. The Pier 70 Risk Management Plan (Treadwell & Rollo, 7/25/13) (" <b>Pier 70 RMP</b> ") applies throughout the Pier 70 Master Plan Area, between Mariposa and 22nd Streets, from mean higher high water inland to Illinois St. The Pier 70 RMP establishes measures that must be followed by anyone performing management, maintenance, and construction at Pier 70 to mitigate potential health risks related to contaminated soil at Pier 70. The requirements generally serve to minimize site users' exposure to soil. The Pier 70 RMP requires notification to the SF Department of Public Health and the San Francisco Bay Regional Water Quality Control Board as well as the Port prior to undertaking soil-disturbing activities, and specifies dust control, soil management, and health and safety requirements for work that exposes or disturbs soil at Pier 70. The RMP is available on the Port's website at <a href="http://www.sfport.com/index.aspx?page=263">http://www.sfport.com/index.aspx?page=263</a> . Tenant must comply with the Pier 70 RMP as a material condition of this Lease.
30. <i>CEQA/BCDC:</i>	[Placeholder]
31. <i>Development Projects:</i>	Port's Pier 70 Projects, including the "Waterfront Site project" currently under exclusive negotiations with Forest City Development California Inc.; "20th Street Historic Buildings project" being developed by Orton Development, Inc.; the Crane Cove Park project being undertaken by the Port; the extension of Nineteenth Street; SF Public Utilities Commission Building 108 utilities infrastructure project; the Port-funded Shipyard Electrification, Port's dredging work, and other Port-funded work to benefit the Premises; and all other City, Port and private activities in Port's implementation of the Pier 70 Master Plan including utility and infrastructure improvements.
32. <i>Lease Prepared By:</i>	

## 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. 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 [describe entity]. 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. No 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 or the operating agreement of Tenant, and (ii) do not result in the creation or imposition of any lien or other encumbrance upon the assets of Tenant, except as contemplated hereby.

(f) Financial Matters. Except to the extent disclosed to Port in writing, (i) Tenant is not in default under, and has not received notice asserting that it is in default under, any agreement for borrowed money, (ii) Tenant has not filed a petition for relief under any chapter of the U.S. Bankruptcy Code, (iii) 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.

## 2. 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, Port's Equipment and the Premises upon the agreements, terms and conditions of this Lease for the Term hereinafter stated.

## 3. 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 17.6 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" includes Excess Sublease Rent, the Equipment Charge, additional charges under Section 7.10, and 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.

"Adjusted Basis" means the value of the Certified Costs of the improvements, to the extent unamortized on the Transfer Date.

"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.

"AICPA" means the American Institute of Certified Public Accountants.

"Alterations" means any alterations, installations, improvements, or additions to Port's Equipment and any Improvements or to the Premises.

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

"Annual Statement" is defined in Section 7.2(a)(i).

"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.

"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 Port's Equipment, personal property or the Premises and any other bookkeeping documents used in Tenant's business operations at 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.

"**Calendar Quarter**" means each three-month period in a twelve-month period, from January 1 and ending December 31. That is, the first Calendar Quarter is January 1-March 31, the second Calendar Quarter is April 1-June 30, the third Calendar Quarter is July 1-September 30, and the fourth Calendar Quarter is October 1-December 31.

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

"**Cash Consideration**" means cash or its equivalent in immediately available funds.

"**Certified Asbestos Consultant**" means an individual certified pursuant to 8 CCR § 341.15.

"**Certified Costs**" are Costs that Port has approved through the procedures described in Section 23.3.

"**Changes**" is defined in Section 12.2 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.

"**Class Life**" means the classification of and amortization period applicable to the Initial Tenant Improvements under Internal Revenue Code section 168(e).

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

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

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

"**Conditions Survey Report**" is defined in Section 8.3.

"**Conduct Code**" is defined in Section 31.15.

"**Concession**" is defined in Section 34.16.

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

"**Core Benefits**" is defined in Section 31.1(c) below.

"**Corps**" means the U.S. Army Corps of Engineers.

"**Costs**" means actual costs paid by Tenant for all categories of costs for improvements, without interest amortized on a straight line basis over the Class Life of the improvements.

"**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 15. Costs of Sale exclude rents, taxes, or other income or expense items customarily prorated in connection with sales of real property.

"**Costs Report**" means a report prepared by a CPA specifying the Class Life of and verifying Tenant's actual Costs for the improvements, accompanied by copies of documentation substantiating all expenditures, such as: (a) executed contracts; (b) invoices for labor, services, goods, and materials, bills of lading, and other bills or receipts marked "Paid" or similarly indicating payment in full; (c) canceled checks or other written evidence of payment; and (d) other documents reasonably requested by Port.

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

"**DMMO**" means the Dredged Material Management Office.

"**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 15.2(f) below.

"**Dredging Work**" is defined in Section 13.6(b)(i).

"**Drydock #2**" means that certain item of floating Port-owned equipment known as Drydock #2.

"**Drydock Eureka**" means that certain item of floating Port-owned equipment known as the Drydock Eureka.

"**Encroachment Area**" is defined in Section 4.4(a).

"**Encroachment Area Charge**" is defined in Section 4.4(a).

"**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 Laws include the Pier 70 Risk Management Plan as amended and as interpreted by Regulatory Agencies with jurisdiction.

"**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.

**"Equipment Charge"** is defined in Section 14.3(c).

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

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

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

**"Event of Default"** is defined in Section 24 below.

**"Facility"** means the piers, buildings, infrastructure, substructure or other structure in or on which the Premises is located.

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

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

**"goodwill"** means the value assigned to Tenant's intangible business assets in connection with a Sale, but only if the buyer will continue to operate the same business that Tenant operated at the Premises and Port reasonably agrees with the valuation.

**"Green Demolition"** is defined in Section 21.4.

**"Gross Revenue"** means all payments, revenues, fees or amounts received by Tenant or by any other person or entity from any sales or business transacted or services performed in, upon or from any part of the Premises, or for the use or occupancy of any portion of the Premises by any person or entity. Gross Revenues shall be determined without reserve or deduction for failure or inability to collect except as expressly set forth in this Lease. Gross Revenues shall not include the following, provided that separate records are available to Port to support such deductions or exclusions, as the case may be, and such deductions or exclusions are properly itemized on Tenant's reporting statements: (a) returns and refunds, (b) the amount of any sales tax or similar tax or imposition, imposed on all sales or charges where such sales tax, similar tax or imposition is billed to the purchaser as a special item, (c) all sums and credits received in settlement of claims for loss or damage to materials in inventory, (e) the proceeds of casualty insurance.

**"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 13.5.

**"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 Port's Equipment or 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, Port's Equipment 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 15.2(f) 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).

**"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 22.1 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 23 (Assignment and Subletting),

"**Invitees**" excludes Tenant's licensees, assignees, subtenants, and any other person whose rights arise through them.

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

"**Law**" means any present or future law, statute, ordinance, code, resolution, rule, regulation, judicial decision, requirement, proclamation, order, decree, policy (including the Waterfront Land Use Plan), and Regulatory Approval of any Regulatory Agency with jurisdiction over Port's Equipment and 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.

"**Letter of Credit**" is defined in Section 9.3(a).

"**Local Business Enterprise**" or "**LBE**" means a business that has been certified as an LBE under the City's program as set forth in Administrative Code Section 14B.3, as amended from time to time.

"**Minimum Rent**" means the Minimum Rent specified in the Basic Lease Information and described further in Section 7.1.

"**Net Sale Proceeds**" means Gross Sale Proceeds less Costs of Sale and goodwill. If Tenant made improvements, Tenant's Adjusted Basis may be deducted if Tenant previously complied with Section 23.3(c).

"**Notice of Removal**" is defined in Section 15.4 below.

"**Notice to Cease Prohibited Use**" is defined in Section 10.3 below.

"**Notice to Vacate**" is defined in Section 4.4(a).

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

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

"**Operations Plan**" is defined in the Basic Lease Information.

"**PACMs**" is defined in Section 17.6 below.

"**Participation Rent**" means the Participation Rent in the Basic Lease Information and described further in Section 7.2.

"**Participation Rent Statement**" is defined in Section 7.2(a).

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

"**Pier 70 RMP**" is defined in the Basic Lease Information.

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

"**Port-funded Shipyard Electrification Project**" is defined in the Basic Lease Information.

"**Port program or project**" shall mean (a) any development, removal or renovation, by public and/or private parties, of the building, pier or seawall lot in, on or in the vicinity of the Premises (including, but not limited to any Development Project(s) described in the Basic Lease Information).

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

"**Port's Sale Participation**" means the portion of Net Sale Proceeds that Tenant must pay to Port.

"**Port Work**" is defined in Section 15.8 below.

"**Port's Equipment**" is defined in the Basic Lease Information.

"**Premises**" means the real property described in the Basic Lease Information and depicted on *Exhibit A*.

"**preservative-treated wood containing arsenic**" is defined in Section 31.12.

"**prevailing party**" is defined in Section 26.1 below.

"**Prohibited Use(s)**" is defined in Section 10.2 below.

"**Proof of Expenditures**" means an itemized statement of the actual costs expended by Tenant in performing work or activities under this Lease, accompanied by documentation satisfactory to Port evidencing all said expenditures. Proof of Expenditures 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, and contracts and receipts for services marked "Paid", (iv) such other proofs of expenditure as may be reasonable approved by Port, and (v) as applicable, unconditional lien waivers from all contractors and subcontractors. All such proofs of expenditure must be attributable directly to work or services performed in connection with the activities performed as required in this Lease.

"**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 14.4.

"**Rent**" means Minimum Rent, Participation Rent, Additional Rent, and any other amounts due and owing to Port, including but not limited to late charges.

"**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 transfer of all or a portion of Tenant's business assets or its interest in this Lease or the leasehold estate, including the sale of goodwill to any other Person or entity.

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

"**saltwater immersion**" is defined in Section 31.12.

"**Security Deposit**" means the amount specified in the Basic Lease Information and as further described in Section 9.1.

"**Shoreside Power System**" means the Port-financed and owned equipment installed at the Premises by Eaton Corporation in 2013 which allows the provision of shoreside electrical power to a ship at berth while its main and auxiliary engines are turned off, including all required utilities downstream of the service entrance serving the Shoreside Power System and any revenue quality meters to monitor utilization of the Shoreside Power System as more particularly described in the as-built drawings.

"**Sublease**" means the following events or proposed events: (a) a proposed or actual sublease or sub-license of all or any part of the Premises under a sublease, sub-sublease, license, sub-license or agreement of similar effect; (b) any Person other than Tenant occupies or claims a right of possession to any part of the Premises; or (c) any subtenant or sub-licensee of Tenant sub-subleases or sub-sub-licenses any of its interest in its sublease or premises.

"**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.

"**Subtenant**" means the Person with whom Tenant makes or proposes to make a Sublease.

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

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

"**SWPPP**" is defined in Section 17.8(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 on the Premises by or for the account of Tenant after the Commencement Date, 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 6.1 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) a change in the identity of Controlling Tenant, the entity which owns or Controls Tenant's equity interests or business assets (such as goodwill, inventory, and profits) changes (including without limitation a dissolution, merger, consolidation, transfer or sale) or the admission of any new shareholder or other equity investor that has the right to exercise Control over Tenant; or (d) any interest of any subtenant, assignee, or other Transferee of Tenant's interest in its Sublease or premises is sold, assigned, encumbered, or otherwise Transferred. So long as Tenant is an entity whose outstanding stock is listed on a nationally recognized security exchange or if at least eighty percent (80%) of Tenant's voting stock is owned by another entity, the voting stock of which is so listed, transfer of such stock does not constitute a Transfer or an Affiliate Transfer under this Lease.

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

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

"**Transfer Notice**" means Tenant's prior written notice to Port of an intent to Transfer 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 (including all PCB-oil containing equipment), water, gas, heat, sewers, oil, telecommunication services, the Shoreside Power system and all other Utilities.

"**Waiving Party**" is defined in Section 18.5.

"**Work**" when used in reference to construction is defined in Section 15.2(c) below.

"**worth at the time of award**" is defined in Section 25.2 below.

#### **4. PREMISES; AS-IS CONDITION.**

##### **4.1. 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. Port and Tenant agree and acknowledge that any statement of square footage as set forth in this Lease for the purpose of calculating Rent is an approximation which Port and Tenant agree is reasonable, that the actual square footage may be less, and that, neither the 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.

**4.2. As-Is Condition.** Tenant acknowledges and agrees that Tenant is familiar with the Facility and the Premises, the Premises is being leased and accepted in its "as-is" condition, without any improvements or alterations by Port, without representation or warranty of any kind, and subject to all applicable Laws governing its use, occupancy and possession. Tenant represents and warrants to Port that Tenant has received and reviewed 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 referenced in *Exhibit F* 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 Facility and 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), 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.

**4.3. 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."

**4.4. 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 the last paragraph of this Section 4.4(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 22 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.

**4.5. 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.

**4.6. 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.

**4.7. 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 (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.

**4.8. *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.

## **5. CONTINUOUS OPERATIONS.**

**5.1. *Continuous Operations.*** [Placeholder for requirements based on negotiation of the selected Respondent's submittals and plans]

**5.2. *Promotion of the Facility.*** [Placeholder for requirements based on negotiation of the selected Respondent's submittals and plans]

**5.3. *Vessel Utilization Report.*** No later than the date that is thirty (30) days after the expiration of each Calendar Quarter, Tenant shall submit a vessel utilization report to Port substantially in the form of the Quarterly Vessel Utilization Report attached hereto as *Exhibit I*, which includes the following information for the previous Calendar Quarter: (i) the name and number of days that each ship was in drydock or berthed at the Premises, (ii) whether the ship utilized the Shoreside Power System; (iii) the average and maximum daily number of employees employed by Tenant at the Premises, (iv) the number of contracts executed by Tenant for ship repair or shipbuilding work, and (v) the vessel name and dollar amount of each such contract. To the extent applicable, Tenant shall clearly mark the specific information contained in the Quarterly Vessel Utilization Report as "confidential/proprietary/trade secret" and, to the extent permitted by Law, Port shall keep such information confidential.

**5.4. *Master Plan.*** Tenant will cooperate with Port in its planning and implementation of the Port's Pier 70 Master Plan. Tenant's Master Plan is attached as *Exhibit J*. At Port's request, Tenant shall update its Master Plan to describe changes to its operations or to address other specific issues requested by Port.

## **6. TERM OF LEASE; TERMINATION BY PORT.**

**6.1. *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. Promptly following the actual Commencement Date, Port and Tenant shall execute a Commencement Date and Expiration Date Memorandum substantially in the form attached hereto as *Exhibit B*, confirming the actual Commencement Date and Expiration Date, but either party's failure to do so shall not affect the commencement or expiration of the Term.

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

**6.2. *Termination Rights.***

(a) Port has the right to terminate this Lease in its entirety or as to any portion of the Premises 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.

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

## **7. RENT.**

Tenant shall pay to Port, in the manner herein described, the following Rent: [Terms to be further negotiated]

### **7.1. Minimum Rent.**

(a) Throughout the Term, Tenant shall pay to Port a monthly Minimum Rent specified in the Basic Lease Information subject to adjustments as provided in this Section. Tenant shall make the first payment of Minimum Rent upon execution of this Lease, and, from and after the Commencement Date, shall pay the monthly Minimum Rent, in advance, on or before the first day of each calendar month throughout the Term. If the 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 Minimum Rent for those months shall be apportioned based on a thirty (30) day month.

(b) Except as provided below in Section 7.3 for periodic market adjustments, the Minimum Annual Rent shall be increased on each Anniversary Date by \_\_\_\_\_ percent (%).

**7.2. Participation Rent.** In addition to Minimum Rent, Tenant shall pay Port a participation rent in the amount specified in the Basic Lease Information. The Participation Rent shall be documented and payable as provided below.

#### **(a) Calculation and Payment of Participation Rent.**

(i) **Payments.** Participation Rent shall be determined and paid by Tenant for each calendar month within twenty (20) days after the end of the prior calendar month, except that in the event this Lease expires or terminates on a day other than the last day of a calendar month, Participation Rent for such calendar month shall be determined and paid within twenty (20) days after such expiration or termination date. At the time of paying the Participation Rent, Tenant shall furnish a complete statement (the "**Monthly Participation Rent Statement**") in a form approved by Port. In addition, Tenant shall furnish to Port, within thirty (30) days after the expiration of each Lease Year, a complete statement, showing the computation of the Participation Rent for the immediately preceding Lease Year ("**Annual Statement**") in a form approved by Port. The Annual Statement is for verification and certification of Monthly Participation Rent Statements only and shall not result in any averaging

of monthly Participation Rent. Each Monthly Participation Rent Statement and Annual Statement shall set forth in reasonable detail Gross Revenues for such immediately preceding calendar month or Lease Year, as applicable, including an itemized list of any and all deductions or exclusions from Gross Revenues that Tenant may claim and which are expressly permitted under this Lease, and a computation of the Participation Rent for the immediately preceding calendar month or Lease Year, as applicable.

(ii) Each Participation Rent Statement and Annual Statement shall be certified by a CPA who is authorized and competent to make such statements, as accurate, complete and current.

(b) If Tenant fails to (i) pay the Participation Rent on the date due as provided above; or (ii) submit the Participation Rent Statement therewith (even if the statement indicates that Participation Rent is not due), such failure in each instance shall be subject to a Late Charge. Tenant shall also pay any costs including attorneys' fees incurred by Port by reason of such failure. Additionally, if Tenant fails to deliver any Participation Rent Statement within the time period set forth in this Section 7.2 (irrespective of whether any Participation Rent is actually paid or due to Port) and such failure continues for three (3) days after the date Tenant receives (or refuses receipt of) written notice of such failure from Port, Port shall have the right, among its other remedies under this Lease, to employ a certified public accountant to make such examination of Tenant's Books and Records (and the Books and Records of any other occupant of the Premises) as may be necessary to certify the amount of Tenant's Gross Revenues for the period in question and the certification so made shall be binding upon Tenant and Tenant shall promptly pay to Port the total reasonable cost of the examination, together with the full amount of Participation Rent due and payable for the period in question, including any Late Charge. Tenant acknowledges that late submittal of the Participation Rent and late payment of Participation Rent will cause Port increased costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. 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 Tenant's lateness.

(c) Acceptance by Port of any monies paid to Port by Tenant as Participation Rent as shown by any Participation Rent Statement shall not be an admission of the accuracy of said Participation Rent Statement or the amount of such Participation Rent payment.

### **7.3. Rent Adjustments.**

**7.4. No Joint Venture.** Port's receipt of a portion of Tenant's Gross Revenues as Participation Rent shall be deemed strictly as rental and nothing herein shall be construed to create the legal relation of a partnership or joint venture between Port and Tenant.

**7.5. 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 or City (hereinafter collectively referred to as "**Port Representative**"), upon no less than fifteen (15) business days prior written notice to Tenant, for the purpose of examining said Books and Records to determine the accuracy of Tenant's reporting of Participation Rent for a period not to exceed the Audit Period after a Participation Statement is delivered to the Port. Tenant shall cooperate with the Port Representative during the course of any audit, provided however, such audit shall occur at Tenant's business office, or at such other location in San Francisco where the Books and Records are kept, and no books or records shall be removed by Port Representative without the prior express written consent of Tenant (provided, however, copies may be made by the Port Representative on site), and once commenced, with Tenant's cooperation, such audit shall be diligently pursued to completion by Port within a reasonable time of its commencement, provided that Tenant makes available to the Port Representative all the relevant Books and Records in a timely manner. If an audit is made of Tenant's Books and Records and Port claims that errors or omissions have occurred, the Books and Records shall be retained by Tenant and made available to the Port Representative until those matters are expeditiously resolved with

Tenant's cooperation. If Tenant operates the Premises through one or more Subtenants or Agents (other than Port), Tenant shall require each such Subtenant or Agent to provide the Port with the foregoing audit right with respect to its Books and Records. Upon completion of the audit, Port shall promptly deliver a copy of the audit report to Tenant.

(a) If an audit reveals that Tenant has understated its Gross Revenues for said audit period, Tenant shall pay Port, promptly upon demand, the difference between the amount Tenant has paid and the amount it should have paid to Port, plus interest at the Interest Rate from the date of the error in the payment. If an audit reveals that Tenant has overstated its Gross Revenues for said audit period, Tenant shall be entitled to a credit against Rent next owed equal to the difference between the amount Tenant has paid and the amount it should have paid to Port. If Tenant understates its Gross Revenues for any audit period by three percent (3%) or more, Tenant shall pay the cost of the audit. A second understatement within any three (3) lease year period of the first such understatement shall be considered an Event of Default.

**7.6. 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.

**7.7. 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.

**7.8. 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.

**7.9. 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 Port's Equipment or 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.

**7.10. 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: 14.1 (Utilities), 17.3 (Tenant's Environmental Condition Notification Requirements), 17.8. (Storm Water Pollution Prevention), 31.1(d) (CMD Form), and 36 below or to provide evidence of the required insurance coverage described in Section 18 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 7.10 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 7.10 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 7.10 and the reasonableness of the amount of the charges described in this Section 7.10.

**8. SPECIFIC TENANT OBLIGATIONS.** As material consideration for this Lease, Tenant shall perform the following obligations. All work performed under this Section must be completed in accordance with all the terms and conditions of this Lease, including without limitation, Section 15 (Improvements and Alterations). Port's approval of any work plan required under this Section shall not relieve Tenant of its independent responsibility to perform the activities in accordance with all Environmental Laws, required Regulatory Approvals, and best management practices. [Specific requirements to be negotiated based on the selected Respondent's proposal]

**8.1. Building Conditions.**

**8.2. Cranes.** Tenant is solely responsible for annual and quadrennial inspection and testing of the Premises' operating cranes. All crane certification reports shall be provided to the Port within thirty (30) days of the inspection.

**8.3. Drydocks.** Concurrently with each certification of a drydock, Tenant shall engage an independent licensed engineer (or equivalent professional), subject to Port's consent as to the contractor's professional qualifications and scope of work, to inspect and evaluate the drydock and provide a conditions survey report including, at a minimum, an evaluation of the current physical condition of the drydock ("**Conditions Survey Report**"). In addition, Tenant shall conduct and submit a Conditions Survey Report for each drydock to Port within the final twelve (12) months of the Term.



## 9. REQUIRED FINANCIAL ASSURANCES.

**9.1. Security Deposit** Tenant shall pay to Port upon execution of this Lease, in addition to the advance payment of the first month's Minimum 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 Minimum 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 Minimum Rent as existed on the date immediately prior to such Minimum Rent increase. Any increase in the Security Deposit shall be delivered to Port on the same date that such increase in Minimum Rent is first due.

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

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

### **9.2. Environmental Oversight Deposit.**

(a) Before the Commencement Date, Tenant must deliver to Port the Environmental Oversight Deposit in cash, in the sum specified in the Summary of Basic Information, as security for Port's recovery of costs of inspection, monitoring, enforcement, and administration during Tenant's operations under this Lease; provided, however, that the Environmental Oversight Deposit will not be deemed an advance of Rent, an advance of any other payment due to Port under this Lease, a security deposit subject to the California Civil Code, or a measure of Port's damages upon an Event of Default.

(b) Port may use, apply, or retain the Environmental Oversight Deposit in whole or in part to reimburse Port for costs incurred if an Environmental Regulatory Agency delivers a notice of violation or order regarding a Hazardous Material Condition ("**Environmental Notice**") to Tenant and either: (i) the actions required to cure or comply with the Environmental Notice cannot be completed within fourteen (14) days after its delivery; or (ii) Tenant has not begun to cure or comply with the Environmental Notice or is not working actively to cure the Environmental Notice within fourteen (14) days after its delivery. Under these circumstances, Port's costs may include staff time corresponding with and responding to Regulatory Agencies, attorneys' fees, and collection and laboratory analysis of environmental samples.

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

(d) Tenant must pay to Port immediately upon demand a sum equal to any portion of the Environmental Oversight Deposit Port expends or applies.

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

### **9.3. Environmental Assurances.**

(a) Before the Commencement Date, Tenant must deliver to Port an additional Security Deposit as collateral for the full and faithful performance by Tenant of its obligations under this Lease in the amount specified in the Basic Lease Information. At Tenant's option, the additional deposit may be provided by an irrevocable, stand-by and unconditional negotiable letter of credit (the "**Letter of Credit**") in a form approved by Port in its sole discretion. Neither cash nor the Letter of Credit nor any portion of the proceeds ("**LC Proceeds**") will be deemed an advance of Rent, an advance of any other payment due to Port under this Lease, a security deposit subject to the California Civil Code, or a measure of Port's damages upon an Event of Default. The "**LC Value**" means the face amount of the Letter of Credit.

(b) The Letter of Credit must:

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

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

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

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

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

(d) Tenant agrees that Port will have until three (3) months after the Expiration Date (or later date of Port's acceptance of Tenant's surrender of the Premises) to return any LC Proceeds drawn but not applied towards Port costs or damages; and that Port will have no further liability to Tenant with respect to the Letter of Credit or LC Proceeds following a transfer of the beneficial interest to a transferee in accordance with the Issuer's requirements.

## **10. USE OF THE PREMISES.**

**10.1. 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.

**10.2. 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 Port's Equipment or the Premises, any part thereof or any of its contents;
- (c) any activity or object which will overload or cause damage to Port's Equipment or 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 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) Except as provided in the Operations Plan, any vehicle and equipment maintenance, including but not limited to, fueling, changing oil, transmission or other automotive fluids;
- (i) the storage of any and all excavated materials, including but not limited to, dirt, concrete, sand, asphalt, and pipes;
- (j) the storage of any and all aggregate material, or bulk storage, such as wood or of other loose materials;
- (k) Except as provided in the Operations Plan, the washing of any vehicles or equipment; or
- (l) other Prohibited Uses identified in the Basic Lease Information, if any.

**10.3. Notice of Prohibited Use Charge.** In the event Port determines after inspection 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) 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 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 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.

## 11. 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 Port's Equipment or 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 11 shall include, without limitation, the responsibility of Tenant to make substantial or structural repairs and Alterations to the Premises, regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or Port, the degree to which the curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Laws involved, and whether the Laws involved are related to Tenant's particular use of the Premises. Any Alteration or Improvements made by or on behalf of Tenant pursuant to the provisions of this Section 11 shall comply with the provisions of Section 15 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.

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

**12.1. *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.

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

Tenant shall be solely responsible for obtaining any Regulatory Approvals, and Tenant shall not seek any Regulatory Approval without first obtaining the prior written approval of Port. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be

borne solely and exclusively by Tenant. Tenant shall be solely responsible for complying with any and all conditions imposed by Regulatory Agencies as part of a Regulatory Approval; provided, however, Tenant shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit or other entitlement from any Regulatory Agency (other than Port), if the Port is required to be a co-permittee under such permit or other entitlement, or if the conditions or restrictions it would impose on the project could affect use or occupancy of the Facility or Port's interest therein or would create obligations on the part of Port (whether on or off of the Premises) to perform or observe, unless in each instance Port has previously approved such conditions in writing, in Port's sole and absolute discretion.

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

Without limiting the terms and conditions of Sections 12.1 and 12.2, 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.

**12.3. *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 Port's Equipment or 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.

## **13. MAINTENANCE AND REPAIRS.**

**13.1. *Tenant's General 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, and at its sole cost and expense, maintain, repair and replace in good and working order, condition and repair Port's Equipment and the Premises and all Improvements and Alterations including without limitation the exterior, interior, structure, substructure and foundations of all buildings thereon, including, but not limited to, glazing. Tenant shall maintain all buildings in a watertight condition to prevent degradation of the buildings. Port shall not be obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to Port's Equipment or 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. In the event that Tenant, its Agents or Invitees cause any damage to Port's Equipment or the Premises or any other property within Port's jurisdiction, Tenant shall be responsible for repair and Port may repair the same at Tenant's sole cost and expense and Tenant shall immediately reimburse Port therefor.

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

In the event that damage or deterioration to Port's Equipment or 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 Port's Equipment or the Premises, then Tenant shall have the independent responsibility for, and shall promptly undertake, maintenance or repair of Port's Equipment or the Premises and complete the same with due diligence.

**13.2. Port's Equipment.**

(a) As-Is Condition. Tenant acknowledges and agrees that Tenant is familiar with Port's Equipment, Port's Equipment is being leased and accepted in its "as-is" condition, without any improvements or alterations by Port, without representation or warranty of any kind, and subject to all applicable Laws governing its use. Tenant represents and warrants to Port that Tenant has received and reviewed the reports listed in *Exhibit F* relating to the condition of Port's Equipment and has investigated and inspected, either independently or through agents of Tenant's own choosing, the condition of Port's Equipment and its suitability 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 Port's Equipment or the condition thereof, the present or future suitability of Port's Equipment for Tenant's business, or any other matter whatsoever relating to Port's Equipment, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

(b) Maintenance Standards for Port Equipment. Tenant shall maintain, repair and replace in good and working order, condition and repair Port's Equipment in accordance with the following standards and shall provide Port with adequate documentation of Tenant's compliance upon Port's request:

Port's Equipment	Standards/Certifications
Drydock #2	[To be negotiated based on the selected Respondent's submittals and plans]
Drydock Eureka	[To be negotiated based on the selected Respondent's submittals and plans]
In-Service Cranes #31, #33, #35	[To be negotiated based on the selected Respondent's submittals and plans]
Out-of-service Cranes (#1, #2, #6, #27) until removed or repaired for continued use	[To be negotiated based on the selected Respondent's submittals and plans]
Shoreside Power System	Maintain Shoreside Power System to an operational standard of 8 KVA.

**13.3. Modification/Removal/Disposition of Port's Equipment.**

(a) Tenant may modify, remove and dispose of Port's Equipment under the following circumstances.

(i) Other than routine maintenance and in-kind repair and replacement, Tenant shall seek Port's prior written approval, which Port shall not unreasonably withhold or delay to modify Port's Equipment.

(ii) If Tenant determines that Port's Equipment has deteriorated or become obsolete despite Tenant's compliance with the provisions of this Lease regarding repair and maintenance, Tenant shall evaluate and report to Port on the feasibility of options for removal and disposition of such equipment, including anticipated costs and timelines and Regulatory Approvals necessary to carry out the different options.

(iii) Based on this information and after conducting any necessary environmental review, Port shall determine, in writing, whether the equipment may be removed and the method of disposition, including offering the equipment to potentially interested buyers and otherwise complying with Port policy regarding surplus equipment.

(iv) Removal and disposition approved by Port shall be at Tenant's cost. No later than ninety (90) days in advance of the planned work, Tenant shall submit to Port for its approval, a plan describing the removal and disposition of the equipment. Unless otherwise determined by Port in writing, Tenant may sell the demolished equipment for salvage value, and Tenant may retain the proceeds in an amount necessary to recoup its hard and soft costs of the demolition and disposition.

(v) Within ninety (90) days of completion of the removal and disposition, Tenant must furnish Port with a report on the removal and final disposition of the equipment and a statement of Tenant's costs for the work accompanied by Proof of Expenditures and adequate documentation of any proceeds from sale of the equipment. Such statement must be certified by a financial officer or other accountant employed by Tenant who is authorized and competent to make such statements, as accurate, complete and current. Any proceeds of sale in excess of Tenant's costs will be paid to Port by Tenant as Additional Rent with the statement of costs.

#### **13.4. *Port's Right to Inspect; Annual Inspections.***

(a) Without limiting Section 27 below (Port's Entry on Premises), Port may make periodic inspections of Port's Equipment and the Premises and may advise Tenant when maintenance or repair is required.

(b) Annual Inspection. One time in each Lease Year, Port and/or its Agents shall conduct an inspection of Port's Equipment and the Premises, including without limitation, the buildings to ensure that Tenant is meeting its maintenance and repair obligations under this Lease. Tenant shall cooperate with Port and its Agents in conducting the inspection, evaluating the condition of Port's Equipment and the Premises, and shall promptly take actions required to comply with recommendations in Port's written report (if any) in the time period specified by Port to meet its obligations under this Lease.

(c) The rights of inspection provided under this Section 13.4 shall not relieve Tenant of its independent responsibility to maintain Port's Equipment and the Premises in a manner required by this Lease. Nor shall Port's failure to inspect or to detect conditions for which Tenant is responsible under this Lease be deemed a release of liability for conditions later detected or determined to be Tenant's responsibility or a waiver for conditions later detected or determined to be Tenant's responsibility.

**13.5. *Port's Right to Repair.*** In the event Tenant fails to maintain the Premises or Port's Equipment in accordance with this Lease or Tenant fails to promptly repair any damage caused by Tenant, its Agents or Invitees as required by this Lease after written notice by Port and a reasonable time to make the repairs, Port may repair the same at Tenant's sole cost and expense and Tenant shall immediately reimburse Port therefor. If the cost (including, but not limited to, salaries of Port staff and reasonable 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 Port's Equipment or the Premises in accordance with this Section ("**Maintenance Notice**"), Tenant shall pay, as Additional Rent, an amount equaling Two Hundred Dollars (\$200.00). In the event Port determines during subsequent inspection(s) that Tenant has failed to maintain Port's Equipment or the Premises in accordance with this Section, 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 Port's Equipment or 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 Port's Equipment or 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 Port's Equipment or 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.

### **13.6. Dredging.**

(a) Central Basin Dredging. Port expects to enter into a Project Partnership Agreement with the Corps for dredging of the Central Basin ("PPA") based on a Corps determination that the Central Basin is a federal channel. Tenant acknowledges that, under the PPA, the Corps will periodically dredge the Central Basin (approximate location shown on *Exhibit A*) for commercial navigation as and when it determines appropriate. Port and Tenant shall use good faith efforts to cooperate and coordinate to ensure ongoing commitments from the Corps regarding the Central Basin. Specifically, in order to preserve and maintain this federal benefit, Tenant must periodically dredge underneath Drydock #2 to maintain a depth necessary to service all vessels contemplated in the Corps' determination that the optimal depth of the Central Basin is 35 feet. In addition, Tenant must market to federal vessels and maintain federal business as necessary to support the PPA. Should Tenant's failure to maintain sufficient federal business result in the Corps discontinuing maintenance dredging activities, Tenant shall assume liability for the lost federal benefit.

#### **(b) Dredging on Premises.**

(i) Port's Obligation. [As noted in the Request for Proposals, Port intends to perform initial dredge work in 2018, subject to negotiation of the selected Respondent's submittals and plans.]

(ii) Tenant's Obligation. [Except as provided above,] Tenant shall be solely responsible for any dredging and dredging-related activities required in connection with its operations, including areas outside of the Premises necessary to provide access to the Premises (the "**Dredging Work**"), and for all costs associated with the Dredging Work, including hydrographic surveys, pre-dredge testing, sampling, chemical analyses, bioassays permitting, and all consultant and dredging contracting. Tenant shall also promptly provide at no cost to Port copies of all pre-dredge and post-dredge surveys, submittals to Regulatory Agencies, soundings,



reports, data, and any other information obtained in connection with the Dredging Work. Tenant shall be responsible for obtaining all Regulatory Approvals required by Laws in its own name, and for testing, sampling, removing, and disposing of the sediment, debris, and other materials dredged from the Bay all in accordance with this Lease. Dredging Work shall be performed in accordance with the requirements of the permit issued to Tenant by the DMMO.

(c) Berth 3West Notice. Tenant shall provide twenty-four (24) month's prior written notice to Port prior to dredging the Berth 3W area to a depth of more than thirty feet (30') in a manner that might impact sediments in the adjoining Crane Cove Park shore area to allow Port to plan for potential impacts to such sediment and/or Crane Cove Park construction. Tenant shall cooperate with Port with respect to any remedial measures Port must undertake due to the dredging activity.

(d) Except as explicitly provided in this Lease, the parties agree that Port has no obligation to dredge any area within or outside of Tenant's leasehold, including without limitation, the Central Basin, or to seek or provide funding for such activities (which are subject to City appropriations). Port makes no representations or warranties regarding Corps' intentions, its ability conduct the contemplated actions (which may be subject to federal appropriations and limitations on expenditures) or the timing of any action by the Corps. Notwithstanding anything to the contrary in this Lease, Port shall not be liable for any act or omission by Port or the Corps with respect to the matters discussed in this Section and Tenant agrees that its waiver of Claims set forth in Section 22 below (Indemnity and Exculpation) includes a waiver of any and all Claims related to the matters set forth in this Section and Tenant hereby assumes the risk of, and waives and releases the Indemnified Parties from all Claims related thereto. The parties further agree that Tenant is not a third party beneficiary of any existing or future agreement between Port and the Corps regarding the Central Basin.

#### **14. UTILITIES AND SERVICES.**

**14.1. Utilities.** Tenant shall make arrangements and shall pay all charges for all Utilities to be furnished on, in or to Port's Equipment or the Premises or to be used by Tenant. Tenant shall procure all electricity 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 Tenant (whether within or outside the Premises and regardless of who installed same). The obligation to repair and maintain includes the obligation to routinely inspect and assess such Utilities using qualified licensed professionals and to report the results of such inspections to Port. Tenant shall coordinate with Port and impacted Port tenants, if necessary, with respect to maintenance and repair of any off-Premises utility infrastructure, including providing advance notice of maintenance and repair requirements. If Tenant requests Port to perform such maintenance or repair, whether emergency or routine, Port shall charge Tenant for the cost of the work performed at the then prevailing standard rates, and Tenant agrees to pay Port promptly upon billing.

The parties agree that any and all utility improvements (not including telephone wiring and equipment) installed by or on behalf of Tenant 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 Minimum 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 a building or 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, Tenant, at no cost to Port, shall reinforce the floor or pier, pursuant to plans and specifications approved by Port and otherwise in compliance with Section 15 below, to the extent necessary to assure that no damage or weakening of any structural or substructural supports, as the case may be, will be occasioned thereby.

**14.2. *Electric Capacity.*** Electric capacity for shipyard uses will be limited to five and one-half (5.5) megawatts for the Shoreside Power System and one (1) megawatt for the rest of Tenant's operations. If Tenant desires to increase its electric usage above the levels stated above, Port will assist in coordinating between Tenant, other Port tenants and the provider to establish additional infrastructure and capacity which shall be at Tenant's sole cost.

**14.3. *Shoreside Power.***

(a) **General.** The Shoreside Power System is owned by Port, is part of the realty and shall, at the end of the Term, remain on the Premises without compensation to Tenant. Tenant may not remove the Shoreside Power System or any component thereof (except in connection with any required maintenance and repair) at any time during or after the Term.

(b) **Maximize Use.** In order to reduce pollutant emissions and as a material term of this Lease, Tenant must maximize utilization of the Shoreside Power System by all ships and vessels docking at the Premises that are equipped for and capable of using shoreside power. As used in this Lease, "ships and vessels that are equipped for and/or capable of using shoreside power" shall mean ships/vessels that have dedicated shoreside power connection points, as well as ships/vessels that can feasibly connect via direct connection to the ship's buss bar or other alternate connection point. Tenant must, at its sole cost, take all cost effective measures to increase the use of the Shoreside Power System, including without limitation, making any needed mechanical and/or equipment adjustments to the Shoreside Power System and providing any additional or supplemental equipment necessary to facilitate the use of the Shoreside Power System. Additionally, Tenant shall use its best efforts in light of existing market conditions to contractually require each capable ship/vessel to use shoreside power unless there is a compelling technical issue that prevents its use.

(c) **Equipment Charge.** Tenant shall pay to Port an equipment charge of twelve cents (\$.12) per kilowatt hour of all electricity used by the Shoreside Power System ("**Equipment Charge**"). The electricity used by the Shoreside Power System shall be supplied by SFPUC to Tenant and will be billed directly to Tenant by SFPUC as a charge separate and additional to the Equipment Charge. SFPUC shall report the actual amount of electricity used by the Shoreside Power System for the previous month on Tenant's monthly electricity bill. Tenant shall pay to Port on a quarterly basis within thirty (30) days after the expiration of each Calendar

Quarter, the applicable Equipment Charge for the prior Calendar Quarter's electricity usage by the Shoreside Power System.

(d) **Reporting.** With each quarterly payment, Tenant shall report the following information as to the relevant Calendar Quarter and cumulatively for the prior year substantially in the form of *Exhibit K* with supplemental explanatory information as necessary: (i) a list all repairs made to the Shoreside Power System and anticipated maintenance or repairs; (ii) the total hours of operation of the Shoreside Power System; (iii) the total amount of electricity delivered by the Shoreside Power System; (iv) a list of each ship utilizing the Shoreside Power System, the kilowatts consumed and the payments made by the ship to Tenant; (v) for each ship that does not utilize the Shoreside Power System, an explanation of (A) the technical reasons why the ship did not connect and (B) how those issues could be resolved should that ship or a similar ship return in the future; (vi) measures taken by Tenant to increase utilization of the Shoreside Power System; and (vii) other information requested by Port and/or pertinent to the mandatory use requirement in this Section.

(e) **Port's Review of Equipment Charge.** No later than sixty (60) days after Tenant submits the final quarterly report for each lease year as required under subsection (d) above, Port and Tenant will re-evaluate the Equipment Charge.

(f) **Environmental Credits.** Port shall retain as its property all environmental credits related to the Shoreside Power System.

**14.4. 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 any building of the Facility or otherwise on or near the Premises for the purpose of supplying power to the Facility or other locations. Notwithstanding Section 14.1, 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.

**14.5. 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.

## **15. IMPROVEMENTS AND ALTERATIONS.**

### **15.1. Port Consent Required.**

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

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

any liability for mechanics' and materialmen's liens, stop notices and to ensure completion of work.

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

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

(e) [Improvements and Alterations of Port's Equipment to be negotiated based on the selected Respondent's submittals and plans.]

**15.2. 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) Without limiting Section 17 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.

(f) 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 15.2(f), 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.

(g) **Union Iron Works Historic District.** Tenant expressly acknowledges that the entirety of the Premises is within the Port of San Francisco's 68 acre Union Iron Works Historic District at Pier 70 which is listed in the National Register of Historic Places and that numerous shipyard buildings/facilities (Buildings 36, 38, 58, 103, 105, 107, 108, 109, 111, 119, 120, 121, Pier 68 Highwater Platform and Whirley Crane No. 27) are contributing resources to the historic district and other building/facilities (Buildings 68, 127, 141, 243, 250, 251 and Wharves 1, 3 and 4, Whirley Cranes No. 1, 2, 6, 31, 32, 33 and 34, as well as Drydock#2 and Drydock Eureka) located within the historic district are non-contributing resources.

Accordingly, all interior and exterior Alterations (including but not limited to, any repair, alteration, improvement, or construction to the interior or exterior of the building/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 Port's Pier 70 Preferred Master Plan, and 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 L**. Tenant expressly agrees to comply with the Secretary's Standards for all current and future interior and exterior repair, alteration, improvement or construction.

**15.3. Improvements Part of Realty.** Except as set forth in Section 15.4 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 28 (Surrender).

**15.4. 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 28. 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.

**15.5. Removal of Non-Permitted Improvements.** If Tenant constructs any Alterations or Improvements without Port's prior written consent or without complying with Section 15.2 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 15 shall survive the expiration or earlier termination of this Lease.

**15.6. 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 buildings on 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.

**15.7. 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.

**15.8. Port's Alterations.** Port reserves the right at any time to make Alterations, additions, repairs, deletions or improvements to 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.

## **16. LIENS.**

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

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

## **17. HAZARDOUS MATERIALS.**

**17.1. *Requirements for Handling.*** Except as provided in Tenant's Operations Plan and at all times in full compliance with all Environmental Laws, 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.

**17.2. *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, 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 17.1;
- (b) will not cause or permit any Hazardous Material Condition; and
- (c) will comply with all Environmental Laws relating to Port's Equipment and 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.

### **17.3. *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 17.1, 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.



**17.4. Requirement to Remediate.**

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

(i) After notifying Port in accordance with Section 17.3(a), Tenant must Remediate at its sole cost in compliance with all Environmental Laws and this Lease, any Hazardous Material Condition occurring during the Term or while Tenant or its Agents or Invitees otherwise occupy any part of the Premises. Tenant must obtain Port's approval of a Remediation work plan, whether or not required under Environmental Laws, then begin Remediation actions immediately following Port's approval of the work plan and continue diligently until Remediation is complete, as determined by Port, in its sole discretion.

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

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

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

(b) 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.

**17.5. Port's Right to Audit.** Port will have the right, but not the obligation, to inspect and audit the Premises for any Hazardous Materials, including the right to Investigate, at reasonable times under Section 27 (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.

**17.6. 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 buildings or locations identified in the reports included in *Exhibit F*, copies of which have been delivered to or made available to Tenant. 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. 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 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 22 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.

**17.7. 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 22 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.

**17.8. Storm Water Pollution Prevention.**

(a) Tenant must comply with all requirements of the California State Water Resources Control Board National Pollutant Discharge Elimination System (“NPDES”) Industrial General Stormwater Permit Order No. CAS000001, 2014-0057-DWQ and NPDES Permit No. CAG032012, Order No. R2-2017-0027, General Waste Discharge Requirements for Discharges from Dry Dock Operations in the San Francisco Bay Region including but not limited to implementation of structural and non-structural (administrative) best management practices, and development and implementation of a Stormwater Pollution Prevention Plan (“SWPPP”) and Stormwater Monitoring Plan.

(b) In addition to requiring compliance with the permit requirements under Subsection (a), to the extent applicable, Tenant shall comply with the post-construction stormwater control provisions of the Statewide General Permit for Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems, NPDES Order No. CAS000004, 2013-0001-DWQ and the San Francisco Stormwater Management Requirements and Design Guidelines, subject to review and permitting by the Port's Engineering Division.

**17.9. *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 Hazardous Materials described in the reports listed in *Exhibit F*, copies of which have been delivered to or made available to Tenant, are known to be on or near the property. 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 17.9 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.

**17.10. *Survival.*** Tenant's obligations under Section 17 shall survive the expiration or earlier termination of this Lease.

## **18. INSURANCE**

**18.1. *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 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), and explosion, collapse and underground (XCU) coverage during any period in which Tenant is conducting any activity on or Alteration or Improvement to Port's Equipment or 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. Port may require Tenant to submit evidence of personal automobile liability insurance for persons parking vehicles at the Premises if an event occurs that is actually or potentially covered by such policies. .

(c) Workers' Compensation; Employer's Liability; Jones Act; U.S. Longshore and Harbor Worker's Compensation Act Insurance. Worker's Compensation Insurance, U.S. Longshore and Harbor Worker's Compensation Act Insurance and Jones Act Insurance with Employer's Liability limit not less than One Million Dollars (\$1,000,000.00) for each accident, injury or illness, on employees eligible for each. In the event Tenant is self-insured for the insurance required pursuant to this Section 18.1(c), it shall furnish to Port a current Certificate of Permission to Self-Insure signed by the Department of Industrial Relations, Administration of Self-Insurance, Sacramento, California.

(d) Ship Repairer's Legal Liability Insurance. Ship Repairer's Legal Liability Insurance with limits not less than Five Million Dollars (\$5,000,000), provided that Tenant's coverage under subsection (n) below covers the same risks and liabilities.

(e) Construction Activities. At all times during any period of Tenant's Construction of Improvements or Alterations subject to Section 15,

(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 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.

(ii) Prior to undertaking construction of improvements that will become part of the realty, Tenant shall notify Port that it has the option, at its cost, to procure builder's all risk insurance. If Port declines to do so, Tenant may self-insure.

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

(f) Property Insurance; Earthquake and Flood Insurance. Tenant shall maintain property insurance policies with broad form coverage covering Tenant's Property and providing primary coverage for Port's Equipment, including earthquake and flood, in an amount not less than one hundred percent (100%) of the then-current full replacement cost of the Improvements, Port's Equipment and other property being insured pursuant thereto (including building code upgrade coverage).

(g) 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 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.

(h) Business Interruption Insurance. Tenant shall maintain business interruption insurance, with a limit of not less than the annual Minimum Rent applicable immediately prior to the hazard causing the loss.

(i) Professional Liability. Tenant shall require all providers of professional services, including architectural, design, engineering, geotechnical, and environmental professionals under contract with Tenant for the Initial Tenant Improvements or any Subsequent Alteration 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.

(j) Watercraft P & I Liability Insurance. If Tenant owns or operates watercraft then, at its sole cost and expense, shall procure and maintain protection and indemnity insurance or other form of watercraft liability insurance acceptable to Port, with limits not less than One Million Dollars (\$1,000,000) per each occurrence, including coverages for owned and non-owned watercraft; but this insurance shall be required only if the Tenant operates any watercraft under the provisions of this Lease; provided, however, that, in the event Tenant receives any goods from any watercraft, then Tenant shall require that the operator of such watercraft maintain the insurance set forth in this Section 18.1(j).

(k) Vessel Pollution Liability Insurance. If Tenant owns and operates watercraft, then, at its sole cost and expense, shall procure and maintain Vessel Pollution Liability Insurance with combined single limit of Two Million Dollars (\$2,000,000.00) each claim, Five Million Dollars (\$5,000,000.00) aggregate, and with coverage to include legal liability arising from the sudden and accidental release of pollutants, and no less than a one-year extended reporting period.

(l) Sudden and Accidental Pollution Insurance. Sudden and accidental pollution liability insurance with limits not less than Five Million Dollars (\$5,000,000.00) each occurrence with any deductible not to exceed One Hundred Thousand Dollars (\$100,000.00), provided that Tenant's coverage under subsection (n) below covers the same risks and liabilities.

(m) Hull and Machinery Protection and Indemnity Insurance. For purposes of clarity this provision refers to and includes coverage for drydock sinking and/or wreck removal. Tenant, at its sole cost and expense shall procure and maintain Hull and Machinery Protection and Indemnity Insurance in a form acceptable to Port and with the following limits: Drydock Eureka - \$1,000,000 and Drydock #2 - \$2,000,000.

(n) Bumbershoot; Umbrella; Excess Insurance. Bumbershoot; Umbrella; Excess Insurance with policy limits of no less than twenty million dollars (\$20,000,000).

(o) 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 prudent for commercial operations similar in size, character, age and nature Tenant's with respect to risks comparable to those associated with this Lease.

**18.2. Claims-Made Policies.** If any of the insurance required in Section 18.1 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.

**18.3. Annual Aggregate Limits.** If any of the insurance required in Section 18.1 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.

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

**18.5. 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.

#### **18.6. 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.

#### **19. DAMAGE AND DESTRUCTION.**

**19.1. Damage and Destruction.** If the Premises, Facility or Port's Equipment 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 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 18 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 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 Rent shall be reduced as provided above, and Tenant shall pay such reduced 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 Rent shall be reduced as provided above, and Tenant shall pay such reduced Rent up to the date of termination.

If at any time during the last six (6) months of the Term, the Premises, the Facility or Port's Equipment 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, the Facility or Port's Equipment, (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.

**19.2. Waiver.** Port and Tenant intend that the provisions of Section 19 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.

## **20. EMINENT DOMAIN.**

**20.1. 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.

**20.2. 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.

**20.3. 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.

**20.4. Temporary Takings.** Notwithstanding anything to the contrary contained in Section 20, 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.

**20.5. Award; Waiver; Termination of Lease; Rent.** Upon termination of this Lease in its entirety pursuant to Section 20.2, or pursuant to an election under Section 20.1, 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 20 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.

**21. ENVIRONMENTAL REQUIREMENTS.** Tenant, at its sole cost and expense, shall comply with the following requirements. Failure to comply with these requirements is a material breach of this Lease.

**21.1. Water Conservation Plan** Within forty-five (45) days of the Commencement Date, Port will provide Tenant with a sample water conservation plan. No later than ninety (90) days from the Commencement Date, Tenant must prepare and submit to Port for approval a Water Conservation Plan that is consistent with the sample provided. At a minimum, the Water Conservation Plan shall include a requirement to perform an inspection and list action items needed to repair, upgrade and/or replace inefficient fixtures and appliances reporting and annual re-inspections. After Port's approval of the Water Conservation Plan, Tenant shall complete the first inspection and conduct related repairs, upgrades and replacements no later than the First (1st) Anniversary Date and shall submit a report to Port within thirty (30) days to summarize its activities and water usage for each month of the prior lease year. Tenant's shall inspect, repair and report annually on the same timeframe.

**21.2. Wastewater and Under-Pier Utility Maintenance Plan.** No later than one hundred eighty (180) days from the Commencement Date, Tenant shall submit for Port's approval and fully implement a Wastewater and Under-Pier Utility Maintenance Plan that is consistent with the Port's Under-Pier Inspection Program. At a minimum, the Wastewater and Under-Pier Utility Maintenance Plan shall include: (i) an annual inspection of all under-pier utilities on the Premises conducted by a plumber that is licensed in the State of California; (ii) preparation and maintenance of a map showing under-pier utilities; (iii) a report containing photos and description of observations and recommendations for repairs; (iv) immediate repair and replacement of damaged or compromised components allowing leaks; and (v) a determination of additional repairs needed within one (1) year and completion of such repairs. Tenant shall complete the inspection and repair and reporting annually. Within thirty (30) days of completion of an inspection and required repairs, Tenant shall submit a report which summarizes its activities.

**21.3. Performance Energy Benchmarking of Buildings.** No later than one hundred eighty (180) days from the Commencement Date, Tenant shall: (i) in consultation with Port staff, conduct an inventory of all buildings on the Premises to identify buildings that are subject



to the EPA Performance Energy Benchmarking requirements and initiate use of the EPA Performance Energy Benchmarking Tools to report annually as required, and (ii) obtain energy efficiency audits and annually measure and disclose energy performance, in accordance with the standards of the San Francisco Environment Code Chapter 20: Existing Commercial Buildings Energy Performance. These requirements are necessary to comply with the Energy Performance, Data Checklist, and Facility Summary requirements set forth in the California Public Resources Code Section 25402.10 et seq.. Tenant acknowledges that Port currently has no data to disclose regarding energy performance of the buildings within the Premises.

**21.4. "Green Demolition".** Tenant shall apply "green demolition" standards to all demolition work conducted at the Premises. This includes compliance with the City's Construction & Demolition Ordinance set forth in Chapter 14 of the San Francisco Environment Code and use of other commercially feasible soft demolition techniques that allow maximum recovery of materials for reuse and recycling of timber, masonry, and other materials.

**21.5. Sharing of Hazardous Materials Information.** Within twenty-four (24) hours of Port's oral or written request, Tenant shall make available to Port any information required by or pertaining to compliance with the Hazardous Materials Unified Program Agency requirements set forth in Chapter 21 of the San Francisco Health Code, including the Business Plan and the Hazardous Materials Inventory. Within fourteen (14) days of Port's oral or written request, Tenant shall make available any and all existing information in Tenant's custody pertaining to asbestos, lead and PCB-oil containing equipment or materials on the Premises. Tenant shall provide Port with annual updates of any new information about the disturbance or presence of these Hazardous Materials on the Premises.

## **22. INDEMNITY AND EXCULPATION.**

**22.1. 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 23, 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. For purposes of this Section 22, Port's Equipment is part of the Premises.

### **22.2. Hazardous Materials Indemnity.**

**(a)** In addition to its obligations under Section 22.1, Tenant, for itself and on behalf of its Agents and Invitees, agrees to Indemnify the Indemnified Parties from any and all Claims and Hazardous Material Claims that arise as a result of: (i) any Hazardous Material Condition, and (ii) Tenant's Exacerbation of any Hazardous Material Condition.

**(b)** Tenant's obligation to Indemnify the Indemnified Parties includes: (i) costs incurred in connection with any Investigation or Remediation requested by Port or required by any Environmental Regulatory Agency and to restore the affected area to its condition before the Release; (ii) damages for diminution in the value of the Premises or the Facility; (iii) damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises or the Facility; (iv) damages arising from any adverse impact on marketing the space; (v) sums paid in settlement of Claims, Hazardous Material Claims, Environmental Regulatory Actions, including fines and penalties; (vi) natural resource damages; and (vii) attorneys' fees, consultant

fees, expert fees, court costs, and all other litigation, administrative or other judicial or quasi-judicial proceeding expenses. If Port pays any costs within the scope of this section, Tenant must reimburse Port for Port's costs, plus interest at the Interest Rate from the date Port incurs each cost until paid, within three (3) business days after Port's payment demand. Tenant's obligations hereunder shall survive the expiration or earlier termination of this Lease.

**22.3. 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.

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

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

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

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

**22.5. Survival.** The provisions of Section 22 shall survive the expiration or earlier termination of this Lease.

## **23. ASSIGNMENT AND SUBLETTING.**

### **23.1. Transfers.**

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

(i) Tenant agrees that any of the following will be a reasonable basis for Port to withhold its consent: (1) at the time Tenant requests Port's consent, an Event of Default, or an event that with notice or the passage of time or both would constitute an Event of Default if not cured, has occurred and remains uncured; (2) the Transfer is an Assignment or a Sublease by a Transferee of Tenant; (3) the Transferee's financial condition is or may become insufficient to support all of the financial and other obligations of this Lease; (4) the Transferee's intended use is inconsistent with this Lease or otherwise will affect any Port interest materially and adversely; (5) the nature of the Transferee's use would involve an increased risk of the Handling or Release of Hazardous Materials or of fire or other casualty; (6) the business reputation or character of the Transferee or any of its Affiliates is not reasonably acceptable to Port; (7) the Transferee is not likely to conduct a business of a quality substantially equal to Tenant's or otherwise reasonably acceptable to Port; or (8) Tenant has not cured an Event of Default or an event that with notice or the passage of time or both would constitute an Event of Default if not cured including without limitation Tenants' obligation to maintain buildings and Port's Equipment.

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

(b) At least sixty (60) days before any Transfer, 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; (iii) the Transferee's completed pre-screening and leasing application; and (iv) a facilities condition report for the Premises, Port-owned buildings and Port's Equipment. In addition, Tenant must provide: (1) any other information, documentation, or evidence that Port requests to enable Port to evaluate the Transfer and the Transferee; and (2) if any of the Transfer Terms are modified before the Transfer Date, a new Transfer Notice and all relevant documentation for any modified Transfer Terms. Tenant's Transfer Notice will not be complete until Tenant has provided Port with all information required under this Subsection.

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

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

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

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

**23.2. Sublease.** In addition to all requirements in Section 23.1, the following provisions apply to any Transfer in the form of a Sublease.

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

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

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

**23.3. Sale.** In addition to all requirements in Section 23.1, the following provisions apply to any Transfer in the form of a Sale.

(a) 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.

(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.

(c) If Tenant constructed Improvements at the Premises or improved Port's Equipment, Net Sale Proceeds will be reduced by Tenant's Adjusted Basis, but only if Port previously approved Tenant's Certified Costs as follows.

(i) Within 90 days after Completion of any Improvements to the Premises or improvements to Port's Equipment which Tenant may wish to deduct in the event of a Sale, Tenant must deliver to Port a 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 Costs Report within 90 days after receiving it. Port will have the right to inspect Tenant's Books and Records for the Costs Report. Tenant must keep accurate Books and Records of all such improvements until the later of two (2) years after Tenant's submission of its Costs Report or six (6) months after any dispute regarding the Costs has been resolved. Tenant's failure to submit a 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) improvements have a Class Life of 15 years; (ii) Certified Costs are \$3 million; (iii) Gross Sale Proceeds are \$10 million; (iv) Costs of Sale are \$200,000, leaving Net Sale Proceeds of \$9.8 million; and (v) the Closing Date is the 6th anniversary of the "placed in service" date of the improvements, then Port's Sale Participation is \$780,000, as shown in the calculation below.

Gross Sale Proceeds:	\$10,000,000
Costs of Sale:	\$200,000
Net Sales Proceeds before Adjusted Basis reduction:	\$9,800,000
Certified Costs of improvements:	\$3,000,000
Adjusted Basis (10/15 years unamortized):	\$2,000,000
Net Sales Proceeds less Adjusted Basis:	\$7,800,000
Port's Sale Participation @ 15% of adjusted Net Sales Proceeds:	\$1,170,000

**23.4. 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 22 (Indemnity and Exculpation);

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

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

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

**23.5. Notice to Port.** In addition to the obligations under Section 32.2, within thirty (30) days of entering into any agreement under which Tenant grants any person the right to occupy or use any portion of the Premises for any period of time, including without limitation, any assignment, sublease, license, permit, concession or vendor agreement or other agreement or renewal thereof, Tenant shall provide written notice to Port and a copy of such agreement, regardless of whether Port consent is required under this Lease for such agreement. Tenant agrees to provide such further information as may be requested by City or Port to enable compliance with reporting obligations under state Law and San Francisco Administration Code Sections 23.38 and 23.39 (or any successor ordinance).

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

**23.7. 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 23.1.

**23.8. 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 3.

## **24. 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) failure by Tenant to deliver the Participation Rent Statement, revised or confirmation statement or Annual Statement when due and such default continues for a period of ten (10) 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, at the option of Port, constitute an Event of Default by Tenant hereunder without any further action by Port (including, but not limited to, notice to Tenant of such failure) or opportunity of Tenant to cure except as may be required by Section 1161 of the California Code of Civil Procedure; or

(c) a second understatement by Tenant of its Gross Revenues for any audit period by five percent (5%) or more within any three (3) year period of the first such understatement; or

**(d)** Failure to maintain and repair Port buildings or Port's Equipment and such failure continues for a period of thirty (30) days after written notice by Port, provided that if such default is not capable of cure within such thirty (30) day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such thirty (30) day period and thereafter diligently prosecutes the same to completion within sixty (60) days (or such longer period as determined by Port upon Tenant's failure to cure after diligent prosecution) after the receipt of notice of default by 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

**(e)** failure to comply with Tenant's continuous operations covenant set forth in Section 5.1, as determined by Port in its sole and absolute discretion and such failure continues for a period of thirty (30) days following written notice from Port; or

**(f)** abandonment or vacation of the Premises by Tenant; or

**(g)** failure to conduct only the Permitted Use or failure to seek Port's prior written consent for a material new or modified use, as determined by Port in its sole and absolute discretion and such failure continues for a period of forty-eight (48) hours following written notice from Port; or

**(h)** failure by Tenant to execute and deliver to Port the estoppel certificate within the time period and in the manner required by Section 36 below, and Tenant's failure to cure the foregoing default within ten (10) days following written notice from Port; or

**(i)** a Transfer, or attempted Transfer, of this Lease or the Premises by Tenant contrary to the provision of Section 23 above; or

**(j)** failure by Tenant or Tenant's broker as applicable to provide evidence of insurance coverage complying with the provisions of Section 18 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

**(k)** failure by Tenant to comply with the provisions of Section 17 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

**(l)** 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

**(m)** 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 24, and such failure continues for a period of thirty (30) days after written notice by Port, provided that if such default is not capable of cure within such thirty (30) day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within

such thirty (30) day period and thereafter diligently prosecutes the same to completion within sixty (60) days (or such longer period as determined by Port upon Tenant's failure to cure after diligent prosecution) after the receipt of notice of default by 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

(n) 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

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

(p) 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

(q) without limiting the provisions of Sections 24(d), 24(g), 24(k), or 24(m) 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.

## **25. 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:

**25.1. *Tenant's Right to Possession Not Terminated.*** Port has the remedy described in Section 1951.4 of the California Civil Code (a landlord may continue the lease in effect after a tenant's breach and abandonment and recover rent as it becomes due, if the tenant has the right to sublet and assign subject only to reasonable limitations) under which it may continue this Lease in full force and effect and Port may enforce all of its rights and remedies under this Lease, including the right to collect Rent when due. During the period Tenant is in default, Port may enter the Premises without terminating this Lease and relet them, or any part of them, to third parties for Tenant's account. Tenant shall be liable immediately to Port for all reasonable costs Port incurs in reletting the Premises, including, but not limited to, broker's commissions, expenses of remodeling the Premises required by the reletting and like costs. Reletting can be for a period shorter or longer than the remaining Term, at such rents and on such other terms and conditions as Port deems advisable. Tenant shall pay to Port the Rent due under this Lease on the dates the Rent is due, less the Rent Port receives from any reletting. In the event that Port shall elect to so relet, then rentals received by Port from such reletting shall be applied in the following order: (i) to reasonable attorneys' fees incurred by Port as a result of a default and costs in the event suit is filed by Port to enforce such remedies; (ii) to the payment of any indebtedness other than Rent due hereunder from Tenant to Port; (iii) to the payment of any costs of maintaining, preserving, altering, repairing and preparing the Premises for reletting, the other costs of reletting, including but not limited to brokers' commissions, attorneys' fees and expenses of removal of Tenant's 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 25.1 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.

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

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

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

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

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

The "**worth at the time of award**" of the amounts referred to in Sections 25.2(a) and 25.2(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 25.2(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%).

**25.3. 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.

**25.4. 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.

**25.5. *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.

**25.6. *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.

**25.7. *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.

**25.8. *Remedies Not Exclusive.*** The remedies set forth in Section 25 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.

## **26. LITIGATION EXPENSES; ATTORNEYS' FEES.**

**26.1. *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.

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

**26.3. *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.

## **27. PORT'S ENTRY ON PREMISES.**

**27.1. *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 Port's Equipment or the Premises to determine whether Port's Equipment or the Premises is in good condition and whether Tenant is complying with its obligations under this Lease.

**27.2. *General Entry.*** In addition to its rights pursuant to Section 27.1 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 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.

**27.3. *Emergency Entry.*** Port may enter Port's Equipment or 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 Port's Equipment or 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.

**27.4. *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 Port's Equipment or the Premises as provided in this Lease or performance of any necessary or required work on Port's Equipment or 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.

**27.5. *Nondisturbance.*** Port shall use its commercially reasonable efforts to conduct its activities on Port's Equipment or the Premises as allowed in this Lease in a manner which, to the extent reasonably practicable, will minimize annoyance or disturbance to Tenant.

## **28. SURRENDER AND QUITCLAIM.**

**28.1. *Surrender.*** Upon expiration or earlier termination of this Lease, Tenant shall surrender to Port Port's Equipment and 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 19 and 20 hereof). Ordinary wear and tear shall not include any damage or deterioration that would have been prevented by proper maintenance by Tenant, or Tenant otherwise performing all of its obligations under this Lease. The Premises shall be surrendered clean, free of debris, waste, and Hazardous Materials, and free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this Lease and any other encumbrances created by Port. On or before the expiration or earlier termination of this Lease, Tenant at its sole cost shall remove from the Premises, and repair any damage caused by removal of, Tenant's Property, including any signage and Alterations and Improvements specified in Port's Notice of Removal. Except for those

designated in Port's Notice of Removal, Alterations and Improvements shall remain in the Premises as Port property.

If the Premises is not surrendered at the end of the Term or sooner termination of this Lease, and in accordance with the provisions of this Section 28 and Section 15.4, Tenant shall continue to be responsible for the payment of Rent (as the same may be increased pursuant to Section 29.1 or 29.2 below as applicable) until the Premises is surrendered in accordance with these Sections, and Tenant shall Indemnify Port from and against any and all loss or liability resulting from delay by Tenant in so surrendering the Premises including, without limitation, any costs of Port to obtain possession of the Premises; any loss or liability resulting from any Claim against Port made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each instance, reasonable attorneys' fees and costs.

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

**28.2. *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.

**28.3. *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.

**28.4. *Survival.*** Tenant's obligation under this Section 28 shall survive the expiration or earlier termination of this Lease.

## **29. HOLDING OVER.**

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

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

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

**29.4. Renewal Letter of Credit.** During any holding over period after the expiration of the original Term (whether with or without the consent of Port), Tenant shall deliver to Port, a new Letter of Credit or certificate of renewal or extension (collectively, "**Renewal LC**") at least ninety (90) days prior to the then current LC Expiration Date, without any action whatsoever on the part of Port, extending the then current LC Expiration Date by an additional year. Failure to provide such Renewal LC shall entitle Port to draw on the Letter of Credit and Port shall hold the proceeds of such draw as Letter of Credit Proceeds pursuant to Section 9.3(b) above.

### **30. 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.

### **31. CITY AND PORT REQUIREMENTS.**

The San Francisco Municipal Codes (available at [www.sfgov.org](http://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. For purposes of this Section 31, Premises shall include Port's Equipment where applicable.

#### **31.1. 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 31.1(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.

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

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

(b) Notwithstanding the above, if Tenant meets the requirements of a "small business" by the City pursuant to Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with Section 31.2 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.

**31.3. *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.

**31.4. *Local Business Enterprises.*** The Port Commission encourages the participation of local business enterprises ("LBEs") in Tenant's operations. Tenant agrees to consult with the 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: <http://sfgov.org/cmd/lbe-certification-0>.

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

**31.6. *Prohibition of Tobacco Sales and Advertising.*** Tenant acknowledges and agrees that no sales or advertising of cigarettes or tobacco products is allowed on the Premises. This advertising prohibition includes the placement of the name of a company producing, selling or

distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of cigarettes and tobacco products, or (ii) encourage people not to smoke or to stop smoking.

**31.7. *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.

**31.8. *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.).

**31.9. *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>.

**31.10. *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.

**31.11. *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.

**31.12. *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.

**31.13. *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 31.12 shall apply. Through its execution of this Lease, Tenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Tenant further acknowledges that, if applicable, the prohibition on contributions applies to each Tenant; each member of Tenant's board of directors, and Tenant's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Tenant; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that if this Section 31.12 applies, Tenant must inform each of the persons

described in the preceding sentence of the prohibitions contained in Section 1.126 and must provide to City the name of each person, entity or committee described above.

**31.14. *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.

**31.15. *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.

**31.16. *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.

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

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

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

Loading and Unloading for Shows and Special Events (as defined in Section 21C.10), and Security Guard Services for Events (as defined in Section 21C.11).

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

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

**31.20. *Consideration Of Criminal History In Hiring And Employment Decisions***

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

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

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

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

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

(f) Tenant and subtenants shall post the notice prepared by 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.

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

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

**31.23. Southern Waterfront Community Benefits and Beautification Policy.** The Port's "Policy for Southern Waterfront Community Benefits and Beautification" identifies beautification and related projects in the Southern Waterfront (from Mariposa Street in the north to India Basin) that require funding. Under this policy, Tenant shall provide community benefits and beautification measures in consideration for the use of the Premises. Examples of desired benefits include: (i) beautification, greening and maintenance of any outer edges of and entrances to the Premises; (ii) creation and implementation of a Community Outreach and Good Neighbor Policy to guide Tenant's interaction with Port, neighbors, visitors and users; (iii) use or support of job training and placement organizations serving southeast San Francisco; (iv) commitment to engage in operational practices that are sensitive to the environment and the neighboring community by reducing engine emissions consistent with the City's Clean Air Program, and use

of machines at the Premises that are low-emission diesel equipment and utilize biodiesel or other reduced particulate emission fuels; (v) commitment to use low impact design and other “green” strategies when installing or replacing stormwater infrastructure; (vi) employment at the Premises of a large percentage of managers and other staff who live in the local neighborhood or community; (vii) use of truckers that are certified by the San Francisco Human Rights Commission as “**Local Business Enterprises**” under the City’s Local Business Enterprise and Non-Discrimination Ordinance (SF Administrative Code Chapter 14B, as amended); and (viii) use of businesses that are located within the Potrero Hill and Bayview Hunters Point neighborhoods. Tenant agrees to provide Port with documents and records regarding these activities upon Port’s request.

**31.24. Local Truckers.** As material consideration for Port’s agreement to enter into this Lease, Tenant agrees that, for all directly contracted or service agreement trucking opportunities associated with Tenant’s operations at the Premises, including, without limitation, hauling of materials on and off the Premises, Tenant shall make good faith efforts to first use Local Truckers.

For purposes of this Section, “**truckers**” means a business that provides trucking services for a profit. “**Local truckers**” means those truckers that are certified by the Contract Monitoring Division of the City’s General Services Agency as “**Local Business Enterprises**” pursuant to the City’s Local Business Enterprise and Non-Discrimination in Contracting Ordinance as amended from time to time (Administrative Code Chapter 14B.)

To the extent that Tenant in its sole discretion directly contracts or enters into a service agreement with truckers for trucking opportunities as described in this Section, Tenant shall use Local Truckers for a minimum of sixty percent (60%) of all contracted or service agreement trucking. Only the actual dollar amount paid to truckers will be counted towards meeting the sixty percent (60%) requirement; equipment rental and disposal fees will not be counted. Notwithstanding the foregoing, if Tenant fails to meet the sixty percent (60%) minimum, Tenant shall not be in default of this provision so long as Tenant first offered trucking opportunities to Local Truckers, and such Local Truckers were unavailable or unwilling to perform the work.

Tenant shall submit a monthly report to the Port and CMD stating the total cost to Tenant of trucking through a contract or service agreement during the preceding month and identifying the total amount paid to Local Truckers by the Tenant. The monthly report shall document all truckers who conducted contract or service agreement work for Tenant, and identify those truckers which are Local Truckers. If Tenant fails to meet the 60% minimum in any month, the report shall document Tenant's good faith outreach efforts to contact Local Truckers and the reasons that such work could not be conducted by Local Truckers. At Port or CMD’s request, Tenant shall provide additional documentation required to ensure Tenant's compliance with this provision. Tenant’s failure to comply with this Section shall be deemed a material breach under the Lease subject to the default provisions of Section 24 of this Lease.

**31.25. 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.

### **32. TAXES AND ASSESSMENTS.**

**32.1. *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.

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

### **33. 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.

#### **34. MISCELLANEOUS PROVISIONS.**

**34.1. *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.

**34.2. *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.

**34.3. *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.

**34.4. *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.

#### **34.5. *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.

**34.6. *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.

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

**34.8. *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.

**34.9. *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.

**34.10. *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.

**34.11. *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.

**34.12. *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.

**34.13. *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.

**34.14. *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.

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

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

## **35. LIMITATION ON DAMAGES.**

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

**35.2. *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.

**35.3. *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.

**36. 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 M*. 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.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

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:**        **[INSERT NAME OF TENANT]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

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

By: \_\_\_\_\_  
Name:  
Deputy City Attorney

Lease Prepared By: \_\_\_\_\_, \_\_\_\_\_

(initial)

**[PAGE INTENTIONALLY LEFT BLANK]**

**EXHIBIT A**

**DESCRIPTION OF PREMISES AND BUILDING INVENTORY**

[Attachment on following page]

**[PAGE INTENTIONALLY LEFT BLANK]**

**EXHIBIT B**

**COMMENCEMENT DATE AND EXPIRATION DATE MEMORANDUM**

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

Tenant:

Lease Number:

Lease Date:

Premises: [\_\_\_\_\_, Suite \_\_\_\_]  
San Francisco, California

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

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

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

Date Signed: \_\_\_\_\_

Tenant:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

**EXHIBIT C**

**ORTON DEVELOPMENT, INC. LICENSE FOR  
PORT-FUNDED SHIPYARD PROJECTS**

[Attachment on following page]



**[PAGE INTENTIONALLY LEFT BLANK]**

**EXHIBIT D**

**PORT-APPROVED OPERATIONS PLAN**

[Attachment on following page]

**[PAGE INTENTIONALLY LEFT BLANK]**

**EXHIBIT E**

**PORT'S EQUIPMENT LIST AND LOCATION MAP**

[Attachment on following page]

**[PAGE INTENTIONALLY LEFT BLANK]**

**EXHIBIT F**  
**LIST OF REPORTS AND ACKNOWLEDGEMENT OF RECEIPT**

By its signature below, Tenant acknowledges receipt of and represents and warrants to Port that Tenant has reviewed the following documents. Port provides the following information without representation or warranty.

**TENANT:**            [INSERT NAME OF TENANT]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

**EXHIBIT G**

**WORKFORCE DEVELOPMENT PROGRAM**

[Attachment on following page]

**[PAGE INTENTIONALLY LEFT BLANK]**



**EXHIBIT H**

**VEHICULAR CIRCULATION AND PARKING PLAN**

[Attachment on following page]

**[PAGE INTENTIONALLY LEFT BLANK]**

**EXHIBIT I**

**VESSEL UTILIZATION REPORT FORM**

[Attachment on following page]

**[PAGE INTENTIONALLY LEFT BLANK]**

**EXHIBIT J**

**TENANT'S MASTER PLAN**

[Attachment on following page]

**[PAGE INTENTIONALLY LEFT BLANK]**

**EXHIBIT K**

**SHORESIDE POWER REPORTING FORMS**

[Attachment on following page]

**[PAGE INTENTIONALLY LEFT BLANK]**



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

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

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

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

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

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

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

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

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

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

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

**[PAGE INTENTIONALLY LEFT BLANK]**

**EXHIBIT M**

**TENANT ESTOPPEL CERTIFICATE**

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

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

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

Dated: \_\_\_\_\_, 20\_\_.

[Name of Tenant]

By:

Name:

Title:

**SCHEDULE 1**

**LOCATION AND IDENTIFICATION NUMBERS OF PCB OIL – CONTAINING EQUIPMENT**

[Attachment on following page(s)]

**[PAGE INTENTIONALLY LEFT BLANK]**

**SCHEDULE 2**

**PIER 68-70 SHIPYARD FACILITY CONDITION SURVEY:  
HIGH-VALUE EQUIPMENT INVENTORY – MOFFATT & NICHOL | AGS JOINT VENTURE  
(JULY 21, 2017)**

[Attachment on following page(s)]

**[PAGE INTENTIONALLY LEFT BLANK]**

**SCHEDULE 3**  
**FEMA Disclosure Notice**

The Federal Emergency Management Agency ("FEMA") is revising Flood Insurance Rate Maps ("FIRMs") for San Francisco Bay Area communities. As part of this effort, FEMA 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 on San Francisco's waterfront.

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

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 shoreline. The San Francisco Bay Area Coastal Study includes both regional hydrodynamic and wave modeling of the San Francisco Bay, as well as detailed onshore coastal analysis used to estimate wave runup and overtopping, as well as overland wave propagation. These onshore analyses form the basis for the Base Flood Elevations (BFEs) and SFHAs shown on the FIRM.

In November 2015, FEMA issued a preliminary FIRM of San Francisco tentatively identifying SFHAs along City's shoreline in and along the San Francisco Bay consisting of "A zones" (areas subject to inundation by tidal surge) and "V zones" (areas subject to the additional hazards that accompany wave action). These zones generally affect City property under the jurisdiction of the Port of San Francisco and other areas of the San Francisco waterfront, including parts of Mission Bay, Hunters Point Shipyard, Candlestick Point, Treasure and Yerba Buena Islands, and an area adjacent to Islais Creek. FEMA plans to finalize the FIRM in mid-2017. Six months after this date, the FIRM will become effective and will be used for flood insurance and floodplain management purposes. During this six-month period, the City plans to amend the Floodplain Ordinance to adopt the FIRM.

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>

[http://www.r9map.org/Docs/Oct13-SanFranCo-FEMA\\_Factsheet\\_rev%20\(2\).pdf](http://www.r9map.org/Docs/Oct13-SanFranCo-FEMA_Factsheet_rev%20(2).pdf)