



ORIGINAL

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

LEASE NO. L-16723

BY AND BETWEEN

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

AND

**ALCATRAZ CRUISES, LLC, A CALIFORNIA LIMITED
LIABILITY COMPANY**

**ALCATRAZ ISLAND FERRY EMBARKATION
PIERS 31, 31 ½ AND 33**

**ELAINE FORBES
EXECUTIVE DIRECTOR**

SAN FRANCISCO PORT COMMISSION

**KIMBERLY BRANDON, PRESIDENT
WILLIE ADAMS, VICE PRESIDENT
GAIL GILMAN, COMMISSIONER
VICTOR MAKRAS, COMMISSIONER
DOREEN WOO HO, COMMISSIONER**

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EXHIBIT K	PORT OF SAN FRANCISCO HISTORIC PRESERVATION REVIEW GUIDELINES FOR PIER AND BULKHEAD WHARF SUBSTRUCTURES
EXHIBIT L	ESTOPPEL CERTIFICATE
EXHIBIT M	PORT'S ZERO WASTE EVENTS AND ACTIVITIES POLICY

SCHEDULE 1 ASBESTOS NOTIFICATION AND INFORMATION
SCHEDULE 2 SUBSTRUCTURE REPORT(S)
SCHEDULE 3 FEMA DISCLOSURE NOTICE
SCHEDULE 4 HAZARDOUS MATERIALS DISCLOSURE

1. Name of the property owner: _____

2. Address of the property: _____

3. City: _____ State: _____ Zip: _____

4. Date of inspection: _____

5. Name of the inspector: _____

6. Title of the inspector: _____

7. Company name: _____

8. Phone number: _____

9. Email address: _____

10. Description of the property: _____

11. Description of the inspection: _____

12. Results of the inspection: _____

13. Recommendations: _____

14. Signature of the inspector: _____

15. Date of signature: _____

BASIC LEASE INFORMATION

<i>Lease Number:</i>	L-16723
<i>Landlord or Port:</i>	City and County of San Francisco , a municipal corporation, operating by and through the San Francisco Port Commission
<i>Landlord's Address:</i>	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Director of Real Estate Telephone: (415) 274-0400 Facsimile: (415) 274-0494
<i>Port/National Park Service ("NPS") Agreement and Concession Contract Background:</i>	<p>In order to provide a stable location in San Francisco for the ferry embarkation site to Alcatraz Island, and to allow for long-term investment in the site, Port and NPS entered into a long term General Agreement dated September 25, 2018 as may be amended from time to time ("Port/NPS Agreement") that establishes portions of Piers 31, 31 ½ and 33 and the Pier 31/33 Water Basin as the ferry embarkation site for Alcatraz Island ("Embarkation Site") and sets forth various other agreements and timing between the Port and NPS. The Embarkation Site will provide a high quality welcome and orientation facility, significantly enhancing the visitor experience including introductions to Alcatraz Island, Golden Gate National Recreation Area, the National Park System, and the Port. Consistent with the Port/NPS Agreement and Schematic Design and Drawings, NPS and Port have worked together to facilitate application for certain Initial Regulatory Approvals (defined below) necessary to construct the Embarkation Site Improvements (defined below).</p> <p>The Embarkation Site will be constructed and operated by Tenant, as the Ferry Concessioner selected by NPS pursuant to a federal governmental process governed solely by applicable federal Laws including without limitation, the 1998 Concessions Act, and the Golden Gate National Parks Conservancy ("Conservancy"), NPS' nonprofit cooperating association, as to other visitor amenities including food service, under their respective leases with the Port.</p> <p>Tenant acknowledges and agrees that (i) the Port/NPS Agreement includes provisions that affect and relate to certain provisions of this Lease, but Tenant is not a third party beneficiary of nor does it have any rights under the Port/NPS Agreement; and (ii) NPS is solely responsible for selection of and contracting with operators for the Ferry Concession Contract and Port has no role in the selection, solicitation, and/or award of a contract to a Ferry Concessioner.</p>

<i>Tenant:</i>	Alcatraz Cruises, LLC, a California Limited Liability Company
<i>Tenant's Main Contact Person and Mailing Address:</i>	Michael Eggers Hornblower Cruises & Events The Embarcadero Pier 3 San Francisco, CA 94111 (925) 785-8996 meggers@hornblower.com
<i>Tenant's Billing Contact and Address:</i>	Yuki Watanabe, Accounting Manager Alcatraz Cruises, LLC The Embarcadero Pier 33 #200 San Francisco, CA 94111 (415) 438-8344 ywatanabe@alcatrazcruises.com
<i>Tenant's Emergency Contact and Address:</i>	Denise Rasmussen, General Manager (415) 559-3122 Drasmussen@alcatrazcruises.com Aaron Warren, Director, Maritime Operations (415) 559-3126 awarren@alcatrazcruises.com
<i>Tenant's Insurance Contact and Address (not broker):</i>	Yuki Watanabe, Accounting Manager Alcatraz Cruises, LLC The Embarcadero Pier 33 #200 San Francisco, CA 94111 (415) 438-8344 ywatanabe@alcatrazcruises.com
<i>Contact Information for Tenant's Agent for Service of Process (including address):</i>	Cogency Global, Inc. With a copy to: Mitchell Randall General Counsel, Hornblower Cruises & Events The Embarcadero Pier 3 San Francisco, CA 94111 (415) 635-2295 mitch.randall@hornblower.com
<i>Effective Date; Expiration Date Term:</i>	This Lease shall become effective on the date of award of the Ferry Concession Contract (within the meaning of 36 C.F.R. §51.3) which will occur only after completion of any Congressional notifications, the expiration of any waiting periods required by 54 U.S.C. §101913(6) and execution of the Ferry Concession Contract by NPS ("Effective Date"). For avoidance of doubt, if the Ferry Concession Contract does not become effective, this Lease will not become effective and will be null and void. In such case, upon Port's request, Tenant shall promptly deliver to Port, without charge, a

	<p>quitclaim deed to the Premises and any other instrument reasonably requested by Port to evidence the termination of any leasehold estate hereunder.</p> <p>Unless earlier terminated or extended in accordance with this Lease, the Term of this Lease shall be coterminous with the term of the Ferry Concession Contract including any extensions of the term of the Ferry Concession Contract by NPS; the “Expiration Date” shall be the date the Ferry Concession Contract expires or is earlier terminated.</p> <p>Promptly following the actual Effective Date, Port and Tenant shall execute a Memorandum substantially in the form attached hereto as <i>Exhibit A</i>, confirming the actual Effective Date and Expiration Date, but either party's failure to do so shall not affect the Effective Date or Expiration Date. Similarly, promptly following any extension of the Ferry Concession Contract by NPS that extends the original Expiration Date, Port and Tenant shall execute a Memorandum substantially in the form attached hereto as <i>Exhibit A</i>, confirming the new Expiration Date, but either party's failure to do so shall not affect the expiration of the Term.</p>
<p><i>Premises; Commencement Dates and Delivery:</i></p>	<p>Port will deliver possession of the Premises in two phases as described below. Tenant’s delay in or failure to accept possession upon delivery by Port is a material breach of this Lease.</p> <p><u>Phase I Delivery - Estimated as the “effective date” of the Ferry Concession Contract as defined by the Ferry Concession Contract:</u></p> <p>The initial phase of the Premises consists of shed and office space; submerged land; and space on the Marginal Wharf comprised of the following and as depicted in <i>Exhibit B</i>:</p> <p>Parcel A Submerged land: approximately 60,000 sq. ft.;</p> <p>Parcel B Pier 31½ Marginal Wharf and plaza: approximately 43,890 sq. ft. of pier-supported outdoor space; and</p> <p>Parcel C Pier 31 Shed: approximately 5,300 sq. ft. of non-contiguous shed space; and</p> <p>Parcel D Pier 33 Shed: approximately 4,062 sq. ft. of shed space; and</p> <p>Parcel D-1 Pier 33 Shed: approximately 1,240 sq. ft. of shed space.</p> <p>Parcels A-D will remain in the Premises for the Term of the Lease.</p>

Promptly following delivery of the Phase I Premises, Port and Tenant shall execute a Memorandum substantially in the form attached hereto as ***Exhibit A***, confirming the actual delivery date ("**Phase I Commencement Date**"), but either party's failure to do so shall not affect the Phase I Commencement Date. Rent for all parcels in the Phase I Premises shall commence on the Phase I Commencement Date ("**Phase I Rent Commencement Date**").

Phase II Delivery - Estimated Commencement Date: August 1, 2019:

Phase II will consist of a total of approximately 13,775 square feet of retail and office space in the Pier 33 South Bulkhead Building as described below.

Parcel E Pier 33 South Bulkhead Building: 1st Floor: approximately 4,612 sq. ft. of on the first floor; and

Parcel F Pier 33 South Bulkhead Building 2nd Floor: approximately 4,555 sq. ft. on the second floor; and

Parcel G Pier 33 South Bulkhead Building 3rd Floor: approximately 4,612 sq. ft. on the third floor;

As of the Phase II Commencement Date, ***Exhibit B-1*** showing the Phase II Premises will be added to this Lease as part of the Premises without further action by the parties. Tenant acknowledges and agrees that the Phase II Premises and delivery thereof will be made without representation or warranty by Port and subject to all provisions of this Lease including without limitation the "as-is" provisions in Section 3. Promptly following the delivery of the Phase II Premises, Port and Tenant shall execute a Memorandum substantially in the form attached hereto as ***Exhibit A***, confirming the actual delivery date ("**Phase II Commencement Date**"), but either party's failure to do so shall not affect the Phase II Commencement Date.

Parcel G will remain in the Premises for the Term of the Lease.

Final Pier 33 South Bulkhead Building Premises:

As described below, Embarkation Site Improvements will include demolition/construction of significant portions of the Phase II Premises and construction of an approximately 992 square foot mezzanine to replace the second floor. Upon Completion of the Embarkation Site Improvements to the Pier 33 South Bulkhead Building as described below and written notice by Port ("**Pier 33 South Bulkhead Building Completion Date**"), Tenant shall surrender Parcel D-1, and approximately 3,280 sq. ft. on the first floor and the entire

	<p>second floor mezzanine of the Pier 33 South Bulkhead Building to Port in compliance with Section 26. Tenant shall surrender and deliver the relevant property to Port strictly in compliance with the conditions and specifications in the Work Letter, including without limitation, the Scope of Development (including the Schematic Design and Drawings) attached as Attachment 1 to the Work Letter which is attached hereto as Exhibit E. Acceptance of such surrender and conditions shall be in Port's sole discretion. As of the Pier 33 South Bulkhead Building Completion Date, this Lease will terminate as to such portions of the Premises and Exhibit B-2 will replace and supersede Exhibit B-1 in its entirety without further action by the parties.</p> <p>The remainder of the Pier 33 South Bulkhead Building will remain under this Lease, consisting of:</p> <p>Parcel E-1 Pier 33 South Bulkhead Building: 1st Floor: approximately 1,382 sq. ft. of space on the first floor; and</p> <p>Parcel G Pier 33 South Bulkhead Building 3rd Floor: approximately 4,612 sq. ft. of office space.</p> <p>Promptly following the Pier 33 South Bulkhead Building Completion Date, Port and Tenant shall execute a Memorandum substantially in the form attached hereto as Exhibit A, confirming the actual Pier 33 South Bulkhead Building Completion Date.</p>
<i>Square Footage and Rent Adjustments:</i>	<p>All square footages are approximate. Port, upon either party's request after Completion of any phase of the Embarkation Site Improvements, will re-measure the relevant parcel(s) and Base Rent will be recalculated for such parcel based on the rent per square foot as shown below. The parties will document such technical corrections, if any, by counter-signed addenda and replacement exhibits to this Lease which addenda and replacement exhibits shall be fully incorporated into this Lease.</p>
<i>Access to Embarkation Site Prior to Delivery of Parcels:</i>	<p>After the Effective Date and prior to any Commencement Date, Port will allow Tenant to access the relevant areas of the Embarkation Site for due diligence purposes under a Port license or other agreement subject to Port's standard terms and conditions for such access agreements and the rights of any existing tenants and users.</p>
<i>Permitted Use:</i>	<p>As more specifically described below and elsewhere in this Lease and subject to all terms and conditions of this Lease, Tenant shall use the Premises solely to operate a ferry embarkation site and related amenities for: (i) excursions to Alcatraz Island; (ii) as authorized in a Concession Contract: passenger ferry and associated services between the Embarkation Site and a landing at another NPS site in the San</p>

	<p>Francisco Bay Area and/or a landing at a non-NPS park within the San Francisco Bay Area for which NPS provides cooperative services through a partnership with another entity; (iii) Interpretive Park Cruises; and (iv) ancillary occasional Special Events approved in writing by NPS and for no other purpose.</p> <p>Parcel A Submerged land: vessel berthing for the vessel(s) permitted under this Lease (see below and <i>Exhibit D</i>); use of floats and ramps; vessel provisioning; overnight berthing; passenger loading and unloading;</p> <p>Parcel B Pier 31½ Marginal Wharf and plaza: for public assembly; visitor circulation; ferry passenger queuing, and staging; information kiosk, interpretive exhibits; souvenir photography directly serving ferry passengers; protected seating and dining area; and support for routine/minor maintenance of ferry vessels ;</p> <p>Parcel C Pier 31 Shed: maritime storage and other storage, including food storage; employee and accessible vehicular parking; public restrooms; and bicycle parking;</p> <p>Parcel D and D-1 Pier 33 Shed: maritime storage and other storage, including food storage; employee break area; utility area and public restrooms and construction activities;</p> <p>Parcel E Pier 33 South Bulkhead Building 1st Floor: ticketing, office and circulation areas;</p> <p>Parcel F Pier 33 South Bulkhead Building 2nd Floor: office and construction activities;</p> <p>Parcel G Pier 33 South Bulkhead Building 3rd Floor: office uses.</p> <p>All Permitted Uses must be consistent with the uses described in the Final Mitigated Negative Declaration for the project (2017-000188ENV) (“FMND”). Tenant shall seek Port’s prior written consent for any new or modified uses subject to further environmental review and approval by the Port Commission and Board of Supervisors, each in its sole discretion if required. If Port approves such new or modified uses, Port may impose reasonable conditions on such uses.</p>
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*Permitted Use; Vessel
Trips and Passengers:*

The ferry services and number of passengers analyzed in the FMND are described below. Failure to comply with these limits is a Prohibited Use and each vessel trip which exceeds the limit shall be treated as a separate incident.

Reporting: Tenant must submit a monthly and annual report to Port showing actual vessel trips and passengers for each route. The monthly report shall be submitted, in writing and in a form acceptable to the Port, no later than thirty (30) days after the close of each month and the annual report shall be submitted in writing in a form acceptable to Port no later than sixty (60) days after the close of each Lease Year. Failure to submit the required reports by the dates specified is subject to a late filing fee of Two Hundred dollars (\$200). The parties agree that the charges associated with a late filing of the reports required in this Section represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's costs 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.

Alcatraz Island and Alcatraz Island Plus Angel Island: These combined ferry service lines will serve an estimated 1.7-1.8 million passengers annually, with daily Alcatraz Island service. The number of daily calls and average daily visitors will vary with the seasons.

Fort Baker: Fort Baker service, if authorized and implemented in accordance with a Ferry Concession Contract, will serve a maximum of forty-thousand (40,000) passengers annually through weekend service limited to two boats on Saturdays and Sundays each.

Interpretive Park Cruises: Interpretive Park Cruises will not exceed the number of paying passengers annually described in the below table. The number of daily calls and average daily visitors will vary with the seasons. Exceeding Interpretive Park Cruise paying passenger limits in any given Lease Year will automatically result in a one-for one paying passenger reduction from the limit in the subsequent Lease Year.

Interpretive Park Cruises Annual Passenger Limits	
Lease Year	Passengers
Interpretive Park Cruise Year 1	45,000
Interpretive Park Cruise Year 2	45,000
Interpretive Park Cruise Year 3	46,125

	Interpretive Park Cruise Year 4	47,278
	Interpretive Park Cruise Year 5	48,460
	Interpretive Park Cruise Years 6 - 15	90,000
<i>Additional Prohibited Uses:</i>	<p>In addition to, and without limiting, the Prohibited Uses specified in Section 8.2 below, Tenant shall be prohibited from using the Premises for any of the following activities:</p> <p>Tenant shall not offer food and beverage on Parcels B-G. Except for souvenir photography directly serving ferry passengers, Tenant shall not offer merchandise on Parcels B- G.</p> <p>The follow uses are prohibited unless and under the terms and conditions allowed in the approved Operations Plan:</p> <ul style="list-style-type: none"> (a) Use of vehicles on the Marginal Wharf, including for deliveries, loading and unloading which weigh in excess of the DOT H20 rating. (b) Use or storage of Hazardous Materials, as defined in Section 2, including without limitation engine and hydraulic oils, diesel fuel, gasoline, compressed gases, such as propane, acetylene, oxygen, paints and paint-related products. No fuel tanks, temporary or otherwise, will be allowed on the Premises. (c) Fueling or performing maintenance of vessels or vehicles or other machinery, fixtures or furniture, including fluid changes or transfers; painting; sanding; chipping; sandblasting; painting preparation work, and engine work. (d) Washing vessels with anything other than biodegradable soap and clean water. Washing vessels with biodegradable soap and clean water is permitted. (e) Discharging bilge water or any oily liquid into Bay waters. (f) Conducting hot works and welding, except with all necessary Regulatory Approvals. <p>Port shall have all remedies set forth in this Lease, and at law or equity in the event Tenant performs any of the Prohibited Uses.</p>	
<i>Operations Plan:</i>	<p>All Permitted Uses must be performed in compliance with the Port-approved Operations Plan attached hereto as <i>Exhibit C</i> and hereby incorporated.</p> <p>Failure to comply with the Operations Plan is a material breach of this Lease. Tenant and Port may, from time to time, review Tenant's Operations Plan and make recommendations for revisions. All revisions to the Operations Plan, whether</p>	

	initiated by Port or Tenant, are subject to the mutual agreement of the parties, each in its reasonable discretion. Under no circumstances will the Operations Plan allow activities that do not comply with applicable Laws or the FMND.
<i>Permitted Vessels:</i>	<p>Tenant may use the Premises only for Tenant-leased or owned vessels (including Affiliate-owned vessels) used for service to Alcatraz Island unless otherwise approved in advance in writing by Port in response to Tenant's request no less than three (3) business days in advance of mooring such vessel. Tenant must secure all required Regulatory Approvals prior to mooring vessels at the Premises.</p> <p>Prior to the Phase I Commencement Date, Tenant shall provide a list of vessels that it intends to operate at the Premises which shall be attached as Exhibit D to this Lease. Exhibit D shall list each vessel, its ownership (including whether it is owned by an Affiliate) and name, the state or federal vessel registration number, the length overall (LOA), the net registered tons and the capacity of the vessels and include a copy of the US Coast Guard Certificate for each vessel. Changes and additions to the vessels listed in Exhibit D may be made with three (3) business days' written notice to Port which notice must include all of the above information. Exhibit D and any additions thereto shall be subject to Port's approval in its sole discretion.</p>

BASE RENT

PHASE I

Parcels A-D will remain in the Premises for the Term of this Lease

<i>Monthly Base Rent Months 1-12 (beginning on the Phase I Commencement Date):</i>	Sq. Ft.	Monthly Base Rate	Total Monthly Base Rent
Parcel A Submerged land	60,000	\$.20	\$12,000
Parcel B Pier 31½ Marginal Wharf and plaza	43,890	\$.40	\$17,556
Parcel C Pier 31 Shed	5,300	\$1.50	\$7,950
Parcel D Pier 33 Shed	4,062	\$1.50	\$6,093

PHASE II

Upon Completion of the Embarkation Site Improvements to the Pier 33 South Bulkhead Building, Parcel D-1 will be surrendered; Parcel G will remain in the Premises for the Term of this Lease. Parcel E in the Phase II Premises will be replaced and superseded by Parcel E-1 in the Final Configuration as shown below and in the Lease Exhibits

<i>Monthly Base Rent Months 1-12 (beginning on the 271st day after the Phase II Commencement Date):</i>	Sq. Ft.	Monthly Base Rate	Total Monthly Base Rent
Parcel D-1 Pier 33 Shed:	1,240	\$1.50	\$1,860
Parcel E Pier 33 South Bulkhead Building 1st Floor	4,612	\$5.00	\$23,060
Parcel F Pier 33 South Bulkhead Building 2nd Floor	4,555	\$3.00	\$13,655
Parcel G Pier 33 South Bulkhead 3rd Floor	4,612	\$3.00	\$13,836

FINAL CONFIGURATION AFTER PIER 33 SOUTH BULKHEAD COMPLETION DATE FOR THE PIER 33 SOUTH BULKHEAD BUILDING

<i>Monthly Base Rent Months 1-12 (beginning on the Pier 33 South Bulkhead Building Completion Date):</i>	Sq. Ft.	Monthly Base Rate	Total Monthly Base Rent
Parcel A Submerged land	60,000	\$.20	\$12,000
Parcel B Pier 31½ Marginal Wharf and plaza	43,890	\$.40	\$17,556
Parcel C Pier 31 Shed	5,300	\$1.50	\$7,950
Parcel D Pier 33 Shed	4,062	\$1.50	\$6,093

Parcel E-1 Pier 33 South Bulkhead 1st Floor	1,382	\$5.00	\$6,910
Parcel G Pier 33 South Bulkhead 3rd Floor	4,612	\$3.00	\$13,836
<i>Annual Base Rent Adjustment:</i>	For Parcel G, on each Anniversary Date, Base Rent shall increase by three percent (3%). For all other parcels, on each Anniversary Date, Base Rent shall increase by two and one-half percent (2.5%).		
<i>Phase II Construction Rent Abatement:</i>	Base Rent for Parcels E and F in the Pier 33 South Bulkhead shall be waived for Two Hundred and Seventy (270) days beginning on the Phase II Commencement Date. No Base Rent is due for Parcels E and F during this 270-day period provided that there is no other existing Tenant Event of Default. Tenant shall resume Base Rent payments for Parcels E and F on the Two Hundred Seventy First (271 st) day after the Phase II Commencement Date regardless of whether the Embarkation Site Improvements to Parcels E and F have been Completed (“ Phase II Rent Commencement Date ”). The Phase II Rent Commencement Date shall be stated in the Memorandum for Phase II.		
<i>Percentage Rent:</i>	<p>As further defined and described in Section 5, in addition to the monthly Base Rent specified above, Tenant shall pay monthly Percentage Rent in an amount equal to the difference between (i) the percentage rent for such calendar month and (ii) the Base Rent for such calendar month for all Parcels, except Parcel G, in any month in which the percentage rent exceeds the Base Rent.</p> <p>As further defined and described in Section 5, “percentage rent” shall be equal to the total monthly:</p> <p>(i) 7.50% of Gross Ticket Revenue; PLUS</p> <p>(ii) 8.00% of Gross Ancillary Revenue; PLUS</p> <p>(iii) 7.25% of Gross Food and Beverage Revenue.</p>		
<i>Rent Abatement During Alcatraz Island Shut down:</i>	Base Rent shall be suspended for Parcels A-E, during periods when Alcatraz Island closes to visitors for more than one (1) day for reasons outside NPS's or its Agent's (including Tenant's) control (such as weather, earthquake damage or a government shutdown, but not deferred maintenance) to the extent that such interruption is not covered by Tenant's business interruption insurance. Percentage Rent will continue to be due for any such period.		
<i>Security Deposit:</i>	Two Hundred Eight Thousand Three Hundred dollars (\$208,300) which consists of: twenty-thousand dollars		

	(\$20,000) plus an amount equal to two (2) months of the total initial base rent for Parcels A-G (\$188,300).
<i>Embarkation Site Improvements:</i>	<p>Tenant must Complete the following improvements as more particularly described in the Scope of Development, including the Schematic Design and Drawings, attached as Attachment 1 to the Work Letter which is attached hereto as Exhibit E and incorporated (collectively, the “Embarkation Site Improvements”): waterside improvements, including new ferry barges, docks and associated infrastructure; Pier 31½ Marginal Wharf deck surface and visitor amenities; Pier 33 Shed visitor restrooms; Pier 31 bulkhead restrooms; interior improvements in the Pier 31 and Pier 33 Sheds; Pier 33 South Bulkhead Building ticketing area improvements; and demolition of a portion of the 2nd floor of the Pier 33 South Bulkhead Building and construction of a mezzanine area. The Embarkation Site Improvements must achieve a Leadership in Energy and Environmental Design (“LEED®”) Gold rating, regardless of the applicable minimum square footage threshold under the Port Green Building Standards Code unless the Chief Harbor Engineer grants a waiver of such certification based on the circumstances listed in Section 101.12 of the Port Green Building Standards Code (as may be amended from time to time) and subject to any conditions the Chief Harbor Engineer imposes as a condition to such waiver.</p> <p>Tenant must Complete the Embarkation Site Improvements no later than the Fifth (5th) anniversary of the Effective Date of this Lease (the “Embarkation Site Improvements Outside Completion Date”); provided, however, that if Port has not obtained the Initial Regulatory Approvals (defined below) by the Effective Date, the Embarkation Site Improvements Outside Completion Date shall be extended on a day-for-day basis until the last of the Initial Regulatory Approvals is obtained by Port.</p> <p>Port and NPS estimate the costs of Embarkation Site Improvements to be thirty million dollars (\$30,000,000).</p> <p>Tenant shall own and maintain the Embarkation Site Improvements during the Term of this Lease. Unless specified otherwise by Port in writing, the Embarkation Site Improvements will become part of the realty upon expiration or earlier termination of this Lease and shall remain on the Premises at no cost to Port.</p> <p>All the Embarkation Site Improvements shall be constructed at Tenant's sole cost and expense and in accordance with Section 13 below and the Work Letter.</p>
<i>Rent Credits for Embarkation Site Improvements:</i>	Upon Completion of the Embarkation Site Improvements by the Embarkation Site Improvements Outside Completion Date, and subject to the conditions of Section 5.5, Tenant shall be entitled to a rent credit in a maximum amount of Two

	<p>Million Five Hundred Twenty Thousand dollars (\$2,520,000) amortized on a straight line basis over a forty-eight (48) month period in equal monthly amounts to be taken at a rate of seventy percent (70%) of the total monthly Rent due.</p> <p>Other than explicitly provided herein, Tenant understands and agrees that it will not receive or seek rent credits or other compensation or consideration for the Embarkation Site Improvements and agrees that it will not seek additional term for the purpose of amortizing such improvements.</p>
<i>Contractor's Bond:</i>	In an amount equal to One Hundred percent (100%) of the construction costs in a form acceptable to Port as described in the Work Letter.
<i>Maintenance and Repair:</i>	<p>As further described in Section 11 below, the parties have the following maintenance and repair responsibilities:</p> <p>Consistent with its routine maintenance and repair regime for similar structures and subject to budgetary restrictions and appropriations, Port will (i) inspect the applicable Substructure (including the Seawall) and exterior of the Pier 31 and Pier 33 bulkhead buildings and Sheds 31 and 33 (including roof, but excluding exterior roll up doors, doors and windows) of the Premises on a periodic and as-needed basis, but no less frequently than every five (5) years, and (ii) will provide as-needed maintenance and repairs in compliance with applicable codes regarding protection of health and safety as determined in the sole discretion of the Chief Harbor Engineer in connection with the following:</p> <ul style="list-style-type: none"> (a) Substructure of the Pier 31 Marginal Wharf; (b) Substructure of the Pier 31 and Pier 33 bulkhead buildings and Sheds 31 and 33; (c) Seawall; (d) exterior of the Pier 31 and Pier 33 bulkhead buildings and Sheds 31 and 33 (including roof, but excluding exterior roll up doors, doors and windows). <p>Tenant shall be responsible for all other maintenance and repair obligations including without limitation: all Utilities; all ferry barges, docks and associated waterside infrastructure; Marginal Wharf deck surface; all interior improvements within the Premises, including without limitation: Pier 33 visitor restrooms; Pier 33 ticketing area, interior of the Pier 31 and 33 Sheds; the Pier 31 bulkhead restrooms; and all interiors and exteriors of the Pier 33 bulkhead within the Premises including exterior windows and doors.</p> <p>If, for reasons other than Tenant's or its Agents' or Invitees' acts or omissions, Port is unable to perform its maintenance and repair obligations such that Tenant's vessels cannot operate from the Premises or customers are not able to access</p>

	<p>the vessels, Port, in its sole discretion, and subject to appropriations by the Port Commission and Board of Supervisors, may request that Tenant conduct the necessary repairs provided that the costs of such repairs can be amortized by Tenant during the remaining Term as agreed by Port and Tenant. The parties agree that Tenant has the right but not the obligation to perform the requested necessary repairs. If Tenant chooses to perform the repairs, Tenant must competitively bid the scope of work for the necessary repairs and maintenance and Port must pre-approve such costs and a schedule for the work. Port agrees to consider and pre-approve changes to costs using the same process as the original pre-approval. Upon Port's written approval of the costs and schedule, Tenant will undertake the work in compliance with Section 13. Upon Completion, (a) subject to the conditions of Section 5.5, Tenant shall be entitled to a rent credit not to exceed the lesser of: the costs pre-approved by Port or Tenant's actual costs amortized on a straight line basis over the remaining Term of the Lease yielding equal monthly amounts to be taken at a rate of seventy percent (70%) (or a higher percentage as agreed by Port and Tenant in order for Tenant to amortize such costs during the remaining Term) of the total monthly Rent due; and (b) Tenant shall have no further obligations with respect to the repairs performed by Tenant, and Port shall resume its maintenance and repair obligations as set forth in this Lease. Notwithstanding any provision of this Lease, Port shall have no maintenance and repair obligations or responsibility to address the effects or impacts of flooding or sea level rise on the Premises or Facility.</p>
<p><i>Port Pier 31½ Marginal Wharf Improvements:</i></p>	<p>Tenant acknowledges that Port intends to perform improvements to the substructure of the Pier 31½ Marginal Wharf ("Pier 31½ Marginal Wharf Improvements") as further described in Exhibit F during the Term. Tenant agrees that Port and its authorized Agents shall have the right to enter the Premises at all reasonable times and upon reasonable notice to perform the Pier 31½ Marginal Wharf Improvements and Tenant shall cooperate by providing access and other reasonably requested assistance at no cost to Port. Port agrees to use its commercially reasonable efforts to minimize annoyance or disturbance to Tenant, its Subtenants (if any), and their respective Invitees.</p> <p>To the extent that Port is unable to obtain funding to undertake the Pier 31½ Marginal Wharf Improvements by December 31, 2019, upon Port's written notice, Tenant shall perform the scope of work described in Exhibit F (as amended if needed) as determined by Port in its sole discretion in accordance with the following provisions provided that such scope of work can be amortized by Tenant during the remaining Term as agreed by Port and Tenant. Tenant must competitively bid the scope of work for the Pier 31½ Marginal Wharf Improvements and Port must pre-</p>

	<p>approve such costs and a schedule for the work. Port agrees to consider and pre-approve changes to costs using the same process as the original pre-approval. Upon Port's written approval of the cost and schedule, Tenant will undertake the Pier 31½ Marginal Wharf Improvements in compliance with Section 13. Upon Completion, (a) subject to the conditions of Section 5.5(b), Tenant shall be entitled to a rent credit not to exceed the lesser of the costs pre-approved by Port or Tenant's actual costs amortized on a straight line basis over the remaining Term of the Lease yielding equal monthly amounts to be taken at a rate of seventy percent (70%) (or a higher percentage as agreed by Port and Tenant in order for Tenant to amortize such costs during the remaining Term) of the total monthly Rent due; and (b) Tenant shall have no further obligations with respect to the repairs performed by Tenant, and Port shall resume its maintenance and repair obligations as set forth in this Lease.</p>
<p><i>Pier 31/ 33 Water Basin and Aprons:</i></p>	<p>Tenant acknowledges that this Lease includes only a portion of the Pier 31/ 33 Water Basin and a portion of the Pier 31 and Pier 33 aprons. The Pier 31 and Pier 33 aprons serve as the secondary means of ingress and egress to the Pier 31 and Pier 33 sheds and must remain accessible for purposes of access and egress to and from The Embarcadero and Tenant shall not obstruct or restrict such access. The areas of the Pier 31/ 33 Water Basin outside the Premises must remain open for safe, unimpeded vessel navigation. Accordingly, the parties agree as follows: (A) Tenant shall navigate as close to the centerline of the Pier 31/ 33 Water Basin as possible taking local conditions (including currents) into consideration in order to leave the basin clear for the safe maneuvering of vessels; there shall be no idling vessels in the basin; (B) as part of its Operations Plan, Tenant shall provide a vessel berthing, scheduling and operations plan to address use of the Pier 31/ 33 Water Basin; and (C) Port reserves the right to allow use of the aprons in connection with uses of the Pier 31/ 33 Water Basin in the case of emergencies and for the following routine maritime uses without limitation: (1) layberthing (including potentially by Tenant including under Tenant's Right of First Refusal as described below), (2) maintenance and repair vessels, barges and equipment including pile driving and dredging equipment, (3) fishing vessels associated with the fish processing operations within the Piers 31 and 33 sheds; and (4) commercial or private vessels laying over during regional transit. For purposes of this Lease, layberthing is generally defined as berthing/storing a vessel that is not being deployed in some kind of in-water service, typically for repairs or on stand-by orders including overnight berthing/storage.</p>
<p><i>Tenant's Right of First Refusal for Use of Aprons and Submerged Lands for Layberthing:</i></p>	<p>Tenant shall have a one-time right of first refusal to enter into an agreement with Port to use the site(s) shown in Exhibit B-3 attached hereto (the "Apron Site(s)") or any portion thereof for layberthing Tenant and/or Affiliate owned vessels used in</p>

	<p>Alcatraz service under the following circumstances and material terms: (i) no later than the Effective Date, Tenant has notified Port in writing of the areas it wishes to use and the duration of such use; (ii) Tenant agrees to use such sites continuously for layberthing and for no other purpose; (iii) a default of the terms of an agreement for layberthing will be a default of this Lease and vice versa; (iv) Tenant must execute an agreement with Port which includes the then-current standard terms and conditions for similar operations including all then-applicable City and Port requirements and payment of rent as established by the then-current published Port Commission-approved rental rate schedule and terms; and (iv) such agreement will be subject to further environmental review and Port Commission and/or Board of Supervisors' approval, each in its sole discretion, as may be applicable.</p> <p>Tenant agrees that the Right of First Refusal provided in this Section is a one-time opportunity expiring on the Effective Date and that Tenant shall have no rights to the Apron Site(s) after the Effective Date. Upon Tenant's exercise of its Right of First Refusal and execution of an agreement on the terms and conditions described in this Section, Port shall use commercially reasonable efforts deliver such site(s) on the Phase I Commencement Date or the earliest date possible after such date if the Apron Site(s) are not available on the Phase I Commencement Date.</p> <p>Tenant shall have no rights under this Section, and Port need not enter into any agreement with Tenant to allow use of any portion of the Apron Sites under this Section if: (i) Tenant cannot adequately demonstrate the need for additional layberthing space relating to its operations at the Premises; or (ii) Tenant is in default under this Lease beyond any applicable cure period at the time that Port would otherwise deliver the Apron Site(s); or (iii) the Apron Site is not intended for the exclusive use of Tenant during the term of the layberthing agreement.</p>
<i>Curb License:</i>	<p><u>Grant of License.</u> In connection with this Lease, Port hereby grants permission to Tenant to carry out the activities described below in the area consisting of approximately one hundred (100) linear feet of "white zone" curb space on the eastern side of The Embarcadero in front of Pier 33 in the City and County of San Francisco, State of California as more particularly described on <i>Exhibit G</i> attached hereto and made a part hereof, together with any and all Improvements and Alterations ("License Area"). This license (the "Curb License") is a revocable, personal, non-assignable (except in connection with a permitted Assignment pursuant to this Lease), non-exclusive, and non-possessory privilege to enter and use the License Area on a temporary basis that commences on the Phase I Commencement Date and expires on the Expiration Date unless sooner terminated pursuant to the terms of this Lease.</p>

The License Area shall be used as a "white zone" solely for a bus/shuttle stop for the drop off and pick up of Tenant's Invitees. This license is subject to all requirements of the Port Harbor Code, as amended from time to time, including without limitation Section 24(d) which states that white zones "shall indicate stopping only for loading or unloading of passengers, day or night, and in any such event the stopping shall be limited to a maximum period of five (5) minutes; provided, however, that in no event shall white zones be used, except for taxicab operators, to originate or solicit business for commercial tour operations or any other commercial operations."

In addition, the following activities are prohibited in the License Area: (a) Parking or stopping for any purpose other than the drop off and pick up Tenant's Invitees; (b) loading or unloading supplies, equipment or materials; (c) interference with the use of the roadway, sidewalk or curb of adjacent Port property by the public, other Port tenants or the Port; (d) installation of any signs, material or equipment. Tenant shall actively manage the License Area to ensure compliance with the terms and conditions set forth herein.

Except as provided herein, the rights by license described above are for the same purposes and are subject to all of the terms and conditions of this Lease as if the License Area is the Premises (including without limitation Section 3.8, but Tenant agrees and acknowledges that, the License is personal, non-assignable (except in connection with a permitted Assignment pursuant to this Lease), non-exclusive, and non-possessory, and revocable and that Port may, in its sole and absolute discretion, upon not less than sixty (60) days' prior written notice to Tenant, revoke or terminate the Curb License at any time prior to the Expiration Date, without cause and without obligation to pay any consideration to Tenant. The parties agree that provisions regarding the nature of the Curb License are material and that the Port would not have granted the Curb License absent such provisions.

Tenant shall be responsible to manage the License Area to ensure compliance with all rules pertaining to its use, and including if necessary, to compensate any City Agency including the Port for the cost of any dedicated enforcement officers, bollards, signage, repainting and minor repair to curbs, signs and bollards.

Port has no obligation, responsibility or liability to provide any services in on or to the License Area; to maintain or repair the License Area; or to remove vehicles parked in the License Area. Tenant shall have no right to perform any Improvements or Alterations to the License Area.

Curb License Fee. From and after the Phase I Commencement Date, Licensee shall pay, as Additional Rent, a monthly License Fee ("**Curb License Fee**") equal to the then-current amount per zone adopted by the Port Commission. In

	<p>addition, Tenant shall pay an initial set up fee equal to the then-current amount per zone adopted by the Port Commission. On each Anniversary Date, the Curb License Fee shall increase by three percent (3%).</p>
<p><i>Assignments, Subleases and Mortgages:</i></p>	<p>As further described in Section 21: (i) Port will consent to an Assignment of this Lease if NPS approves an Assignment of the Ferry Concessioner Contract; and (ii) without NPS's and Port's independent consent, Tenant shall not (A) enter into a sublease or similar agreement allowing another person to use the Premises or any portion thereof including without limitation a manager, vendor or concessionaire; or (B) enter into a mortgage or similar agreement.</p>
<p><i>Embarkation Site Construction Coordination:</i></p>	<p>Tenant and Port will cooperate with each other and with the Conservancy to coordinate construction, maintenance and repair and other activities at the Embarkation Site. If, despite the parties' diligent efforts, the Port's construction, maintenance and repair activities discussed above or in Sections 3.9, 13.10 or 14.3 result in a direct documented loss of Alcatraz Island customers in any month such that Tenant's Percentage Rent due is less than that Tenant's Base Rent due for such month, then, as the sole remedy under this Lease and upon satisfactory documentation where parties are making diligent efforts and there is still a documented loss, Port will provide rent abatement to Tenant in the form of a prorata reduction in Base Rent on a per square footage lost basis for up to a maximum of six (6) months. The parties agree that, for purposes of this Section, diligent efforts shall include scheduling construction, maintenance and repair work in a manner that preserves Tenant's ability to continue trips to Alcatraz Island.</p>
<p><i>Certain Regulatory Approvals:</i></p>	<p>Port shall initiate and Tenant acknowledges that Port will obtain, with Tenant's full cooperation, the Regulatory Approvals listed in (a) - (c) below (collectively, the "Initial Regulatory Approvals") consistent with the Schematic Design and Drawings prior to the start of construction of the Embarkation Site Improvements:</p> <ul style="list-style-type: none"> (i) a BCDC permit(s) for the construction of the Embarkation Site Improvements and Tenant's operations; (ii) an Army Corps of Engineers permit for construction of the Embarkation Site Improvements; and (iii) a RWQCB permit for construction of the Embarkation Site Improvements and Tenant's stormwater management . <p>Port agrees to promptly provide Tenant with copies of all Port correspondence, submissions, applications, or deliverables of a material nature concerning the Initial Regulatory Approvals. Port shall afford Tenant reasonable notice and opportunity to participate in all meetings and hearings regarding the Initial Regulatory Approvals.</p>

	<p>Prior to the start of construction of the Embarkation Site Improvements, Tenant shall, at its sole cost and expense, add its name to the BCDC permit and transfer the other two permits into its name and remove Port from such permits. Port will cooperate with such actions at no cost to Port (except for Port's internal staff time). Tenant agrees and acknowledges that it will be solely responsible at its sole cost and expense and without liability to Port for compliance with all the terms and conditions of the Initial Regulatory Approvals, including without limitation, development, maintenance and repair of any public access areas required by the BCDC permit (notwithstanding that Port will be co-permittee on the BCDC permit) and for any further approval or amendment to any Initial Regulatory Approval due to any deviation from the Schematic Design and Drawings or otherwise.</p>
<i>Utilities:</i>	<p>Tenant's sole responsibility, as further described in Section 12 below. New or upgraded Utilities must be installed above the top surface of the pier deck.</p>
<i>Local Hiring Requirements:</i>	<p>Tenant shall comply with the Local Hire Plan attached hereto as Exhibit H which is hereby incorporated.</p>
<i>City Requirements:</i>	<p>The parties agree that any new Laws and City Requirements (that do not conflict with federal law or for which NPS has not obtained a waiver) effective subsequent to the effective date of the Port/NPS Agreement but prior to the Effective Date of this Lease shall be added to this Lease by written addenda.</p>
<i>Development Project:</i>	<p>Pier 31 ½ Marginal Wharf Improvements; Long-term Conservancy Lease (Port Lease No. L-16274); Seawall Earthquake Safety Program; Pier 31 Building Envelope and Window Repair Project.</p>
<i>Mitigation Measures and Improvement Measures Monitoring and Reporting Program (MMRP):</i>	<p>In order to mitigate any potential significant environmental impacts of the project, Tenant agrees that its development and operation will be in accordance with the MMRP set forth in the FMND and attached as Exhibit I and fully incorporated herein. Tenant is responsible for implementation and compliance with all measures relating to its activities. As appropriate, in addition, Tenant will incorporate the MMRP into any contract for the development and/or operation of the Premises. Failure to comply with the requirements of this Section shall be a default of this Lease.</p>
<i>Lease Prepared By:</i>	<p>Jay Edwards, Senior Property Manager</p>

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LEASE AGREEMENT

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

1. DEMISE.

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

2. DEFINITIONS.

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

"**1998 Concessions Act**" means the National Park Service Concessions Management Improvement Act of 1998 (54 U.S.C. §101911 et seq.) and its implementing regulations, as may be superseded or amended.

"**ACMs**" is defined in Section 16.6 below.

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

"**Additional Rent**" means the Curb License Fee 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 Construction Costs of the Embarkation Site Improvements to the extent unamortized as of Sale Closing.

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

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

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

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

"Approved Pier Flood Protection Plan" is defined in Section 14.

"Apron Sites" means open water areas for vessel berths directly adjacent to pier supported structures adjacent to and alongside Piers 31 and 33 as generally shown on *Exhibit B-3*.

"Assign" or **"Assignment"** shall have the same meanings as in the 1998 Concessions Act and the Ferry Concession Contract.

"Audit Period" is defined in Section 5.6.

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

"Base Rent" means the monthly Base Rent specified in the Basic Lease Information and described further in Section 5.2 hereof.

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

"Books and Records" means all of Tenant's books, records, and accounting reports or statements relating to its business, this Lease, the Embarkation Site Improvements and the operation and maintenance of the Premises, including without limitation, cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the Premises and any other bookkeeping documents Tenant utilizes in its business operations for the Premises. Tenant shall maintain a separate set of accounts to allow a determination of Gross Revenue generated directly from the Premises and all exclusions therefrom.

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

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

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

"CEQA" means the California Environmental Quality Act.

"Certified Construction Costs" are Construction Costs that Port has approved through the procedures described in Section 21.3(c).

"Changes" is defined in Section 10.2 below.

"Chief Harbor Engineer" or **"CHE"** means the Port's Chief Harbor Engineer acting in his/her regulatory capacity as the Port's chief building official in accordance with applicable Laws.

"CHE Determination" as defined in Section 14.

"CHE Determination Notice" as defined in Section 14.

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

"City Agency" means a department of 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 Embarkation Site Improvements under Internal Revenue Code Section 168(e).

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

"Commission" means the San Francisco Port Commission.

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

"Completion" or **"Completed"** means, as the case may be, completion by Tenant of all aspects of (i) the Embarkation Site Improvements in accordance with the Work Letter (including the Scope of Development), (ii) Subsequent Alterations, or (iii) any other improvements undertaken by Tenant under the provisions of this Lease; each in compliance with all Regulatory Approvals and Port's issuance of applicable certificates of occupancy, completion or other written evidence of Port's sign-off on a building permit or other documentation as required. Where this Lease specifies phased construction, Completion means Completion as to each specified phase.

"Concession Franchise Fee" is defined in Section 5.1.

"Conduct Code" is defined in Section 31.13.

"Conservancy" is defined in the Basic Lease Information.

"Construction Costs" means actual costs paid by Tenant for all categories of costs for Embarkation Site Improvements, without interest, and subject to the limitations set forth in the Work Letter, and amortized on a straight line basis over the Class Life of the Embarkation Site Improvements.

"Construction Costs Report" means a report prepared by a CPA specifying the Class Life of and verifying Tenant's actual Construction Costs for the Embarkation Site 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.

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

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

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

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

"Curb License" is defined in the Basic Lease Information.

"Curb License Fee" is defined in the Basic Lease Information.

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

"disturbed or removed" is defined in Section 13.3(g) below.

"Dredging Work" is defined in Section 11.5.

"DMMO" means the Dredged Material Management Office.

"Effective Date" is defined in the Basic Lease Information.

"Embarkation Site" is defined in the Basic Lease Information.

"Embarkation Site Improvements" means the Improvements to be constructed by Tenant as further described in the Basic Lease Information and the Work Letter.

"Embarkation Site Improvements Outside Completion Date" is defined in the Basic Lease Information.

"Encroachment Area" is defined in Section 3.13 below.

"Encroachment Area Charge" is defined in Section 3.13 below.

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

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

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

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

"Event of Default" is defined in Section 22.

"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.

"Facility" means the piers, buildings or other structure in or on which the Premises is located including the entire Embarkation Site and Pier 31½ Facility No. 1315; Pier 33 Bulkhead Facility No. 1330; Pier 33 Shed Facility No. 1300; Pier 31 Shed Facility No. 1310; and the Pier 31/33 Water Basin.

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

"Ferry Concession Contract" means a valid and effective contract entered into under authority of the 1998 Concessions Act between NPS and each successive Ferry Concessioner authorizing a Ferry Concessioner to provide: (i) passenger ferry and associated services between the Embarkation Site and a landing at Alcatraz Island; (ii) if authorized or required by NPS: passenger ferry and associated services between the Embarkation Site and a landing at another NPS site in the San Francisco Bay Area and/or a landing at a non-NPS park within the San Francisco Bay Area for which NPS provides cooperative services through a partnership with another entity; and (iii) Interpretive Park Cruises.

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

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

"Force Majeure" means events which result in delays of performance of a party's obligations hereunder due to causes beyond the party's control and not caused by the acts or omissions of such party, including acts of nature or of the public enemy, war, invasion, insurrection, riots, any general moratorium in the issuance of governmental or regulatory permits applicable to the Premises or the Improvements, any failure of a Regulatory Agency to issue a Regulatory Approval (provided that Tenant has acted with all due diligence to obtain such Regulatory Approval), any action by a third party challenging a Regulatory Approval that delays the finality thereof, acts of the government, fires, floods, earthquakes, tidal waves, epidemics, quarantine, restrictions, strikes, freight embargoes, unusually severe weather (but only if such unusually severe weather causes actual delays); delays of contractors or subcontractors due to any of the foregoing causes; strikes and substantial interruption of work because of labor disputes (excluding strikes and labor disputes directly related to any contracts between a party and its contractors or work performed on behalf of such party). Force Majeure does not include (1) failure to obtain financing or failure to have adequate funds, (2) sea level rise; and (3) any event that does not cause an actual delay.

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

"Gross Ancillary Revenue" is defined in Section 5.1.

"Gross Revenue" is defined in Section 5.1.

"Gross Food and Beverage Revenue" is defined in Section 5.1.

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

"Gross Ticket Revenue" is defined in Section 5.1.

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

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

"Hard costs" is defined in Section 11.4 below.

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

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

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

"HEPA" is defined in Section 13.3(g) 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, and ferry barges, docks and associated infrastructure).

"Improvement Costs" is defined in Section 4.4(b).

"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" means Port and City, including, but not limited to, all of their respective boards, commissions, departments, agencies, and other subdivisions, and their respective Agents.

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

"Initial Regulatory Approvals" is defined in the Basic Lease Information.

"Interpretive Park Cruises" means an excursion departing from and returning to the Embarkation Site without any landings in between which travels through waters within Golden Gate National Recreation Area and includes substantive interpretive materials regarding the NPS and NPS's parks.

"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.

"Late Charge" means a fee of fifty dollars (\$50.00) with respect to Base Rent and a fee equivalent to One Hundred Dollars (\$100.00) with respect to Percentage Rent and Monthly and Annual Statements.

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

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

"Lease Year" means the twelve (12) month period starting on each Commencement Date and ending on the last day of the twelfth (12th) month after such date and each subsequent twelve month period.

"License Area" is defined in the Basic Lease Information.

"Marginal Wharf" means the approximately 43,000 square foot pile-supported wharf located between Pier 31 and Pier 33 commonly known as Pier 31½.

"NPS" means the National Park Service.

"Net Sale Proceeds" means Gross Sale Proceeds less Costs of Sale and goodwill. If Tenant made Embarkation Site Improvements at the Premises, Tenant's Adjusted Basis may be deducted if Tenant previously complied with Section 21.3.

"Notice of Removal" is defined in Section 13.5 below.

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

"Notice to Vacate" is defined in Section 3.13 below.

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

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

"PACMs" is defined in Section 16.6 below.

"**Percentage Rent**" means the Percentage Rent set forth in the Basic Lease Information and Section 5.

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

"**Phase I Commencement Date**" is defined in the Basic Lease Information.

"**Phase II Commencement Date**" is defined in the Basic Lease Information.

"**Phase I Premises**" means that portion of the Premises that is delivered on the Phase I Commencement Date.

"**Phase II Premises**" means that portion of the Premises that is delivered on the Phase II Commencement Date.

"**Phase I Rent Commencement Date**" the date on which the payment of Rent commences for the Phase I Premises as specified in the Basic Lease Information.

"**Phase II Rent Commencement Date**" the date on which the payment of Rent commences for the Phase II Premises as specified in the Basic Lease Information.

"**Pier 31½ Marginal Wharf Improvements**" is defined in the Basic Lease Information.

"**Pier 31/ 33 Water Basin**" means the open water area between and extending to the end of Piers 31 and 33.

"**Pier Flood Protection Measures**" is defined in Section 14.

"**Pier Flood Protection Plan**" is defined in Section 14.

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

"**Port program or project**" shall mean (a) any development, removal or renovation, by public and/or private parties, of the building, pier or seawall lot in, on or in the vicinity of the Premises and any Development Project described in the Basic Lease Information, (b) the Seawall Resiliency Project; and (c) the Pier 31½ Marginal Wharf Improvements.

"**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 13.10 below.

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

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

"**prevailing party**" is defined in Section 24.1 below.

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

"**Project Requirements**" is defined in the Work Letter.

"**Proof of Expenditures**" documentation, 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, satisfactory to Port evidencing expenditures for improvements. 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) and such other proofs of expenditure as may be reasonable approved by Port, and (v) as applicable, unconditional lien waivers from all contractors and subcontractors.

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

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

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

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

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

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

"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.

"RWQCB" means the State of California Regional Water Quality Control Board.

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

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

"saltwater immersion" is defined in Section 31.12.

"Scope of Development" means schematic design and drawings, the Schedule of Performance, the preliminary plans and any narrative description which is attached to the Work Letter (*Exhibit E*) as Attachment 1. The Scope of Development includes the Schematic Design and Drawings prepared by NPS and approved by Port prior to the Effective Date.

"Seawall" is defined in Section 3.7 and shown on *Exhibit B-4* in relation to the Premises.

"Secretary's Standards" is defined in Section 13.3(e) below.

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

"Significant Change" means (1) a change in the identity of Controlling Tenant, (2) the admission of any new shareholder or other equity investor that has the right to exercise Control over Tenant, (3) the dissolution of Tenant, or (4) the sale of fifty percent (50%) or more of Tenant's assets, outstanding equity interests, capital or profits or of the assets, outstanding equity interests, capital or profits of any Person Controlling Tenant. 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 a transfer of such stock does not constitute a Significant Change under this Lease.

"Special Event" means use of the Premises for the following types of activities, which, in each case, have been approved in writing by NPS: concerts, musical and theatrical performances and other forms of live entertainment, public ceremonies, art or historical exhibitions or other public or private exhibitions and activities related thereto related to programming on Alcatraz Island or other NPS sites or programs.

"Sublease" means the following events or proposed events: (a) a proposed or actual sublease, sublicense or agreement of similar effect with a subtenant, sublicensee, manager, vendor, concessionaire, food truck or food cart operator for all or any part of the premises as defined in a lease or similar agreement; (b) any person other than Tenant occupies or claims a right of possession to any part of the Premises; or (c) any further sublease, sublicense or agreement of similar effect with a subtenant of any of its interest in its sublease or premises.

"Subleasing 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.

"Subsequent Alteration" means all alterations, installations, Improvements, repairs to and reconstruction, replacement, addition, expansion, restoration, alteration or modification of any Improvements, or any construction of additional Improvements, following completion of the Embarkation Site Improvements pursuant to the Work Letter. As otherwise provided by this Lease, Subsequent Alterations may include: the Pier 31½ Marginal Wharf Improvements and/or specified Port's maintenance and repair obligations if assigned to Tenant.

"Substructure" means that portion of the pier that includes all the load bearing structural elements that are at or below the top surface of the pier deck. The load bearing structural elements of the substructure include but are not limited to slab/deck, beams and piles. For purposes of this Lease, "Substructure" does not include the asphalt covering the apron or the wooden decking or any utilities located within or under the Substructure.

"SWPPP" is defined in Section 16.8(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.

"Tariff" means the Port of San Francisco Tariff No. 5 on file with the Federal Maritime Commission, as amended or superseded from time to time (including amendments to the numbering designation). Except as otherwise set forth in this Lease, Tenant is contractually bound by all Tariff terms and conditions as if the same were set forth in full herein. In the event of a conflict between the provisions of the Tariff and the provisions of this Lease, the provisions of this Lease shall prevail.

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

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

"Term" is defined in Section 4.1 below.

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

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

"Waiving Party" is defined in Section 17.5.

"Work" when used in reference to construction is defined in Section 13.3(c).

"worth at the time of award" is defined in Section 23.2 below.

3. PREMISES; AS-IS CONDITION.

3.1. Premises.

(a) Subject to the provisions of this Lease, Port hereby leases to Tenant, and Tenant hereby leases from Port, the Premises 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 B** attached hereto and incorporated herein by reference. Except as otherwise set forth in the Basic Lease Information regarding re-measurement upon Completion of the Embarkation Site Improvements, Port and Tenant agree and acknowledge that (i) any statement of rentable or usable (if applicable) square footage set forth in this Lease is an approximation which Port and Tenant agree is reasonable and that the usable square footage of the Premises may be less than the rentable square footage of the Premises; (ii) the rentable square footage of the Premises shall be used at all times to calculate the Base Rent due and payable by Tenant under this Lease; and (iii) neither the Base Rent nor any other economic term based on rentable square footage shall be subject to revision whether or not the actual rentable or usable square footage is more or less.

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

3.2. Accessibility Inspection Disclosure.

California law requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("CASp") to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. Tenant is hereby advised that the Premises has not been inspected by a CASp and, except to the extent expressly set forth in

this Lease, Port shall have no liability or responsibility to make any repairs or modifications to the Premises in order to comply with accessibility standards. The following disclosure is required by law:

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

3.3. San Francisco Disability Access Disclosures. Tenant is hereby advised that the Premises may not currently meet all applicable construction-related accessibility standards, including standards for public restrooms and ground floor entrances and exits. Tenant understands and agrees that Tenant may be subject to legal and financial liabilities if the Premises does not comply with applicable federal and state disability access Laws. As further set forth in Section 9 (Compliance with Laws), Tenant further understands and agrees that it is Tenant's obligation, at no cost to Port, to cause the Premises and Tenant's use thereof to be conducted in compliance with the ADA and any other federal or state disability access Laws. Tenant shall notify Port if it is making any Alterations or Improvements to the Premises that might impact accessibility standards required under federal and state disability access Laws.

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

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

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

3.7. Seawall. The City is engaged in an effort to prepare for a major earthquake and to create more resilient City infrastructure. As part of this effort, the Port is developing a plan to strengthen the Northern Waterfront Seawall which stretches from Fisherman's Wharf to Mission Creek ("Seawall") to maintain viability of Port's operations, increase protection of Port and City assets, and enhance life safety in the face of degradation, flooding, earthquakes, climate change, and security hazards. The Seawall was constructed over 100 years ago within the Bay and supports reclaimed land, or fill, and as a result is more vulnerable to seismic risk. Earthquake performance of reclaimed land is an issue for coastal communities worldwide. *The Seawall Earthquake Vulnerability Study of the Northern Waterfront Seawall, San Francisco, California July 2016* and information about Port and City's resiliency goals and plans and improvements can be found on the Port's website at: <http://sfport.com/seawall>. Tenant agrees that its waiver of Claims set forth in Section 20 below (Indemnity and Exculpation) is given with full knowledge of the direct or indirect, known or unknown, and foreseeable or unforeseeable losses and claims (including the potential additional risks of injury or death to persons or damage to property) due to the Seawall's condition or the proximity of the Premises to the Bay and the Seawall.

3.8. As-Is Condition. Tenant acknowledges and agrees that Tenant is familiar with the Premises, the Premises is being leased and accepted in phases in their "as-is" condition, without any preparation, improvements or alterations by Port except for the Pier 31½ Marginal Wharf Improvements, without representation or warranty of any kind, and subject to all applicable Laws governing their use, occupancy and possession. Tenant acknowledges that it has been afforded a full opportunity to inspect Port's records relating to conditions of the Facility. Port makes no representation or warranty as to the accuracy or completeness of any matters contained in such records and Tenant is not relying on any such information. All information contained in such records is subject to the limitations set forth in this Section. Tenant represents and warrants to Port that Tenant has received and reviewed the disclosures regarding the Seawall in Section 3.7 above including *The Seawall Earthquake Vulnerability Study of the Northern Waterfront Seawall, San Francisco, California July 2016* and information on the Port's website; the FEMA disclosure notice attached as **Schedule 3** and a copy of the report(s) relating to the Substructure and/or superstructure of the Facility, as further described in **Schedule 2** attached hereto. Tenant further represents and warrants to Port that Tenant has investigated and inspected, either independently or through agents of Tenant's own choosing, the condition of the Facility and its suitability for Tenant's business and intended use including (i) its quality, nature, adequacy and physical condition including the structural elements, foundation, and the condition and load-bearing capacity of the piles, and all other physical and functional aspects; (ii) its quality, nature, adequacy, and physical, geotechnical and environmental conditions (including Hazardous Materials conditions, including the presence of asbestos or lead, with regard to the buildings, soils, sediments and any groundwater); (iii) its suitability for the Improvements; (iv) its zoning, land use regulations, historic preservation laws, and other Laws governing use of or construction on the Site; and (v) all other matters of material significance affecting the Facility and its use and development under this Lease. Tenant specifically acknowledges and agrees that neither City, Port nor any of their agents have made, and Port hereby disclaims, any representations or warranties, express or implied of any kind, concerning the rentable area of the Premises, the physical or environmental condition of the Premises or the Facility (including, but not limited to the substructure and/or the Seawall), the present or future suitability of the Premises for Tenant's business, any compliance with laws or applicable land use or zoning regulations, any matter affecting the use, value, occupancy or enjoyment of the site, or any other matter whatsoever relating to the Premises, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

3.9. Reserved Rights Regarding Seawall. Port has the right to use the Premises on an extended basis, without charge, and Tenant shall cooperate by providing access and other reasonably requested assistance at no cost to Port and permit Port and its Agents to enter the Premises upon reasonable prior notice but not less than ten (10) business days (except in the event of an emergency which poses an imminent danger to public health or safety as determined

by Port in its sole discretion) for the purpose of inspecting, repairing and rebuilding the Seawall as Port reasonably deems necessary. Nothing herein shall imply any duty upon the part of Port to perform any work which under any provision of this Lease Tenant may be required to perform or place upon Port any obligation, or liability, for the care, supervision or repair of the Premises or Seawall. If Port elects to perform work on the Seawall within the Premises pursuant to this Section, Port shall not be liable for and Tenant hereby waives any and all Claims against Port, City and their Agents arising out of any disturbance, inconvenience, nuisance, loss of business or other damage to Tenant by reason of the performance of such work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, provided Port uses commercially reasonable efforts to minimize inconvenience or disturbance to the activities of Tenant, its Subtenants (if any), and their respective Invitees. Except as provided in the Basic Lease Information in the section entitled "*Embarkation Site Construction Coordination*," in no event will inconvenience or disturbance caused by Port's activities under this Section constitute an actual or constructive eviction of Tenant, entitle Tenant to any abatement or diminution of Rent, or otherwise relieve Tenant from any of its obligations under this Lease. If such use of the Premises is required by Port or its Agents, then the parties will coordinate their use of the Premises and use their good faith efforts to minimize adverse impacts to each of their respective needs. Port will have the absolute right to use the Premises without charge in the event of an emergency involving the Seawall.

3.10. *Port's Rights Regarding Premises.* Port shall have the full right and authority to make, revoke, impose, and amend any Rules and Regulations pertaining to and reasonably necessary for the proper use, operation and maintenance of the Facility and Tenant agrees to be bound by any Rules and Regulations Port 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.

3.11. *Flags.* Throughout the Term, a Port flag will fly on each flagpole within the Premises ("**Flagpoles**"). Port will provide the Port flags to Tenant. The dimensions of Port flags will be similar to the dimensions of Port flags flown on the roofs of Port buildings in the Central Waterfront. Tenant will promptly, at no charge, install, raise, lower and remove Port flags at Port's request. Tenant also may use the Flagpoles to fly other flags on each Flagpole, provided that such other flags, other than the flags of the United States and the State of California, must be placed beneath the Port flag.

3.12. *Use of Intellectual Property; Music Broadcasting Rights/Port logo.* Tenant is solely responsible for obtaining any necessary clearances or permissions for the use of intellectual property owned by third parties, including musical or other performance rights.

3.13. *No Right to Encroach.*

(a) If Tenant (including, its Agents, Invitees, successors and assigns) uses or occupies space outside the Premises without the prior written consent of Port (the "**Encroachment Area**"), then upon written notice from Port ("**Notice to Vacate**"), Tenant shall immediately vacate such Encroachment Area and pay as Additional Rent for each day Tenant used, occupied, uses or occupies such Encroachment Area, an amount equal to the rentable square footage of the Encroachment Area, multiplied by the higher of the (i) highest rental rate then approved by the San Francisco Port Commission for the Premises or the Facility, or (ii) then current fair market rent for such Encroachment Area, as reasonably determined by Port (the "**Encroachment Area Charge**"). If Tenant uses or occupies such Encroachment Area for a fractional month, then the Encroachment Area Charge for such period shall be prorated based on a thirty (30) day month. In no event shall acceptance by Port of the Encroachment Area Charge be deemed a consent by Port to the use or occupancy of the Encroachment Area by Tenant, its Agents, Invitees, successors or assigns, or a waiver (or be deemed as a waiver) by Port of any and all other rights and remedies of Port under this Lease (including Tenant's obligation to Indemnify Port as set forth in the last paragraph of this Section 3.13, 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 20 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. TERM OF LEASE; EXTENSIONS; TERMINATION BY PORT.

4.1. Term. The term of this Lease (the "Term") shall be for the period specified in the Basic Lease Information commencing on the Effective Date and expiring on the Expiration Date as set forth in the Basic Lease Information and in any Memorandum executed by Port and Tenant confirming an actual Effective Date and/or Expiration Date.

4.2. Existing Leases. Tenant acknowledges the following existing leases as of the Effective Date:

(i) Port Amendment to and Restatement of Lease No. L- 12501, as amended, with Hornblower Yachts, Inc. for portions of the Facility.

(ii) Port Lease No. L-15837 with San Francisco Pier 33 LLC for the Pier 33 South Bulkhead Building.

4.3. Delivery of Premises. If Port is unable to deliver possession of the Premises or any portion thereof to Tenant, 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 or any portion thereof. Notwithstanding anything to the contrary above, if Port's inability to deliver possession of the Premises or any portion thereof on an estimated Commencement Date results from Tenant's or its Agents' acts or omissions, then Rent payable by Tenant hereunder shall commence on the date when Port would have delivered possession of the Premises but for such acts or omissions.

4.4. Port's Termination Rights. Notwithstanding any other provision of this Lease,

(a) Port has the right to terminate this Lease if the CHE determines, in his or her 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 by Port. If Port consents in writing, Port's notice of termination will be deemed rescinded and of no further effect.

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

4.5. Termination of Port/NPS Agreement Due to Alcatraz Island.

(a) In the event that the Port/NPS Agreement is terminated under Sections 5.5(a) or 5.5(e) of the Port/NPS Agreement due to issues with Alcatraz Island, and (a) no 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; and (b) Tenant has Completed the Embarkation Site Improvements; then, Port may elect in its sole discretion to either: (i) terminate this Lease and pay Tenant a portion of the Improvements Costs for the Embarkation Site Improvements under the terms and conditions specified in Section 4.4(b) based on the expected term of the Ferry Concession Contract and this Lease; or (ii) offer Tenant an extension option to continue this Lease until the earliest of the following events: (A) the original expiration date of the Ferry Concession Contract; (B) NPS chooses another party as a Ferry Concessioner; or (C) the date the Embarkation Site Improvements are amortized.

(b) If Port offers an extension option and Tenant elects to extend, then the Lease shall be on all of the terms, conditions and covenants of this Lease, including Tenant's eligibility for rent credits. If Tenant does not elect to extend, the Lease shall expire on the date that the Port/NPS Agreement terminates (or such later date established by mutual written

agreement for the convenience of the parties) and the parties will have no further obligations except those that expressly survive the expiration or earlier termination of this Lease. In this case, Port shall have no obligation to pay Improvement Costs or any portion thereof, moving or relocation costs or any other responsibility or liability to Tenant except as expressly provided in this Lease

(c) Nothing in this Section 4.5 affects Port's or Tenant's rights under Section 4.4(a) or (b), Section 18 (Damage and Destruction), Section 19 (Eminent Domain) or Section 14 (Flood Risk and Sea Level Rise).

4.6. Month to Month Hold Over. Any holding over after the expiration of this Lease or the expiration or earlier termination of the Port/NPS Agreement (including without limitation, any holding over after expiration of an extension term provided in Section 4.5) 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. Either party may cancel the month-to-month tenancy upon thirty (30) days written notice to the other party. If Tenant holds over with the prior written consent of Port, monthly Base Rent shall be equal to the higher of: (a) the Base Rent payable in the month immediately preceding the expiration of this Lease increased by three percent (3%), or (b) the then current rate for the Facility approved by the Port Commission, in either case together with any monthly charge of Additional Rent payable under this Lease.

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 plus any Percentage Rent which would be otherwise due.

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.

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

5. RENT.

Unless otherwise specified in this Lease, Tenant's obligation to pay Rent shall commence on the relevant Commencement Date. Tenant shall pay Rent to Port in the manner described below.

5.1. Definitions.

"Concession Franchise Fee" means the Ferry Concessioner's franchise fee as defined in the Ferry Concession Contract.

"Gross Ancillary Revenue" all other Gross Revenues including revenues from, without limitation, charter transportation for Special Events and photo sales after exclusions above are deducted.

"Gross Food and Beverage Revenue" means the Gross Revenue from food and beverages sales on board vessels after exclusions above are deducted.

"Gross Revenue" means, subject only to the exceptions explicitly provided in this Lease, all sales, payments, revenues, income, fees, rentals, receipts, proceeds and amounts of any kind whatsoever, whether for cash, credit or barter, received or receivable by Tenant or any other party from any business, use or occupation, or any combination thereof, transacted, arranged or performed, in whole or in part, on the Premises, including without

limitation, all returns and refunds, employee meals, discounted and complimentary meals, beverages and services or similar benefits and/or goodwill, the total value, based on price, for the tickets, cover charges, merchandise and any other items and the operation of any event, including any Special Event or fundraising event, and catering or food delivery business conducted by, from or at the Premises (irrespective of where the orders therefor originated or are accepted and irrespective of where the food or beverages are consumed). Gross Revenues shall include on-vessel audio and interpretive tours revenues if an Interpretive Park Cruise includes such revenues. Without exception, Gross Revenues shall be determined without reserve or deduction for failure or inability to collect (including, without limitation, spillage and waste) and without deduction or allowance for cost of goods sold or other costs, charges or expenses of purchasing or selling incurred by Tenant. No value added tax, no franchise or capital stock tax and no income, gross receipts or similar tax based upon income, profits or gross receipts as such shall be deducted from Gross Revenues.

The following amounts shall be excluded from Gross Revenues in the manner illustrated in Section 5.3 provided that, Tenant provide to Port separate records to support such deductions or exclusions, as the case may be, and separate notations are made for same on Tenant's Monthly and Annual Statements:

(i) (A) sums collected for any sales or excise tax imposed directly upon the Ferry Concessioner by any duly constituted governmental authority (but only if stated separately from the selling price of the goods, merchandise or services, and collected from customers, and in fact paid to the appropriate governmental authority for which they are collected); (B) audio and interpretive tours revenue passed through to the Conservancy for tours on Alcatraz Island; (C) NPS Federal Lands Recreation Enhancement Act ("FLREA") fees passed through to NPS; and (D) Angel Island Tram Tour and Park Entrance Fees passed through to California State Parks or its concessioners;

(ii) the amount paid to NPS as a Concession Franchise Fee (the deduction of which shall be no more than twenty-five and one-half percent (25.5%)).

Administrative overhead or markups on these above items will not be excluded from Gross Revenues. Any increase of other pass through fees included in the overall ticket price (currently NPS "amenity fee" or Conservancy audio tour fee) or change in calculation or collection of such fee will not affect the amount of the deduction for the purposes of determining Gross Revenues.

"Gross Ticket Revenue" means the Gross Revenues from ticket sales after the exclusions above are deducted.

5.2. Base Rent. Tenant shall pay Base Rent for the first month for the Phase I Premises on or before the Effective Date. Subsequently, beginning on the relevant Commencement Date for each parcel, Tenant shall pay the monthly Base Rent, in advance, on or before the first day of each calendar month throughout the Term. If necessary, Base Rent shall be apportioned based on a thirty (30) day month. Except as otherwise specifically set forth in this Lease, under no circumstances shall Tenant's obligation to pay Rent be delayed due to failure to complete the Embarkation Site Improvements, Force Majeure, Port delays or other reasons.

5.3. Exclusion for Concession Franchise Fee. The following illustrates the exclusion of the Concession Franchise Fee for descriptive purposes only assuming a 25.5% Concession Franchise Fee:

Total Monthly ferry ticket revenues	\$1,000,000	A
Allowable exclusions under Lease other than Concession Franchise Fee	<u>\$250,000</u>	B
	\$750,000	C=A-B
Concession Franchise Fee at 25.5%	<u>\$191,250</u>	D
"Gross Revenue" under Lease for Ferry Ticket Sales	\$558,750	E=C-D
Monthly Percentage Rent Due under Lease for Ferry Ticket Sales (if, added to other categories, exceeds monthly base rent).	\$41,906	F=E*7.5%

5.4. Percentage Rent.

As further described in the Basic Lease Information, Tenant agrees to pay to Port, in addition to the monthly Base Rent payable by Tenant pursuant to Section 5.1 above, a monthly Percentage Rent in an amount equal to the difference between (i) the percentage rent for such calendar month and (ii) the Base Rent for such calendar month for all Parcels except Parcel G in any month in which the percentage rent exceeds the Base Rent the taking into consideration any rent credits that may be applicable. Tenant shall separately determine and report percentage rent for: (A) excursions that land at Alcatraz Island; and (B) Interpretative Park Cruises.

(a) No reduction, change, waiver or concession by NPS with respect to the Concession Franchise Fee will affect the calculation of Gross Revenues unless approved in writing by Port in advance in its sole discretion.

(b) Percentage 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, Percentage 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 Percentage Rent, Tenant shall furnish a complete statement (the "**Monthly Percentage 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 Percentage 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 Percentage Rent Statements only and shall not result in any averaging of monthly Percentage Rent. Each Monthly Percentage 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 Percentage Rent for the immediately preceding calendar month or Lease Year, as applicable.

(c) Each Monthly Percentage Rent Statement shall be certified as accurate, complete and current by a financial officer or other accountant employed by Tenant who is authorized and competent to make such Monthly Percentage Rent Statement. Each Annual Statement shall be certified as accurate, complete and current by an independent CPA. Tenant must submit payment of the balance owing together with any Annual Statement showing that Tenant has underpaid Percentage Rent. At Port's option, overpayments may be refunded to

Tenant, applied to any other amount then due under the Lease and unpaid, or applied to Rent due at the first opportunity following Tenant's delivery of any Annual Statement showing an overpayment.

(d) If Tenant fails to (i) pay the Percentage Rent on the date due as provided above; (ii) submit the Monthly Percentage Rent Statement therewith (even if the statement indicates that Percentage Rent is not due); or (iii) fails to submit the Annual Statement, 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 Monthly Percentage Rent Statement or Annual Statement within the time period set forth in this Section 5.3 (irrespective of whether any Percentage 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 Percentage Rent due and payable for the period in question, including any Late Charge. Tenant acknowledges that late submittal of the Monthly Percentage Rent and Annual Statements and late payment of Percentage 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.

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

5.5. Rent Credits.

(a) Rent Credits for Embarkation Site Improvements. As described in this Section, and subject to subsection (b), Tenant shall be entitled to a rent credit for Embarkation Site Improvements that are so designated in the Work Letter Attachment 1 in an amount not to exceed Two Million Five Hundred Twenty Thousand dollars (\$2,520,000) to be taken monthly against all Rent due in the manner described in the Basic Lease Information. The following example demonstrates how the rent credit shall be applied.

Total Rent Credit Available: \$2,520,000 divided by 48 months = \$52,200
Monthly Revenues Subject to Percentage Rent: \$2,000,000
Percentage rent: \$150,000
Less Monthly Base Rent: \$70,000
Percent Rent Due: \$80,000
Total Rent due: \$150,000

Maximum Rent Credit applied: \$52,200
Net Rent Due: \$97,500

(b) Rent Credits for the Pier 31 ½ Marginal Wharf Improvements and/or specified Port's maintenance and repair obligations if assigned to Tenant. Costs expended by Tenant for the Pier 31 ½ Marginal Wharf Improvements and/or specified Port's maintenance and repair obligations assigned to Tenant as otherwise provided under this Lease must be "Certified" in order to be eligible for rent credits. Certified costs are those hard and soft costs for which Tenant: (a) has obtained prior written approval by Port to incur for the purposes of eligibility for rent credits as part of a proposed work plan or otherwise; (b) has paid any and all permit or

review fees (including, but not limited to those charged by Port); and (c) has obtained all required Regulatory Approvals. Port agrees to consider and pre-approve changes to costs using the same process as the original pre-approval.

(c) **Additional Conditions for All Rent Credits.** In addition to the requirements set forth in the Basic Lease Information and the specific requirements applicable to each obligation as set forth above in Subsections(a) and (b), the following requirements apply regarding rent credits:

(1) Within thirty (30) days after final Completion of the Embarkation Site Improvements, Tenant shall deliver to Port an itemized statement of the actual costs expended by Tenant accompanied by Proof of Expenditures for such work reasonably satisfactory to Port. Costs expended for improvements that are eligible for rent credits shall not include any items other than those identified in the Work Letter Attachment I for the Embarkation Site Improvements or items pre-approved by Port for any other scope of work and shall not include items related to Tenant's trade fixtures, office equipment and supplies, furniture, communications facilities or any other items of personalty not intended to be affixed to or become a part of the Facility or Facility Systems, nor any fees, exactions, impositions, or similar charges imposed as a condition to permit approval. To the extent Tenant (through its employees, contractors, or any party in which Tenant has a direct financial interest) performs any of the improvements, the costs for such labor shall be no more than the commercially reasonable, market-rate labor charges typically charged for such work by parties in an arms-length transaction. In no event shall the cost of any construction management fees, general administrative costs or other forms of mark-up be eligible for rent credits unless clearly identified in the approved scope of work. Furthermore, in no event shall maintenance, repair and/or replacement costs for the Embarkation Site Improvements be eligible for rent credits. Upon receipt of Proof of Expenditures, Port in its reasonable discretion shall determine in writing the costs eligible for rent credits and Tenant may apply such rent credits in accordance with the provisions of the Basic Lease Information and this Section.

(2) Rent credits cannot be applied retroactively.

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

(4) In the event all or any portion of the rent credit available to Tenant exceeds seventy percent (70%) (or a higher percentage as agreed by Port and Tenant as described in the Basic Lease Information) of the monthly installment of Rent due, the remaining portion of the rent credit shall be carried forward to the next installment of monthly Rent until the earlier to occur of (i) the rent credit being fully applied, (ii) the expiration or earlier termination of this Lease excluding any holdover period (with or without Port consent), or (iii) an uncured default by Tenant of any term or condition of this Lease.

(5) Tenant agrees and acknowledges that any right or claim Tenant may have to any form of rent credit that has not yet been actually applied ("**unused rent credit**") shall, upon the earlier to occur of (a) an uncured default by Tenant of any term or condition of this Lease, (b) Tenant's failure to submit to Port within thirty (30) days following completion of the work, Proof of Expenditures related to such improvements, as described in Section 5.5(b); or (c) the expiration or earlier termination of this Lease excluding any holdover

period (with or without Port consent), be immediately terminated, without notice, and Port shall have no liability or obligation to pay or credit Tenant all or any portion of the unused rent credit.

5.6. Books and Records. Tenant agrees that the business of Tenant upon the Premises shall be operated with a non-resettable register and so that a duplicate dated sales slip or such other recording method reasonably acceptable to Port shall be issued with each sale, whether for cash, credit or exchange. Furthermore, Tenant shall keep (and shall cause its Subtenants and assignees to keep) at the Premises at all times during the Term complete and accurate Books and Records that contain all information required to permit Port to verify Gross Revenues and deductions and exclusions therefrom that are in accordance with this Lease and with generally accepted accounting practices consistently applied with respect to all operations of the business to be conducted in or from the Premises and shall retain such Books and Records until the later of (i) four (4) years after the end of each Lease Year to which such Books and Records apply or, (ii) if an audit is commenced or if a controversy should arise between the parties hereto regarding the Percentage Rent payable hereunder, until such audit or controversy is concluded even if such audit period extends beyond the expiration or earlier termination of the Lease (the "Audit Period").

5.7. No Joint Venture. Port's receipt of a portion of Tenant's Gross Revenues as Percentage 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.

5.8. Audit.

(a) 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 Percentage Rent for a period not to exceed the Audit Period after a Percentage 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.

(b) 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 for either Base Rent or Percentage 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.

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

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

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

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

5.13. Additional Charges. Without limiting Port's other rights and remedies set forth in this Lease, at law or in equity, in the event Tenant fails to submit to the appropriate party, on a timely basis, the items identified in Sections: 12.1 (Utilities), 16.3 (Tenant's Environmental

Condition Notification Requirements), 16.8. (Storm Water Pollution Prevention), 31.1(d) (CMD Form), and 34 below or to provide evidence of the required insurance coverage described in Section 17 below, then upon written notice from Port of such failure, Tenant shall pay, as Additional Rent, an amount equaling One Hundred Dollars (\$100.00). In the event Tenant fails to provide the necessary document within the time period set forth in the initial notice and Port delivers to Tenant additional written notice requesting such document, then Tenant shall pay to Port, as Additional Rent, an amount equaling One Hundred Fifty Dollars (\$150.00) for each additional written notice Port delivers to Tenant requesting such document. The parties agree that the charges set forth in this Section 5.13 represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Tenant's failure to provide the documents identified in this Section 5.13 and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this Lease, at law or in equity. By signing this Lease, each party specifically confirms the accuracy of the statements made in this Section 5.13 and the reasonableness of the amount of the charges described in this Section 5.13.

6. TAXES AND ASSESSMENTS.

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

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

information relating to any assignment of or sublease under this Lease to the County Assessor within sixty (60) days after such assignment or sublease transaction.

7. REQUIRED FINANCIAL ASSURANCES.

7.1. Security Deposit. Tenant shall pay to Port upon execution of this Lease, in addition to the advance payment of the first month's Base Rent, the Security Deposit, in cash, in the sum specified in the Basic Lease Information, as security for the faithful performance by Tenant of all terms, covenants and conditions of this Lease. The parties agree that the Security Deposit shall, at all times during the Term, equal twenty-thousand dollars (\$20,000) plus an amount equal to two (2) months of the then-current Base Rent. Any increase in the Security Deposit to maintain the same ratio of Security Deposit to Base Rent shall be delivered to Port on the same date that such increase in Base Rent is first due.

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

Tenant hereby waives the provisions of California Civil Code Section 1950.7 and/or any successor statute, it being expressly agreed that Port may apply all or any portion of the Security Deposit in payment of any and all sums reasonably necessary to compensate Port for any other loss or damage, foreseeable or unforeseeable, caused by the act or omission of Tenant or any Agent or Invitee of Tenant, and that following a default by Tenant, all or any portion of the Security Deposit may be retained by Port following a termination of this Lease and applied to future damages, including damages for future Rent, pending determination of the same. Subject to the foregoing, Port will return any balance to Tenant within ninety (90) days of the expiration or earlier termination of this Lease.

7.2. Environmental Oversight Deposit.

(a) Tenant shall pay to Port upon execution of this Lease an Environmental Oversight Deposit in cash in the amount of Ten Thousand Dollars (\$10,000), 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.

8. USE OF THE PREMISES.

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

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

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

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

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

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

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

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

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

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

(i) except during construction of the Embarkation Site Improvements or Subsequent Alterations, the storage of any and all aggregate material, or bulk storage, such as wood or of other loose materials; or

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

8.3. Notice of Prohibited Use Charge. In the event Port determines after inspection of the Premises that Prohibited Uses are occurring on the Premises, then Tenant shall immediately cease the Prohibited Use and shall pay to Port, as Additional Rent, an amount equaling Two Hundred Dollars (\$200.00) upon delivery of written notice to Tenant to cease the Prohibited Use ("Notice to Cease Prohibited Use"). In the event Port determines in subsequent inspection(s) of the Premises that Tenant has not ceased the Prohibited Use, then Tenant shall pay to Port, as

Additional Rent, an amount equaling Three Hundred Dollars (\$300.00) for each additional Notice to Cease Prohibited Use delivered to Tenant. The parties agree that the charges associated with each inspection of the Premises and delivery of the Notice to Cease Prohibited Use, if applicable, represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the Premises and Tenant's failure to comply with the applicable Notice to Cease Prohibited Use and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this Lease, at law or in equity. By signing this Lease, each party specifically confirms the accuracy of the statements made in this Section and the reasonableness of the amount of the charges described in this Section.

9. COMPLIANCE WITH LAWS AND REGULATIONS.

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

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

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

10.1. *Port Acting as Owner of Property.* Tenant understands and agrees that Port is entering into this Lease in its capacity as a landowner with a proprietary interest in the Premises and not as a Regulatory Agency of the City with certain police powers. By entering into this Lease, Port is in no way modifying or limiting the obligation of Tenant to obtain any required Regulatory Approvals from Regulatory Agencies, and to cause the Premises to be used and occupied in accordance with all Laws and required Regulatory Approvals. Examples of Port

actions as a Regulatory Agency include Port issuance of building, encroachment and other construction-related permits, and the Chief Harbor Engineer's actions to protect public health and safety.

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

Except as otherwise provided in the Basic Lease Information with respect to the Initial Regulatory Approvals, 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. Except as otherwise provided in the Basic Lease Information with respect to the Initial Regulatory Approvals, 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: (1) conditions and/or restrictions under such permit or other entitlement could affect use or occupancy of the Facility or other Port property or Port's interest therein or would create obligations on the part of Port or could otherwise encumber, restrict or change the use of Port property (other than the Premises), unless in each instance Port has previously approved, in Port's sole discretion, such conditions or restrictions; or (2) conditions and/or restrictions under such permit or other entitlement could affect use or occupancy of the Premises or Port's interest therein or would create obligations on the part of Port on the Premises or could otherwise encumber, restrict or change the use of the Premises, unless in each instance Port has previously approved, in Port's reasonable discretion, such conditions and/or restrictions.

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

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

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

11. MAINTENANCE AND REPAIRS.

11.1. Port's Obligations. Port's obligations to maintain and repair the Premises are strictly limited to those explicitly stated in the Basic Lease Information and nothing in this Lease shall imply any greater duty upon the part of Port to perform any other repair or maintenance work and under any provision of this Lease. 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 when such 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's maintenance and repair 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. 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 or its authorized Agents entry onto the Premises to perform its maintenance and repair obligations 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.

If Port fails to perform its maintenance and repair obligations as set forth in this Lease and such failure materially impacts Tenant's ability to operate, then Tenant must provide written notice to Port specifying the nature of Port's default and actions needed to cure. If, after receipt of such written notice, Port's failure to perform its obligations continues without cure for more than one hundred eighty (180) days (or, if such cure cannot reasonably be completed within such 180-day period, Port fails to commence with due diligence and dispatch within such 180-day period the curing of such failure, or having so commenced, fails to diligently and with good faith prosecute such cure to completion within twelve (12) months), Tenant shall be entitled to seek an order for specific performance to compel Port to perform such obligations. Tenant agrees that, notwithstanding anything to the contrary in this Lease or pursuant to any applicable Laws, Tenant's remedies hereunder shall constitute Tenant's sole right and remedy for Port's default under this Section. In no event shall Tenant be entitled to offset from all or any portion of Rent becoming due hereunder or to otherwise recover or obtain from Port or its Agents any damages arising out of Port's default under this Section.

11.2. Tenant Maintenance and Repair Obligations. Unless otherwise set forth in the Basic Lease Information: (i) beginning on the relevant Commencement Date for each parcel, Tenant shall at all times during the Term, and at its sole cost and expense, maintain, repair and replace in good and working order, condition and repair the Premises and all Improvements and Alterations thereon, including, but not limited to, glazing; and (ii) Port shall not be obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the Premises nor to any Improvements or Alterations now or hereafter located thereon. Maintenance and repair shall be in accordance with the Embarkation Site Waterside Improvements and Maintenance Specifications included in the Work Letter which is attached hereto as **Exhibit E**. Tenant hereby waives all rights to make repairs at Port's expense under Sections 1932(1), 1941 and 1942 of the California Civil Code or under any similar Law now or hereafter in effect. Notwithstanding any maintenance and repair obligations of Port that may be set forth in the Basic Lease Information, in the event that Tenant, its Agents or Invitees cause any damage to the Premises or any other property within Port's jurisdiction, Tenant shall be responsible for repair and Port may repair the same at Tenant's sole cost and expense and Tenant shall immediately reimburse Port therefor.

Tenant shall not make, nor cause or suffer to be made, any repairs or other work for which a permit is required by any applicable building code, standard or regulation, including,

without limitation, the Port Building Code or of any rule or regulation of Port without first obtaining Port's prior written consent and a permit therefor.

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

11.3. Port's Right to Inspect. Without limiting Section 25 below, Port may make periodic inspections of the Premises and may advise Tenant when maintenance or repair of the Premises is required, but such right of inspection shall not relieve Tenant of its independent responsibility to maintain such Premises and Improvements in a condition as good as, or better than, their condition at the Phase I Commencement Date, excepting ordinary wear and tear.

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

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

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

11.5. Dredging. Tenant shall be solely responsible for any dredging and dredging-related activities required in connection with its operations or use of the Premises, 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 pre- and post-dredge hydrographic surveys; pre-dredge sediment sampling and analyses as required by all Regulatory Agencies; permitting; all consultant and dredging contracting; and for repair of any damages to existing structures incurred during Tenant's Dredging Work.

(a) Tenant must comply with all of the following conditions in connection with any Dredging Work:

(i) Dredging Work must be performed in accordance with the requirements of the permits issued to Tenant by Regulatory Agencies and in accordance with the authorizations obtained from the Dredged Material Management Office ("DMMO").

(ii) At least three (3) months prior to commencement of any Dredging Work, Tenant must notify Port in writing of the anticipated start date, along with the anticipated time required to perform and complete the Dredging Work, and the anticipated volume of materials that will be dredged with each dredging episode.

(iii) Tenant shall provide to Port copies of all pre-dredge and post-dredge hydrographic surveys within fifteen (15) days of conducting the survey. Tenant shall provide all submittals to DMMO and Regulatory Agencies to Port including dredging permit applications, Sampling and Analysis Plans, Sampling and Analysis Reports and sample analytical data, Dredge Operations Plans, Work Notices, Post-Dredging Reports and any other information developed in connection with the Dredging Work at the time of submittal to DMMO and Regulatory Agencies. Tenant shall provide Port approved permits issued to Tenant by Regulatory Agencies within seven (7) calendar days after receipt of the permit from the permitting Regulatory Agency. Tenant shall provide Port evidence of all DMMO authorizations obtained by Tenant including, but not limited to, sampling and analysis plan and dredge operations plan authorizations, and dredged material Suitability Determinations. As used in this Section, a "Suitability Determination" means a DMMO authorization that dredged materials are suitable for placement at a proposed re-use or disposal location. All reports, surveys, results, plans, notices, sampling data, or such other information that is required to be provided to Port under this Section 11.5 will be provided at no cost to Port. Tenant will provide Port one (1) electronic copy (in the format then requested by the Port) of all the foregoing documents and authorizations.

(iv) Within seven (7) calendar days after DMMO authorization of Tenant's sampling and analysis plan, Tenant shall provide Port with a proposed schedule of activities beginning with pre-dredge sediment sampling, pre-dredge hydrographic surveying, dredging, post-dredge hydrographic surveying and concluding with the submittal of the Post-Dredging Report.

(v) Tenant shall maintain records of dredging operations, such as daily logs, dredged material disposal documentation, and pre- and post-dredging hydrographic surveys to be included in a Post-Dredging Report.

(vi) Tenant is solely responsible for notifying all vessel operators using the Pier 31/33 Water Basin along with tenants and licensees of Port adjacent to the Premises, of Tenant's dredging schedule (i.e., commencement of and period of dredging).

(vii) Tenant is solely responsible for ensuring that the scheduled Dredging Work does not interfere with other activities previously scheduled by Port or other Port tenants near the Premises provided that Port makes such scheduling information available to Tenant in a reasonable time prior to Tenant's commencement of the Dredging Work.

(viii) Tenant must submit post-dredging report(s) to Regulatory Agencies and Port in accordance with the reporting schedules and documentation requirements specified in Tenant's dredging permits.

(ix) Tenant shall be solely responsible for testing, sampling, removing, and disposing of the sediments and any associated debris or other materials excavated from the Bay in connection with any Dredging Work performed by Tenant under this Section 11.5 and in accordance with this Lease and any required Regulatory Approval.

(b) Beneficial Re-Use of Dredged Materials. Tenant will seek a Suitability Determination from DMMO that the dredged materials from any Dredging Work may be beneficially re-used at Tenant's sole cost. Tenant will commence the applicable Dredging Work

only after DMMO has made a Suitability Determination that the dredged materials may or may not be beneficially re-used at an authorized beneficial re-use site. If DMMO determines that the dredged materials may be beneficially re-used and the authorized beneficial re-use site is accepting dredged materials, then Tenant will deposit dredged materials at the authorized beneficial re-use site, at no cost to Port. If DMMO determines that the dredged materials are not suitable for beneficial re-use or if the DMMO determines that the dredged materials may be beneficially re-used and the authorized beneficial re-use site cannot accept the materials due to scheduling, equipment, or similar beneficial re-use site constraints, then Tenant will dispose of dredged materials at a DMMO-authorized disposal location. Should an authorized beneficial re-use site exist on Port property, and at the Port's request, Tenant shall prioritize and seek a Suitability Determination from DMMO for beneficial re-use of a portion or the entire volume of dredged materials, as determined by Port, at such Port property, and at no cost to Port.

11.6. Acts of Nature. Nothing contained herein shall require Port to repair or replace the Premises or the Improvements thereon as a result of damage caused by acts of war, earthquake, tidal wave or other acts of nature, except that this provision shall not affect any obligation to make repairs to the Premises pursuant to Section 18 in the event of any damage or destruction of the Premises.

12. UTILITIES AND SERVICES.

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

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

If Tenant requires electric current in excess of that usually furnished or supplied for the Premises, Tenant shall first procure the written consent of Port, which Port may refuse, in its sole and absolute discretion, to the use thereof, and Port may cause an electric current meter to be installed in the Premises so as to measure the amount of electric current consumed for any such other use. The cost of any such meter and of installation, maintenance, and repair thereof shall be paid for solely by Tenant and Tenant agrees to pay to Port promptly upon demand therefor by Port for all such electric current consumed, as shown by the meter, at the rates charged for such service by the San Francisco Public Utilities Commission or the local public utility, as the case may be, furnishing the same, plus any additional expense incurred in keeping account of the electric current so consumed.

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

California Civil Code Section 1932(1), 1941, and 1942, or any other applicable existing or future Laws permitting the termination of this Lease due to such interruption, failure or inability.

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

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

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

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

13. IMPROVEMENTS AND ALTERATIONS.

13.1. Port Consent Required.

(a) Tenant shall not make nor cause or suffer to be made, any Alterations or Improvements to the Premises (i) without the prior written consent of Port, which consent shall not be unreasonably withheld; provided, however, that Port shall have the right in its sole and absolute discretion to consent or to withhold its consent to any Alterations or Improvements which affect the structural portions of the Premises, the Facility or the Facility Systems, and (ii) until Tenant shall have procured and paid for all Port and other Regulatory Approvals of the various Regulatory Agencies having jurisdiction over the Premises, including, but not limited to, any building or similar permits required by Port or its CHE 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 any building: (i) installation of furnishings, trade fixtures, equipment, or decorative improvements; (ii) painting the interior of any of the buildings within the Premises; and (iii) carpeting any of the buildings within the Premises.

13.2. Tenant's Obligation to Construct the Embarkation Site Improvements. Tenant shall construct the Embarkation Site Improvements in accordance with, and subject to all the terms, covenants, conditions and restrictions of this Section 13 and the Work Letter. Any Subsequent Alteration shall be performed in accordance with this Section 13.

13.3. Construction Requirements; Subsequent Alterations. All Alterations and Improvements to the Premises including without limitation all Subsequent Alterations 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 expenses of Tenant, with reasonable dispatch and prosecuted to completion, and only by duly licensed and bonded contractors or mechanics approved by Port, and subject to any conditions that Port may reasonably impose.

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

(d) At the completion of any Work described in this Section, Tenant shall furnish to Port one reproducible "as built" drawing of all Alterations and Improvements made in the Premises. If Tenant fails to provide such as-built drawings to Port within sixty (60) days after completion of the Improvements, Port, after giving notice to Tenant shall have the right, but not

the obligation, to cause the preparation by an architect of Port's choice of "as-built" drawings, at Tenant's sole cost, to be paid by Tenant to Port within thirty (30) days after Port's request therefor.

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

(f) Without limiting Section 16 below (Hazardous Materials), in the event that asbestos-containing materials ("ACM") are determined to exist in or about the Premises, Tenant shall ensure that all Alterations and Improvements and any asbestos related work, as further defined in California Health & Safety Code Section 25914.1(b), is performed in compliance with all Laws relating to asbestos, including but not limited to, Cal-OSHA regulations found in Title 8 of the California Code of Regulations, Sections 1502 and 1529. Additionally, Tenant shall distribute notifications to all employees and contractors as required pursuant to California Health & Safety Code Sections 25915 et seq. informing them of the existence of ACM and that moving, drilling, boring, or otherwise disturbing ACM may present a health risk and should not be attempted by an unqualified employee. No Alterations or Improvements affecting ACM-containing areas or any asbestos related work shall be performed without Port's prior written consent in each instance.

(g) Tenant, on behalf of itself and its Agents or Invitees, shall comply with all requirements of the Port Building Code, Section 3424, and all other Laws, including, without limitation, the California and United States Occupational Health and Safety Acts and their implementing regulations, when the work of Alterations or Improvements disturbs or removes lead-based or presumed lead-based paint (as described below). Tenant and its Agents or Invitees shall give to Port three (3) business days prior written notice of any disturbance or removal of lead-based or presumed lead-based paint. Further, Tenant and its Agents or Invitees, when disturbing or removing lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter ("HEPA") local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers, without Port's prior written consent; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool, without Port's prior written consent; and (e) heat guns operating above 1,100 degrees Fahrenheit. Paint on the interior and exterior of buildings built before December 31, 1978, is presumed to be lead-based paint unless lead-based paint testing, as defined in Section 3424 of the Port Building Code, demonstrates an absence of lead-based paint on the surfaces of such buildings. Under this Section 13.3(g), lead-based paint is "disturbed or removed" if the work of Alterations or Improvements involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on an interior or exterior surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface.

13.4. Improvements Part of Realty. Except as set forth in Section 13.5 below, all Alterations and Improvements constructed on or affixed to the Premises by or on behalf of

Tenant shall become part of the realty owned by Port upon expiration or earlier termination of this Lease, and, shall, at the end of the Term, remain on the Premises without compensation to Tenant. Tenant may not remove any such property at any time during or after the Term unless Port so requires as further provided in Section 26 (Surrender).

13.5. 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 26. Any such removal is subject to the requirements of this Section, including the requirement to obtain a Port building or similar permit. If termination of this Lease is the result of loss or destruction of the Premises or any Improvements thereon, Port shall deliver the Notice of Removal to Tenant within a reasonable time after the loss or destruction. Tenant shall be obligated at its own expense to remove all Alterations or Improvements specified in the Notice of Removal, including without limitation all telephone wiring and equipment installed by Tenant. Tenant shall promptly repair, at its own expense, in good and workmanlike fashion any damage occasioned thereby. If Tenant fails to complete any required demolition or removal on or before the termination of this Lease, Port may perform such removal or demolition at Tenant's expense, and Tenant shall reimburse Port within three (3) business days after demand therefor.

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

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

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

13.9. Improvements on Roof. Tenant shall not install any equipment on the roof of any building within the Premises or on any other part of the Facility outside of the Premises without Port's prior written consent. If Port consents, then Tenant shall have a non-exclusive revocable license on and over the roof and/or to other areas necessary to install, maintain and repair the

equipment in a location mutually agreeable to Port and Tenant, subject to and consistent with all necessary Regulatory Approvals, including a building or encroachment permit issued by Port. Port makes no representation with respect to Tenant's ability to obtain such Regulatory Approvals. Tenant's use of any licensed areas shall be subject to all the terms and conditions of this Lease and Tenant shall have the obligations and liabilities as if the licensed areas are included in the Premises under this Section, and Sections 3.6, 9-11, 13, 16, 17, 20 and 26 of this Lease. The license granted to Tenant hereunder is for the sole purpose of constructing, maintaining, restoring, replacing and operating Tenant's approved equipment, including any necessary conduits, only in connection with Tenant's Permitted Uses under this Lease and Tenant shall not have the right to install any other equipment outside of the Premises, including without limitation a telecommunications (cell) site or any other equipment that can be used for any commercial purpose. The license granted hereby includes the right of ingress and egress through the Facility during non-business hours for access to or from the Premises and Tenant's equipment, provided that Tenant must notify the Port's Property Manager at least 24 hours in advance of any access and shall comply with all reasonable requirements of such designated person with respect to Tenant's requested access. In the event of an emergency, Tenant shall have the right to enter the licensed areas provided it makes good faith efforts to notify Port in advance of such entry.

13.10. Port's Work. 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**") upon reasonable prior notice but not less than ten (10) business days (except in the event of an emergency which poses an imminent danger to public health or safety as determined by Port in its sole discretion). If the Port causes any damage while using the Premises for the activities performed by Port in accordance with this Section 13.10, upon satisfactory documentation of such damage, Port shall promptly restore the Premises to a mutually acceptable condition at its cost. 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. Except as provided in the Basic Lease Information in the section entitled "*Embarkation Site Construction Coordination*," 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; provided that Port uses commercially reasonable efforts to conduct its activities in a manner that, to the extent reasonably practicable, will minimize inconvenience or disturbance to Tenant except when the Port Work is necessary, in Port's sole and absolute discretion, to maintain Port property in safe, hazard-free condition.

14. FLOOD RISK AND SEA LEVEL RISE.

14.1. Pier Flood Protection Measures. In addition to Tenant's obligations to comply with Laws and to repair and maintain the Premises if, at any time during the Term of this Lease, and subject to compliance with CEQA, CHE determines that there is a need for **Pier Flood Protection Measures** (as defined below) at the Premises or proximate to the Premises to protect the Premises from a significant risk of flooding or other damage resulting from climate change or sea level rise, in order to protect public health and safety ("**CHE Determination**"), Tenant shall be responsible at no cost to Port for permitting, constructing and implementing any such Pier Flood Protection Measures in the manner described in this Section. Tenant understands and agrees that it will not receive or seek rent credits or other compensation or consideration for any Pier Flood Protection Measures. Port and Tenant agree that neither a CHE Determination nor a Threat Determination (as defined below) under this Section 14 shall be a Taking for purposes of this Lease.

“Pier Flood Protection Measures” may include without limitation (1) temporary public access closures, sandbagging or similar temporary measures to minimize the risks associated with wave overtopping of the pier apron; (2) waterproofing or relocation of utility infrastructure from underneath the pier to minimize the risk of water or wastewater discharges to San Francisco Bay; and/or (3) short perimeter flood walls or similar measures to address more frequent and serious flooding associated with stillwater levels at or above the elevation of the pier deck. For purposes of this section, and without affecting Tenant’s other obligations under this Lease, Pier Flood Protection Measures do not include substantial repairs, maintenance or improvements to the Substructure, raising first floor elevations or regional improvements such as breakwater or levee improvements which the parties acknowledge may be necessary to protect the City from sea level rise, but are beyond the scope of this Lease.

(a) **CHE Determination Notice.** Promptly following a CHE Determination, Port will deliver to Tenant notice of the CHE Determination (**“CHE Determination Notice”**). The CHE Determination Notice will include a description of the need for required Pier Flood Protection Measures and a timeline for Tenant to submit for the CHE’s approval, in his or her sole discretion, a conceptual level scheme of the required measures along with a schedule for completing design, securing all Regulatory Approvals and completing construction (**“Pier Flood Protection Plan”**). The CHE has the sole discretion to approve or disapprove the final designs and implementation of any Pier Flood Protection Measures to be constructed within Port’s jurisdiction (including the Premises). Within sixty (60) days of receiving such plan, the CHE will review and either approve the plan or request revisions to the plan. If revisions are required, Tenant will promptly revise the Pier Flood Protection Plan and re-submit to the CHE for his or her review and approval. Tenant will continue to revise and re-submit until the CHE approves the Pier Flood Protection Plan, as revised; provided, however, Tenant must have obtained the CHE’s approval of a Pier Flood Protection Plan (the **“Approved Pier Flood Protection Plan”**) within the time period set forth in the CHE Determination Notice.

(b) If Tenant fails to implement any required Pier Flood Protection Measures or the Approved Pier Flood Protection Plan within the time required in the CHE Determination, Port shall provide Tenant with thirty (30) days written notice and the right to cure such failure. If Tenant fails to cure within the 30-day period, Port shall have the right but not the obligation to implement the measure(s) on Tenant’s behalf following an additional thirty (30) days’ written notice of Port’s intent to do so (unless such failure to cure gives rise to an emergency which creates an imminent danger to public health or safety as determined by the CHE) and Tenant shall reimburse Port for its actual costs.

14.2. Termination. If, at any time during the Term, the CHE determines conditions at the Premises or Facility pose an ongoing threat to public health and safety due to flood risk and sea level rise conditions (even despite construction of the Pier Flood Protection Measures) (**“Threat Determination”**), this Lease will terminate within ninety (90) days of the CHE’s written notice to Tenant of the Threat Determination, or the termination date set forth in the Threat Determination notice, whichever is earlier, without cost or liability to Port.

14.3. Required Flood Protection Improvements for Other Port Property. If the CHE determines that there is a need to install flood protection measures within the Premises to protect other Port property, Tenant shall cooperate by providing access and other reasonably requested assistance at no cost to Port. Nothing herein shall imply any duty upon the part of Port to perform any work which under any provision of this Lease Tenant may be required to perform, nor to place upon Port any obligation, or liability, for the care, supervision or repair of Port property outside the Premises; provided that, if the Port causes any damage while using the Premises for the activities performed by Port in accordance with this Section 14.3, upon satisfactory documentation of such damage, Port shall promptly restore the Premises to a mutually acceptable condition at its cost. If Port elects to perform flood protection measures for other Port property, Port shall not be liable for inconvenience, loss of business or other damage to Tenant by reason of the performance of such work on the Premises, or on account of bringing

necessary materials, supplies and equipment into or through the Premises during the course of such work, provided Port uses commercially reasonable efforts to minimize the interference any such work may cause with the activities of Tenant, its Subtenants, and their respective Invitees. Except as provided in the Basic Lease Information in the section entitled "*Embarkation Site Construction Coordination*," in no event will inconvenience or disturbance caused by Port's activities under this Section constitute an actual or constructive eviction of Tenant, entitle Tenant to any abatement or diminution of Rent, or otherwise relieve Tenant from any of its obligations under this Lease.

14.4. *Limitations; Waiver.*

(a) Tenant's obligation hereunder in connection with the Pier Flood Protection Measures shall include, without limitation, the obligation 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 curative action may interfere with Tenant's use or enjoyment of the Premises, or the likelihood that the parties contemplated the particular Pier Flood Protection Measures involved. Further, no occurrence or situation arising during the Term, nor any present or future Law or circumstance, 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 otherwise seek redress against Port except with respect to Tenant's right to terminate under the terms and conditions specified in Section 18 (Damage and Destruction) and Section 19 (Eminent Domain). Without waiving the right to terminate as provided in Section 18 (Damage and Destruction) and Section 19 (Eminent Domain), 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 or on account of any such occurrence or situation.

(b) If the CHE determines that there is a need for Pier Flood Protection Measures or makes a Threat Determination as described in this Section, the rights and obligations of the parties shall be as set forth in this Section. Accordingly, Port and Tenant each hereby waive the provisions of Sections 1932(2) and 1933(4) of the California Civil Code and Sections 1265.110, 1265.120, 1265.130, and 1265.140 of the California Code of Civil Procedure as such sections may from time to time be amended, replaced, or restated. Notwithstanding the prior sentence, Port and Tenant do not intend to waive their rights under Section 18 (Damage and Destruction) and Section 19 (Eminent Domain) in the event of damage, destruction or a Taking.

14.5. *Additional Improvements To Address Sea Level Rise .*

At any time during the Term, Port or Tenant may propose optional additional improvements to be performed by Tenant, at its option and at its cost that (i) are beyond the scope of the potential Pier Flood Protection Measures contemplated in this Section; and (ii) are not otherwise Tenant's obligation under this Lease (including under Section 9 (Compliance with Laws) and Section 11 (Maintenance and Repair)). Tenant acknowledges that additional Regulatory Approvals will be required for such improvements.

15. *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.

16. HAZARDOUS MATERIALS.

16.1. Requirements for Handling. Except as provided in the Operations Plan and 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.

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

(a) will not permit any Hazardous Materials to be present in, on, under or about the Premises, any other part of the Facility, or other Port property except as permitted under Section 16.1;

(b) will not cause or permit any Hazardous Material Condition; and

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

16.3. 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 16.1, 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.

16.4. Requirement to Remediate.

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

(i) After notifying Port in accordance with Section 16.3(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 Phase I Commencement Date as to the Phase I Premises or before the Phase II Commencement Date as to the Phase II Premises.

16.5. 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 25 (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.

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

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

Tenant hereby acknowledges receipt of the notification specified in the first paragraph of Section 16.6 hereof and the notice or report attached as *Schedule 1* hereto and understands, after having consulted its legal counsel, that it must make its employees and contractors aware of the presence of ACMs and/or PACMs in or about the Premises in order to avoid or minimize any damage to or disturbance of such ACMs and/or PACMs. Tenant further acknowledges its obligations under Cal-OSHA General Industry Safety Order for Asbestos to provide information to its employees and contractors regarding the presence of ACMs and PACMs at the Premises and to provide a training program for its employees that conforms with 8 CCR § 5208(j)(7)(C).

Tenant agrees that its waiver of Claims set forth in Section 20 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.

16.7. 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 20 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.

16.8. Storm Water Pollution Prevention.

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

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

16.9. Presence of Hazardous Materials. California Law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Tenant is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Premises, including, but not limited to, vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as asbestos, naturally-occurring radionuclides, lead and formaldehyde. Further, the following known Hazardous Materials are present on the property: asbestos in building, if any, as described in *Schedule 1* attached hereto, naturally

occurring asbestos, contamination commonly found in fill, petroleum contamination, lead-based paint, etc. and the Hazardous Materials described in the reports listed in *Schedule 4*, attached hereto, copies of which have been delivered to or made available to Tenant. By execution of this Lease, Tenant acknowledges that the notice set forth in this section satisfies the requirements of California Health and Safety Code Section 25359.7 and related Laws. Tenant must disclose the information contained in this Section 16.9 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.

16.10. *Survival.* Tenant's obligations under Section 16 shall survive the expiration or earlier termination of this Lease.

17. INSURANCE.

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

(a) **Commercial General Liability Insurance.** Tenant will maintain "**Commercial General Liability**" insurance with coverage at least as broad as Insurance Services Office form CG 00 01 10 93 (or its replacement) insuring against claims for bodily injury (including death), property damage, personal injury and advertising injury, including coverage for premises operations, blanket contractual liability (to the extent possible under the above-referenced policy form or under a separate policy form) which includes coverage extending to the Indemnity in broad form property damage, explosion, collapse and underground hazards, independent contractors, products and completed operations, with such insurance to afford protection in an amount not less than Five Million Dollars (\$5,000,000) per occurrence and annual aggregate, and Ten Million Dollars (\$10,000,000) products and completed operations aggregate, and deleting any exclusions for care, custody and control of real property. All such insurance may be provided under a combination of primary and umbrella excess policies and may be provided under policies with a "claims made" trigger as provided in Section 17.2.

(b) **Worker's Compensation Insurance.** Worker's compensation insurance as required by Laws, U.S. Longshore and Harborworker's Act Insurance and Jones Act insurance with employer's liability limit not less than Five Million Dollars (\$5,000,000) for each accident, on employees eligible for each. Tenant's insurance must be from a carrier with an A M Best rating of A-7 or better; must be statutory in nature; must include USL&H on an "if any basis", with E L coverage of \$5,000,000.00. In the event Licensee is self-insured, it shall furnish Certificate of Permission to Self-Insure signed by Department of Industrial Relations, Administration of Self Insurance, Sacramento, California.

(c) **Comprehensive or Business Automobile Liability Insurance.** Comprehensive or Business Automobile 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 coverage for owned, non-owned and hired automobiles, as applicable, which insurance shall be required if any automobiles or any other motor vehicles are operated in connection with Tenant's activity on, in or around the License Area. If parking is a Permitted Activity under this License, Tenant must obtain, maintain, and provide to Port upon request evidence of personal automobile liability insurance for persons parking vehicles at the License Area on a regular basis, including without limitation Tenant's Agents and Invitees.

(d) **Watercraft Liability Insurance.** Watercraft Liability Insurance acceptable to Port, with limits not less than Five Million Dollars (\$5,000,000) including coverages for owned and non-owned watercraft.

(e) **Contractor's Pollution Legal Liability Insurance.** At all times during any period of Tenant's construction of Improvements or Alterations subject to Section 13, Contractor's Pollution Legal 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.

(f) Vessel Pollution Liability Insurance. 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.

(g) Hull and Machinery Protection and Indemnity Insurance. Hull and Machinery Protection and Indemnity Insurance in a form and with limit of market value of the vessel.

(h) Bumbershoot; Umbrella; Excess Insurance. Bumbershoot; Umbrella; Excess Insurance with policy limits of no less than \$25 million dollars (\$25,000,000); applies to and follows form: Marine General Liability; Auto; Protection/Indemnity; Pollution; ELL; and Liquor.

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

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

(ii) 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.

(j) Property Insurance; Earthquake and Flood Insurance. Tenant shall maintain property insurance policies with coverage at least as broad as Insurance Services Office ("ISO") form CP 10 30 06 95 ("Causes of Loss – Special Form", or its replacement), including earthquake, subject to provisions of Section 17.6(b), and flood, subject to the provisions of Section 17.6(c), in an amount not less than one hundred percent (100%) of the then-current full replacement cost of

the Improvements and other property being insured pursuant thereto (including building code upgrade coverage).

(k) Builders Risk Insurance. At all times prior to Completion of the Embarkation Site Improvements and during any period of Subsequent Alteration, Tenant shall maintain, on a form reasonably approved by Port, builders' risk insurance in the amount of one hundred percent (100%) of the completed value of all new construction, insuring all new construction, including all materials and equipment incorporated in, on or about the Premises, and in transit or storage off-site, that are or will be part of the permanent Improvements, against "all risk" and "special form" hazards, water damage (including groundwater damage and water damage resulting from backed up sewers and drains) and flood insurance (subject to the provisions of Section 17.6(c).

(l) Boiler and Machinery Insurance. Unless same is not included within Tenant's property insurance, Tenant shall maintain boiler and machinery insurance covering damage to or loss or destruction of machinery and equipment located on the Premises or in the Improvements that is used by Tenant for heating, ventilating, air-conditioning, power generation and similar purposes, in an amount not less than one hundred percent (100%) of the actual replacement value of such machinery and equipment.

(m) Business Interruption and Extra Expense Insurance. Tenant shall maintain business interruption and extra expense insurance for loss caused by any of the perils or hazards set forth in and required to be insured pursuant to Section 17.1(j) with a limit of not less than the annual Rent applicable immediately prior to the hazard causing the loss.

(n) Professional Liability. Tenant shall require all providers of professional services, including architectural, design, engineering, geotechnical, and environmental professionals under contract with Tenant for the Embarkation Site 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.

(o) Special Events/Participants. Tenant, at its sole cost and expense, shall procure and maintain Special Events/Participants Liability (GL) coverage insurance acceptable to Port, with limits not less than One Million Dollars (\$1,000,000.00).

(p) Garage Liability and Garage Keepers Legal Liability Insurance. Garage Liability and Garage Keepers Legal Liability Insurance with limits not less than One Million Dollars (\$1,000,000.00) per occurrence.

(q) Liquor Liability. If Tenant is engaged in the selling or service of alcoholic beverages other than aboard vessels, coverage must be provided for bodily injury or property damage including damages for care, loss of service, or loss of support arising out of the selling or serving of any alcoholic beverages. Coverage for any "package" store as well as lounge facility must be specifically included. The following minimum limits of liability are required: Each Common Cause Limit One Million Dollars (\$1,000,000.00); Aggregate Limit Five Million Dollars (\$5,000,000.00).

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

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

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

17.2. Claims-Made Policies. If any of the insurance required in Section 17.1 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.

17.3. Annual Aggregate Limits. If any of the insurance required in Section 17.1 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.

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

17.5. 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.

17.6. 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) As to earthquake insurance:

(i) During construction of the Embarkation Site Improvements, such insurance shall be in an amount at least equal to the maximum amount as is available at rates that are commercially reasonable for owners or operators of comparable visitor serving businesses located in the City and County of San Francisco, from recognized carriers (with a deductible of up to but not to exceed five percent (5%) of the then-current, full replacement cost of the Improvements or other property being insured pursuant thereto (including building code upgrade coverage and without any deduction being made for depreciation).

(ii) From and after Completion of the Embarkation Site Improvements, such insurance shall be in an amount at least equal to One Hundred percent (100%) of the maximum probable loss that would be sustained by the Premises as a result of an earthquake measuring 8.0 on the Richter Scale, as determined not less frequently than every 5 years by the City's Risk Manager, but only at rates that are commercially reasonable for owners or operators of comparable visitor serving businesses located in the City and County of San Francisco.

(c) As to flood insurance only:

(i) During construction of the Embarkation Site Improvements, such insurance shall be in an amount at least equal to the maximum amount as is available at rates that are commercially reasonable for owners or operators of comparable visitor serving businesses located in the City and County of San Francisco, from recognized insurance carriers (with a deductible up to, but not to exceed fifteen percent (15%) of the then-current, full replacement cost of the Improvements or other property being insured pursuant thereto (including building code upgrade coverage and without any deduction being made for depreciation);

(ii) From and after Completion of the Embarkation Site Improvements, such insurance shall be in an amount at least equal to the amount available at rates that are commercially reasonable for owners or operators of comparable visitor serving businesses located in the City and County of San Francisco, from recognized insurance carriers, but only at rates that are commercially reasonable for owners or operators of comparable visitor serving businesses located in the City and County of San Francisco.

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

(e) All insurance policies required to be maintained by Tenant hereunder shall 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.

(f) 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 Effective 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.

18. DAMAGE AND DESTRUCTION.

18.1. Prior to Delivery.

(a) If, prior to Phase I Commencement Date as to the Phase I Premises or any part thereof or prior to the Phase II Commencement Date as to the Phase II Premises or any part thereof, the Facility or the Phase I Premises or the Phase II Premises, as the case may be suffers any damage from fire or other casualty in an amount of less than One Million Dollars (\$1,000,000), Tenant agrees that it shall take delivery in accordance with this Lease and all of Port's right, title and interest in and to the proceeds of any insurance covering such damage shall be assigned to Tenant upon delivery of such parcel(s).

(b) If prior to Phase I Commencement Date as to the Phase I Premises or any part thereof or prior to the Phase II Commencement Date as to the Phase II Premises or any part thereof, the Facility or the Phase I Premises or the Phase II Premises, as the case may be suffers any damage from fire or other casualty in excess of One Million Dollars (\$1,000,000), then either Party may elect to terminate this Lease, by written notice to the other Party delivered not less than one hundred twenty (120) days following the event that caused such damage. If neither Party so terminates this Lease, all of Port's right, title and interest in and to the proceeds of any insurance covering such damage shall be assigned to Tenant and this Lease shall remain in effect. Tenant shall not be entitled to any additional rent credit, abatement or allowance under

the Lease as a result of such casualty. Tenant shall, to the extent reasonably practicable, restore or secure the damaged property to the condition it was in immediately preceding the casualty.

(c) Following a termination pursuant to this Section 18.1, neither Party shall have any further right or obligation hereunder other than those that survive the termination of this Lease.

(d) Port will maintain its existing property insurance until the Phase I Commencement Date as to the Phase I Premises and the Phase II Commencement Date as to the Phase II Premises.

18.2. After Delivery. If, after the Phase I Commencement Date as to the Phase I Premises or any part thereof or after the Phase II Commencement Date as to the Phase II Premises or any part thereof the Facility or the Phase I Premises or the Phase II Premises, as the case may be is damaged by fire or other casualty, then Port shall repair the same provided that funds for such repairs are appropriated by Port, in its sole discretion, for such purpose and that such repairs can be made within the Repair Period. In the event such conditions are satisfied, this Lease shall remain in full force and effect except that so long as such damage or casualty is not attributable to Tenant, its Agents or Invitees, Tenant shall be entitled to a proportionate reduction of Base Rent during the Repair Period based upon the extent to which such damage and the making of such repairs materially interferes with Tenant's use or occupancy of the Premises less any insurance proceeds Tenant receives, or would have received if Tenant complied with the requirements set forth in Section 17 which proceeds are to be applied against the payment of Rent during any Repair Period.

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

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

Within thirty (30) days after receipt of Port's notice to terminate, Tenant shall have the right (but not the obligation) to notify Port that Tenant will provide the funds and perform such repair, and shall provide Port with such reasonable assurances as Port may require that such funds are available to Tenant. If Tenant exercises the foregoing option, Port's election to terminate shall be deemed rescinded and of no further force or effect and Tenant shall promptly (allowing for securing necessary Regulatory Approvals), commence and diligently repair and restore the damaged Premises and/or the Facility to the condition they were in immediately before such casualty in accordance with then applicable Laws (including any required code upgrades, the Secretary's Standards and Port's Guidelines), without regard to the amount of availability of insurance proceeds. All repair and restoration shall be performed in accordance with Section 13 and shall be at Tenant's sole cost and expense. In no event will Tenant be entitled to any reimbursement from Port or any rent credit, offset, or abatement in connection

with any cost and expense incurred by Tenant for the repair and restoration of the damaged Premises and/or the Facility.

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

Except for the rights to terminate as set forth in this Section, no damage to or destruction of the Premises or any part thereof from any casualty event shall permit Tenant to surrender this Lease or relieve Tenant from any obligations, including the obligation to pay Rent. Notwithstanding anything to the contrary in this Lease, (i) Port shall have no obligation to repair the Premises or the Facility, and (ii) 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. Proceeds of rental interruption or business interruption insurance, if any, will be applied first to unpaid Rent due or coming due.

18.3. Waiver. Port and Tenant intend that the provisions of this Section 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.

19. EMINENT DOMAIN.

19.1. 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.

19.2. 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.

19.3. 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.

19.4. Temporary Takings. Notwithstanding anything to the contrary contained in this Section 19, 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 its occupancy of the Premises

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.

19.5. *Award; Waiver; Termination of Lease; Rent.* Upon termination of this Lease in its entirety pursuant to Section 19.3, or pursuant to an election under Section 19.2, then:

(i) Tenant's obligation to pay Rent shall continue up until the date of termination and thereafter shall cease, and (ii) Port shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease and any Improvements Pertaining to the Realty), and Tenant shall have no claim against Port for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Property. Port and Tenant intend that the provisions of Section 19 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.

20. INDEMNITY AND EXCULPATION.

20.1. *Indemnity Prior to Delivery.* After the Effective Date and before the Phase I Commencement Date as to the Phase I Premises and before the Phase II Commencement Date as to the Phase II Premises, and without limiting any indemnity provisions contained in any other agreement between Port and Tenant or under Law, Tenant shall Indemnify the 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, caused or permitted by any acts or omissions of Tenant, its Agents or Invitees, or (b) any default by Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease, or (c) the use, occupancy, manner of use or occupancy or the activities therein by Tenant, its Agents or Invitees, or (d) any acts, omissions or negligence of Tenant, its Agents or Invitees, in, on or about the Premises, the Facility or any other Port property, or (e) claims by Tenant with regard to the acts or omissions of NPS in connection with the federal contracting process for or enforcement of a Ferry Concession Contract, or (f) the acts or omissions of Port in connection with obtaining or any requirements of the Initial Regulatory Approvals, or (g) Claims by NPS or the Conservancy against Port if arising directly or indirectly out of Tenant's acts or omissions under this Lease, including without limitation any default or breach of Tenant's obligations under this Lease.

20.2. *Indemnity After Delivery.* Tenant shall Indemnify the 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 21, 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 (including without limitation, failure to construct the Embarkation Site Improvements in compliance with this Lease), (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, or (f) claims by Tenant with regard to the acts or omissions of NPS in connection with the federal contracting process for or enforcement of a Ferry Concession Contract, or (g) the acts or omissions of Port in connection with obtaining or any requirements of the Initial Regulatory Approvals, or (h) Claims by NPS or the Conservancy against Port if arising

directly or indirectly out of Tenant's acts or omissions under this Lease, including without limitation any default or breach of Tenant's obligations under this Lease.

20.3. Hazardous Materials Indemnity.

(a) In addition to its obligations under Sections 20.1 and 20.2, 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. Unless Tenant or its Agents or Invitees Exacerbate the Hazardous Material Condition, Tenant's indemnity obligations do not include Claims arising as a result of 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 Phase I Commencement Date as to the Phase I Premises and before the Phase II Commencement Date as to the Phase II Premises.

(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.

20.4. 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.

Without limiting Tenant's Indemnity obligations with respect to the Premises or the Facility, Port agrees that Tenant's Indemnity for Claims relating to "other Port property" as set forth above in Subsection 20.1(a) and 20.2(a) applies only if such Claims arise directly or indirectly out of Tenant's, its Agent's or Invitee's acts, omissions or negligence.

20.5. Exculpation and Waiver. Tenant, as a material part of the consideration to be rendered to Port, hereby waives and 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 any and all Claims, including without limitation all Claims arising from the joint or concurrent, active or passive, negligence of the Indemnified Parties, 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 or Embarkation Site 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 Effective Date including without limitation, claims under the Port/NPS Agreement; (ix) the acts or omissions of NPS in connection with the federal contracting process for or enforcement of the Ferry Concession Contract; (x) the acts or omissions of Port in connection with obtaining or any requirements of the Initial Regulatory Approvals; (xi) Claims by NPS or the Conservancy against Port if arising directly or indirectly out of Tenant's acts or omissions under this Lease, including without limitation any default or breach of Tenant's obligations under this Lease; (xii) inability to use all or any portion of the Premises due to flood risk, sea level rise, a CHE Determination Notice, Threat Determination or other conditions more fully described in Section 14; and (xiii) any other acts, omissions or causes, but excluding from the above (A) any Claims caused solely by the Indemnified Parties' willful misconduct or gross negligence and (B) any Claims caused by Port's failure to perform its maintenance and repair obligations as set forth in this Lease subject to the limitations of Section 11.1.

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

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

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

20.6. *Survival.* The provisions of Section 20 shall survive the expiration or earlier termination of this Lease.

21. MORTGAGE, ASSIGNMENT AND SUBLEASING.

21.1. *Mortgage.* Except with NPS's and Port's express prior written consent, each independently and in its sole and absolute discretion, Tenant shall not (i) engage in any financing or other transaction creating any mortgage, deed of trust or similar security instrument upon Tenant's leasehold estate in the Premises or Tenant's interest in the Improvements under this Lease; or (ii) place or suffer to be placed upon Tenant's leasehold estate in the Premises or interest in the Improvements hereunder any lien or other encumbrance. Under no circumstance whatsoever shall Tenant place or suffer to be placed any lien or encumbrance on Port's fee interest in the land in connection with any financing permitted hereunder, or otherwise. Port shall not subordinate its interest in the Premises, nor its right to receive Rent, to any Mortgagee of Tenant. Any mortgage, deed of trust, encumbrance or lien not permitted by Port shall be deemed to be a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced. Tenant may seek Port's consent to any transaction subject to this Section only upon receipt of NPS's written consent to such transaction.

21.2. Assignment. This Lease is non-Transferable except as provided herein. In the event that NPS, in its sole discretion, approves an Assignment of the Ferry Concessioner Contract, Port will consent to an Assignment of this Lease, provided that: (i) Port is given reasonable prior notice of the Assignment; (ii) Tenant executes a consent agreement in a form approved by Port and reimburses Port for its reasonable review costs; (iii) the agreement between the assigning Tenant and the new assignee includes the following terms: (A) assignee's express assumption of, and acknowledgement and agreement that the assignee will be liable for, all of the original Tenant's obligations under this Lease; (B) an indemnification clause and waiver of claims provisions as provided in this Lease; (C) provisions requiring that all of the assignee's insurance policies name the City as an additional insured as required under Section 17 of this Lease and acknowledging Port's right to demand increased coverage to amounts customarily required for similar operations under then current market conditions; (D) a provision stating that if this Lease is terminated for any reason, the assignee's right to possession will terminate; (E) assignee's express waiver of any and all relocation assistance and benefits in connection with this Lease to the extent permitted by applicable Laws; (F) Port's participation in the proceeds of any Sale as provided in Section 21.3; and (G) if the proposed assignee is a tenant of the Port, there must be no Event of Default under the relevant lease(s) and the assignee must be in compliance with all applicable City requirements at the time of the proposed transfer as determined by Port in its sole discretion.

21.3. Sale. The following provisions apply to any 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 Completed construction of Embarkation Site Improvements as of the Sale Closing, Net Sale Proceeds will be reduced by Tenant's Adjusted Basis, but only if Port previously approved Tenant's Certified Construction Costs as follows.

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

For example, if: (i) Embarkation Site Improvements have a Class Life of 15 years; (ii) Certified Construction 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 Sale Closing is the 6th anniversary of the "placed in service" date of the Embarkation Site Improvements, then Port's Sale Participation is \$1,170,000, 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 Construction Costs of Embarkation Site 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

21.4. *Subleasing by Tenant.*

(a) Subleases. Tenant will not Sublease any portion of the Premises, including a Sublease to a Tenant Affiliate, without the prior written consent of Port which will not be unreasonably withheld. All Subleases must be in full compliance with all of the terms and provisions of this Section 21.4. A Sublease without Port's consent will be voidable by Port, in its sole discretion. Tenant may seek Port's consent to a Sublease subject to this Section only upon receipt of NPS's written consent to such transaction.

(b) Request for Sublease. Tenant must give Port at least thirty (30) days written notice before entering into a proposed Sublease (herein "Notice of Request to Sublease") and provide Port with the following information in writing: (a) the name, address, legal composition and ownership of the proposed Subtenant, (b) reasonably adequate evidence that the proposed Subtenant's financial condition and prospects are sufficient to support all of the financial and other obligations of the proposed Sublease, (c) a full description of the terms and conditions of the proposed Sublease, including copies of any and all proposed agreements concerning the proposed Sublease, (d) a description of the proposed use by the proposed Subtenant, (e) the material terms of any proposed Sublease, including all payments to be made or other consideration to be given in connection with the Sublease, and (f) evidence of NPS's prior written consent to such Sublease. Until such time as Tenant has provided to Port all information set forth hereinabove, Tenant's Notice of Request to Sublease will not be deemed to have been served or given. Tenant will immediately notify Port of any modifications to the proposed terms of the Sublease.

(c) Port's Options. Upon receiving a Notice of Request to Sublease, Port will have the right to either (1) consent to the proposed Sublease, which consent shall not be unreasonably withheld, subject to any reasonable conditions upon such Sublease or (2) deny its consent to the proposed Sublease on the following reasonable grounds: (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) that the proposed Subtenant's financial condition and prospects are or could become insufficient to support all of the financial and other obligations of the proposed Sublease; (3) that the use to which the Premises will be put by the proposed Subtenant is inconsistent with the terms of this Lease or otherwise will affect any Port interest materially and adversely; (4) the business reputation or character of the proposed Subtenant is not reasonably acceptable to Port or the proposed Subtenant is not likely to conduct a business in the Premises of a quality substantially equal to Tenant's or otherwise reasonably acceptable to Port; (5) that the nature of the proposed Subtenant's intended or likely use of the Premises would involve an unmitigated risk of the Handling, Release or mishandling of Hazardous Materials and Port reasonably believes that the

measures proposed by Subtenant are insufficient to mitigate the risk of Handling or Release of Hazardous Materials by Subtenant, or otherwise materially increase the risk of fire or other casualty; (5) that the Sublease rental rate does not reflect an arm's length transaction; (6) that the Sublease rental rate is below the fair market rent for similar use and type of premises; (7) failure of the Sublease to contain provisions specified in this Lease; or (8) NPS has not consented to the Sublease..

(d) Required Provisions in Subleases. Each and every Sublease must contain all the following provisions:

(i) the Indemnification clause and waiver of claims provisions in Section 20 (Indemnity and Exculpation);

(ii) insurance provisions requiring that all of the Subtenant'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 Subtenant's are conducted;

(iii) a provision stating that if this Lease is terminated for any reason, by either party, the Subtenant's right to possession under the Sublease will terminate;

(iv) a requirement that the Subtenant must 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.

(v) a provision stating that in the event of termination, reentry or dispossession by Port under this Lease Port may, at its option, take over all of the right, title and interest of Tenant under such Sublease, and such Subtenant shall, at Port's option, attorn to Port pursuant to the then executory provisions of such Sublease;

(vi) an express waiver of any and all relocation assistance and benefits in connection with this Lease to the extent permitted by applicable Laws;

(vii) a statement that the Sublease is subject to and subordinate to this Lease;

(viii) a prohibition on assignment or further subleasing, in whole or in part, without Port's consent, which may be given or withheld in Port's sole discretion;

(ix) a provision similar to Section 25 (Port's Entry) requiring Subtenant to permit Port to enter its subleased space for the purposes specified in that Section; and

(x) a provision similar to Section 34 (Tenant Estoppel) requiring Subtenant, from time to time, to provide Port an estoppel certificate substantially similar to the form attached hereto as *Exhibit L*; and

(e) Any Sublease that does not comply with this Section fully including without limitation Tenant's failure to seek or obtain Port's consent when such consent is required, will constitute an incurable Event of Default and will be void as to Port and this Lease. Port's consent to one Sublease will have no effect with respect to any other Sublease.

(f) Copy of Executed Sublease. Tenant shall provide Port a true and complete copy of each executed Sublease within thirty (30) days after the execution thereof. Each executed Sublease must contain substantially the same (or more favorable to the landlord) business terms as set forth in the applicable Notice of Request to Sublease.

(g) Excess Rent. Tenant agrees to pay to Port immediately upon receipt all Excess Rent, less Subleasing Expenses, as Additional Rent. In calculating Excess Rent, Subleasing 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 Subleasing 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
Subleasing Expenses:	\$15,000 + \$15,000 = \$30,000
Amortized Subleasing 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

21.5. Assignment of Sublease Rents. Tenant immediately and irrevocably assigns to Port, as security for Tenant's obligations under this Lease, all of Tenant's interest in any rent from any Sublease, except that, until the occurrence of a Tenant Event of Default, Tenant has the right to receive, collect and enjoy such rents. Subtenant will pay the rent and other sums due under any Sublease directly to Port upon receiving written notice from Port that Tenant is in default under this Lease with respect to the payment of Rent. In the event that, notwithstanding the giving of such notice, Tenant collects any rent or other sums from any Subtenant, then Tenant will hold such sums in trust for the benefit of Port and will immediately forward the same to Port. Port's collection of such rent and other sums will not constitute an acceptance by Port or attornment by such Subtenant.

21.6. No Further Consent Implied. No material terms of an Assignment or Sublease after approval by Port, may be amended without Port's prior written consent. Consent to one Assignment or Sublease will not be construed as consent to a subsequent Assignment or Sublease.

21.7. Fees for Review. Tenant will reimburse Port for its reasonable costs in connection with the review, investigation, processing, documentation, disapproval and/or approval of any proposed Mortgage, Assignment or Sublease including without limitation attorneys' fees and costs.

21.8. No Release of Tenant. The acceptance by Port of Rent or other payment from any other person will not be deemed to be a waiver by Port of any provision of this Lease or to be a release of Tenant from any obligation under this Lease.

21.9. Notice to Port.

(a) In addition to the obligations under Section 16.26.2, 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).

(b) **Notice of Significant Change.** Tenant shall promptly notify Port of any and all Significant Changes regardless of whether such Significant Change constitutes an Assignment. At such time or times as Port may reasonably request, Tenant must furnish Port

with a statement, certified as true and correct by an officer of Tenant, setting forth all of the constituent members of Tenant and the extent of their respective holdings, and in the event any other Persons have a beneficial interest in Tenant, their names and the extent of such interest.

21.10. Assignment/Sublease Audit. Tenant agrees to make its Books and Records available to, and cooperate with, any Port representative for the purpose of conducting an audit under the terms and conditions described in Section 5.8 of the accuracy of Tenant's financial reporting on an Assignment or Sublease during the Audit Period. If an audit reveals that Tenant has understated any amounts owed to Port during 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 amounts owed to Port 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 amounts owed to Port 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.

21.11. Acknowledgement. Tenant acknowledges and agrees that Port's rights with respect to Assignments and Subleases are reasonable limitations for purposes of California Civil Code Section 1951.4 and waives any Claims arising from Port's actions under this Section 21.

22. DEFAULTS 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 Monthly Percentage Rent Statement or Annual Statement when due and such default continues for a period of three (3) days following written notice from Port. Notwithstanding the foregoing, Port shall not be required to provide such notice more than twice during any twelve (12) month period, and any such failure by Tenant after Tenant has received two (2) such notices in such twelve (12) month period shall, 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 or any Assignment/Sublease proceeds owed to Port for any Audit Period within any three (3) Lease Year period of the first such understatement;

(d) failure to comply with the Port-approved Operations Plan or Tenant's management covenants set forth in Section 33, as determined by Port in its sole and absolute discretion and such failure continues for a period of two (2) days following written notice from Port; or

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

(f) failure to pay Port at close of escrow of any Sale, Port's Participation in Net Sale Proceeds and such default continues for a period of three (3) days following written notice from Port.

(g) failure to use the Premises solely for the Permitted Use, as determined by Port in its sole and absolute discretion and such failure continues for a period of twenty-four (24) hours following written notice from Port; 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 34 below, and Tenant's failure to cure the foregoing default within five (5) days following written notice from Port; or

(i) failure by Tenant to submit a Pier Flood Protection Plan within the time period set forth in the CHE Determination Notice; failure to implement any required Pier Flood Protection Measures or the Approved Pier Flood Protection Plan within the time required in the CHE Determination or failure to otherwise comply with the provisions of Section 14 within the time specified for such task in Section 14; or

(j) a Mortgage, Assignment or Sublease, or attempted Mortgage, Assignment, or Sublease of the leasehold, this Lease or the Premises by Tenant contrary to the provision of Section 21 above; or

(k) failure by Tenant or Tenant's broker as applicable to provide evidence of insurance coverage complying with the provisions of Section 17 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

(l) failure by Tenant to comply with the provisions of Section 16 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

(m) 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 (the timeframes in this subsection will be extended by Port provided Tenant promptly undertakes action to cure such default within such 10 or 15-day period and thereafter diligently prosecutes the same to completion); or

(n) 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 22, and such failure continues for a period of fifteen (15) days after written notice by Port, provided that if such default is not capable of cure within such fifteen (15) day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such fifteen (15) day period and thereafter diligently prosecutes the same to completion within sixty (60) days after the receipt of notice of default from Port. Port shall not be required to provide such notice more than twice in any twelve (12) month period with respect to any material non-monetary defaults and after the second notice in any calendar year, any subsequent failure by Tenant during such twelve (12) month period shall automatically constitute an Event of Default hereunder; or

(o) 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

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

(q) 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;

(r) without limiting the provisions of Sections 22(g) or 22(l) above or lengthening the cure periods under those subsections, failure by Tenant to comply with Laws and Tenant's failure to cure the foregoing default within forty-eight (48) hours following written notice from Port; or

(s) failure to comply with the terms and conditions governing use of the Curb License and such failure continues for a period of twenty-four (24) hours following written notice from Port.

23. 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:

23.1. *Tenant's Right to Possession Not Terminated.* Port has the remedy described in Section 1951.4 of the California Civil Code (a landlord may continue the lease in effect after a tenant's breach and abandonment and recover rent as it becomes due, if the tenant has the right to sublet and assign subject only to reasonable limitations) under which it may continue this Lease in full force and effect and Port may enforce all of its rights and remedies under this Lease, including the right to collect Rent when due. During the period Tenant is in default, Port may enter the Premises without terminating this Lease and relet them, or any part of them, to third parties for Tenant's account. Tenant shall be liable immediately to Port for all reasonable costs Port incurs in reletting the Premises, including, but not limited to, broker's commissions, expenses of remodeling the Premises required by the reletting and like costs. Reletting can be for a period shorter or longer than the remaining Term, at such rents and on such other terms and conditions as Port deems advisable. Tenant shall pay to Port the Rent due under this Lease on the dates the Rent is due, less the Rent Port receives from any reletting. In the event that Port shall elect to so relet, then rentals received by Port from such reletting shall be applied in the following order: (i) to reasonable attorneys' fees incurred by Port as a result of a default and costs in the event suit is filed by Port to enforce such remedies; (ii) to the payment of any indebtedness other than Rent due hereunder from Tenant to Port; (iii) to the payment of any costs of maintaining, preserving, altering, repairing and preparing the Premises for reletting, the other costs of reletting, including but not limited to brokers' commissions, attorneys' fees and expenses of removal of Tenant's Personal Property, trade fixtures and Alterations; (iv) to the payment of Rent due and unpaid hereunder; (v) to the payment of future Rent and other sums payable by Tenant hereunder as the same may become due and payable hereunder; and (vi) the balance, if any, shall be paid to Tenant upon (but not before) expiration of the Term. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of Rent hereunder, be less than the Rent payable during the month by Tenant hereunder, then Tenant shall pay such deficiency to Port. Such deficiency shall be calculated and paid monthly. No act by Port allowed by this Section 23.1 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.

23.2. Termination of Tenant's Right to Possession. Upon an Event of Default, 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 23.2(a) and 23.2(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 23.2(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%).

23.3. 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.

23.4. 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.

23.5. 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.

23.6. *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.

23.7. *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.

23.8. *Remedies Not Exclusive.* The remedies set forth in Section 23 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.

24. LITIGATION EXPENSES; ATTORNEYS' FEES.

24.1. *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.

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

24.3. *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.

25. PORT'S ENTRY ON PREMISES.

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

25.2. *General Entry.* In addition to its rights pursuant to Section 25.1 above, Port and its authorized Agents shall have the right to enter the Premises at all reasonable times and upon reasonable notice for any of the following purposes:

(a) To perform any necessary maintenance, repairs or restoration to the Premises or Seawall, to perform Port Work 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; or "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.

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

25.4. 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 NPS's, Port's or their authorized Agents entry onto the Premises as provided in this Section 25 or performance of any necessary or required work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, except damage resulting solely from the willful misconduct or gross negligence of Port or its authorized representatives.

25.5. Nondisturbance. Port shall use its commercially reasonable efforts to conduct its activities on the Premises as allowed in this Section 25 in a manner which, to the extent reasonably practicable, will minimize annoyance or disturbance to Tenant.

26. SURRENDER AND QUITCLAIM.

26.1. Surrender. Upon expiration or earlier termination of this Lease, Tenant shall surrender to Port the Premises in good order, condition, and repair (except for ordinary wear and tear occurring after the last necessary maintenance made by Tenant and except for destruction or condemnation as described in Sections 18 and 19 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 26 and Section 13.5, Tenant shall continue to be responsible for the payment of Rent (as the same may be increased pursuant to Section 4.6 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.

26.2. 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.

26.3. 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, the benefits of which Tenant waives.

26.4. Survival. Tenant's obligation under this Section 26 shall survive the expiration or earlier termination of this Lease.

27. 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.

28. REPRESENTATIONS AND WARRANTIES OF TENANT.

Tenant represents, warrants and covenants to Port as follows, as of the date hereof and as of the Effective Date:

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

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

(c) **No Limitation on Ability to Perform.** 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.

At Port's request, Tenant shall reaffirm the representations and warranties above as of the Phase I and Phase II commencement dates.

29. TENANT'S MANAGEMENT COVENANTS.

29.1. Covenants. Tenant shall maintain and operate the Premises, or cause the Premises to be maintained and operated, in a first-class manner consistent other visitor serving businesses located on Port property. Tenant shall be exclusively responsible, at no cost to Port, for the management and operation of the Improvements in addition to all other aspects of the Premises. In connection with managing and operating the Premises, Tenant shall provide (or require others to provide) services as necessary and appropriate to the uses to which the Premises

are put, including, but not limited to (a) repair and maintenance of the Improvements, as more fully described in Section 11, (b) utility and telecommunications services, (c) cleaning, janitorial, extermination, and trash removal, (d) landscaping and grounds keeping and (e) security services for the Premises.

29.2. Continuous Operations. Tenant shall use commercially reasonable efforts to ensure that all of the Premises are used continuously beginning on the relevant Commencement Date for each parcel for the Permitted Use and shall not allow any portion of the Premises to remain unoccupied or unused without the prior written consent of Port, which consent may be withheld in Port's sole and absolute discretion. Notwithstanding the foregoing, the Port shall not unreasonably withhold its consent to any cessation of operations for any reasonably necessary time period due to the following causes or in the following circumstances: (a) if the Premises become untenable due to fire or other casualty, (b) as may be necessary in connection with performing repairs to the Premises, or (c) while conducting periodic inventory of Tenant's goods and merchandise.

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) 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.

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 (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. Notwithstanding any provision of this Lease, this subsection shall not apply to the Ferry Concessioner Contract.

(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 Effective 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(a).

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

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

(e) Tenant shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying the City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings

related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

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

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

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

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

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

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

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

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

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

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

31.24. Vending Machines; Nutritional Standards and Calorie Labeling Requirements; Offerings. Tenant shall not install or permit any vending machine on the Premises without the prior written consent of Port. Any permitted vending machine must comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code section 4.9- 1(c), as may be amended from time to time (the "Nutritional

Standards Requirements”). Tenant agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section shall be deemed a material breach of this Lease. Without limiting Port’s other rights and remedies under this Lease, Port shall have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements. In addition, any Restaurant including any employee eating establishment located on the Premises is encouraged to ensure that at least twenty-five percent (25%) of Meals (as capitalized terms are defined in San Francisco Administrative Code section 4.9-1) offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code section 4.9-1(e), as may be amended.

31.25. Employee Signature Authorization Ordinance. The City has adopted an Employee Signature Authorization Ordinance (S.F. Admin Code Sections 23.50-23.56). That ordinance requires employers of employees in hotel or restaurant projects on public property with fifty (50) or more employees (whether full-time or part-time) to enter into a **"card check"** agreement with a labor union regarding the preference of employees to be represented by a labor union to act as their exclusive bargaining representative. Tenant shall comply with the requirements of such ordinance, if applicable, including, without limitation, any requirements in the ordinance with respect to its Subtenants or operators.

31.26. Labor Peace Agreement. The City has adopted a Labor Peace Agreement ordinance (**"LPA Ordinance"**) codified at SF Administrative Code Section 23.70 et seq.) which requires among other things, Employers of Employees working in Excursion Vessel Operations to agree, upon request by their Employees’ labor representative, to enter into a Labor Peace Agreement with a union seeking recognition containing specified minimum terms and to engage in mediation and arbitration if the parties are unable to agree on the terms of a Labor Peace Agreement within the specified timeframe and to make certain reports to the Office of Labor Standards and Enforcement (**"OLSE"**). Tenant shall comply with the requirements of the LPA Ordinance unless it: (i) employs fewer than forty (40) employees in vessel operations; (ii) is signatory to a valid and binding collective bargaining agreement as to the union seeking recognition; or (iii) meets any of the other exemptions in the LPA Ordinance as determined by OLSE. In addition, Tenant shall include, as a material term in any Subcontract the following language: “San Francisco Administrative Code Chapter 23, Article VIII, commencing at Section 23.70, which applies to [Subcontractor], is incorporated herein by reference. To the extent [Subcontractor] employs Employees in Excursion Vessel Operations within the scope of Administrative Code Chapter 23, Article VIII, [Subcontractor] hereby agrees as a material condition of this subcontract to enter into and abide by a Labor Peace Agreement with a Labor Organization or Organizations that represents, or seeks to represent, [Subcontractor’s] Employees, if and as required by Article VIII, and to otherwise fully comply with the requirements of that Article.”

Tenant’s failure to comply with the LPA Ordinance or this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.74 against the breaching party.

32. MISCELLANEOUS PROVISIONS.

32.1. 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.

32.2. Entire Agreement. This Lease contains all of the representations and the entire agreement between the parties with respect to the subject matter of this Lease. Any prior correspondence, memoranda, agreements, warranties, or representations, whether written or oral, relating to such subject matter are superseded in total by this Lease. No prior drafts of this Lease

or changes from those drafts to the executed version of this Lease shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider those drafts in interpreting this Lease.

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

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

32.5. 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. The parties agree that, as necessary, Port will update each of the Schedules prior to the Phase I and Phase II Commencement Dates.

(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) Tenant agrees that it has obtained this Lease as a result of NPS's selection, solicitation, and award of a contract to a Ferry Concessioner in its sole discretion pursuant to a federal governmental process governed solely by applicable federal Laws including without limitation, the 1998 Concessions Act and that Port has no role in such selection, solicitation, or award process. To the extent that any provision of this Lease has been negotiated between Port and Tenant, Tenant agrees that such provisions have been negotiated at arm's length between persons sophisticated and knowledgeable in the matters addressed. In addition, each party to this Lease 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.

32.6. 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.

32.7. 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.

32.8. 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.

32.9. 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.

32.10. 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.

32.11. 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.

32.12. 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.

32.13. *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.

32.14. *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, including without limitation, NPS.

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

32.16. *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, "consideration") without a written agreement executed by the Executive Director of Port or his or her designee authorizing such consideration and, if applicable, certification of the consideration from the City's Controller.

33. LIMITATION ON DAMAGES.

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

33.2. *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.

33.3. *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.

34. TENANT ESTOPPEL CERTIFICATES.

Tenant, at any time and from time to time upon not less than ten (10) days' prior notice from Port, shall execute and deliver to Port or to any party designated by Port a certificate in substantially the same form as that attached to this Lease as *Exhibit L*. 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.

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

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

By: [Signature]
Michael J. Martin
Deputy Director, Real Estate and Development

Date Signed: 5/7/19

TENANT: ALCATRAZ CRUISES, LLC, A CALIFORNIA LIMITED
LIABILITY COMPANY

By: [Signature]
Name: TERRY MACKIN
Title: CEO

Date Signed: 5/7/19

By: [Signature]
Name: Mitchell Randall
Title: Vice President

Date Signed: 5/7/2019

Two Corporate Officers
MUST SIGN

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

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

Lease Prepared By: Jay Edwards, Senior Property Manager [Signature] (initial)

Port Commission Reso. 18-39
BoS Reso. 317-18

EXHIBIT A

EFFECTIVE DATE, 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:

Effective Date:

Premises: _____, San Francisco, California

The Effective Date of the Lease is hereby established as _____, 20__.

The Phase I Commencement Date of the Lease is hereby established as _____, 20__.

The Phase I Rent Commencement Date of the Lease is hereby established as
_____, 20__.

The Phase II Commencement Date of the Lease is hereby established as _____, 20__.

The Phase II Rent Commencement Date of the Lease is hereby established as
_____, 20__.

The Expiration Date is _____, 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: 5/7/19

Tenant:

By: 
Name: _____
Title: _____

Date Signed: 5/7/19

ADDENDUM TO LEASE NO. L-16723 BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO ACTING BY AND THROUGH THE SAN FRANCISCO PORT COMMISSION, AS LANDLORD, AND ALCATRAZ CRUISES, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, AS TENANT

This Addendum is fully incorporated into this Lease. In the event of any conflict between the provisions of this Addendum and provisions of the Lease, the provisions of this Addendum shall control.

Port and Tenant hereby agree as follows:

1. GENERAL. Due to delays in the execution of this Lease and the circumstances as of the date of execution of this Lease, the previously planned effective and commencement dates and manner of delivery are different than those originally described. This Lease will be effective and will commence on the same date and all parcels will be delivered concurrently on the Commencement Date. Accordingly,

(a) all references to the "Effective Date," "Phase I Commencement Date" and the "Phase II Commencement Date" shall be to the Commencement Date. All references to the "Phase I Premises" or to the "Phase II Premises" shall be to the "Premises;" and

(b) the parties agree that Section 18.1(a) (relating to damage and destruction prior to delivery) and Section 20.1(a) (relating to Indemnity prior to delivery) are superseded and of no force and effect; and

(c) the Effective Date and the Commencement Date of this Lease is November 1, 2019.

2. BASIC LEASE INFORMATION.

The Basic Lease Information is revised as follows:

2.1. The Section titled "*Premises; Commencement Dates and Delivery*" is deleted and replaced with the following:

Premises:	<p>The Premises consists of shed and office space; submerged land; and space on the Marginal Wharf comprised of the following and as depicted in <i>Exhibit B</i>:</p> <p>Parcel A Submerged land: approximately 60,000 sq. ft.;</p> <p>Parcel B Pier 31½ Marginal Wharf and plaza: approximately 43,890 sq. ft. of pier-supported outdoor space; and</p> <p>Parcel C Pier 31 Shed: approximately 5,300 sq. ft. of non-contiguous shed space; and</p> <p>Parcel D Pier 33 Shed: approximately 4,062 sq. ft. of shed space; and</p> <p>Parcel D-1 Pier 33 Shed: approximately 1,240 sq. ft. of shed space.</p> <p>Parcel E Pier 33 South Bulkhead Building: 1st Floor:</p>
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	<p>approximately 4,612 sq. ft. of on the first floor; and</p> <p>Parcel F Pier 33 South Bulkhead Building 2nd Floor: approximately 4,555 sq. ft. on the second floor; and</p> <p>Parcel G Pier 33 South Bulkhead Building 3rd Floor: approximately 4,612 sq. ft. on the third floor;</p> <p>Parcels A-D and Parcel G will remain in the Premises for the Term of the Lease.</p> <p><u>Final Pier 33 South Bulkhead Building Premises:</u></p> <p>As described below, Embarkation Site Improvements will include demolition/construction of significant portions of the Pier 33 South Bulkhead Building and construction of an approximately 992 square foot mezzanine to replace the second floor. Upon Completion of the Embarkation Site Improvements to the Pier 33 South Bulkhead Building as described below and written notice by Port (“Pier 33 South Bulkhead Building Completion Date”), Tenant shall surrender Parcel D-1, and approximately 3,280 sq. ft. on the first floor and the entire second floor mezzanine of the Pier 33 South Bulkhead Building to Port in compliance with Section 26. Tenant shall surrender and deliver the relevant property to Port strictly in compliance with the conditions and specifications in the Work Letter, including without limitation, the Scope of Development (including the Schematic Design and Drawings) attached as Attachment 1 to the Work Letter which is attached hereto as Exhibit E. Acceptance of such surrender and conditions shall be in Port’s sole discretion. As of the Pier 33 South Bulkhead Building Completion Date, this Lease will terminate as to such portions of the Premises and Exhibit B-2 will replace and supersede Exhibit B-1 in its entirety without further action by the parties.</p> <p>The remainder of the Pier 33 South Bulkhead Building will remain under this Lease, consisting of:</p> <p>Parcel E-1 Pier 33 South Bulkhead Building: 1st Floor: approximately 1,382 sq. ft. of space on the first floor; and</p> <p>Parcel G Pier 33 South Bulkhead Building 3rd Floor: approximately 4,612 sq. ft. of office space.</p> <p>Promptly following the Pier 33 South Bulkhead Building Completion Date, Port and Tenant shall execute a Memorandum substantially in the form attached hereto as Exhibit A, confirming the actual Pier 33 South Bulkhead Building Completion Date.</p>
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2.2. The following Section is deleted:

<i>Access to Embarkation Site Prior to Delivery of Parcels:</i>	After the Effective Date and prior to any Commencement Date, Port will allow Tenant to access the relevant areas of the Embarkation Site for due diligence purposes under a Port license or other agreement subject to Port's standard terms and conditions for such access agreements and the rights of any existing tenants and users.
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2.3. The Section titled "*Phase II Construction Rent Abatement*" is deleted and replaced with the following:

<i>Phase II Construction Rent Abatement:</i>	Base Rent for Parcels E and F in the Pier 33 South Bulkhead shall be waived for Two Hundred and Seventy (270) days beginning on the Commencement Date until July 30, 2020. No Base Rent is due for Parcels E and F through July 30, 2020 provided that there is no other existing Tenant Event of Default. Tenant shall resume Base Rent payments for Parcels E and F on August 1, 2020 regardless of whether the Embarkation Site Improvements to Parcels E and F have been Completed by such date.
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2.4. The following Section is added:

<i>Prior Lease:</i>	The parties agree that as of the Commencement Date, Lease No. L-16499 effective as of May 9, 2019 between Alcatraz Cruises, LLC and Port (the " Prior Lease ") is hereby terminated; provided, however, that the parties shall continue to be liable for any obligations under the Prior Lease which have accrued prior to the date of termination and any obligations which by their terms survive the termination or expiration of the Prior Lease.
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3. DEFINITIONS.

The following defined terms are deleted: "Phase I Commencement Date," "Phase II Commencement Date;" "Phase I Premises;" "Phase II Premises;" "Phase I Rent Commencement Date;" and "Phase II Rent Commencement Date".

4. EXISTING LEASES. Section 4.2 is deleted.

5. TAXES AND ASSESSMENTS. Section 6.3 is added as follows:

6.3. Reporting. Tenant must provide a copy of this Lease to the County Assessor not later than sixty (60) days after the Commencement Date, and any failure of Tenant to timely provide a copy of this Lease to the County Assessor will be a default under this Lease. In addition to providing notice to Port as required by Section 21.9, Tenant must report any renewal, extension, assignment, sublease, or other transfer of this Lease to the County Assessor within sixty (60) days after any such transaction.

6. CITY REQUIREMENTS.

6.1. Section 31.13 is deleted and replaced with the following:

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 31.13 shall apply. Through its execution of this Lease, Tenant acknowledges its obligations under Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any

land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of one hundred thousand dollars (\$100,000) or more. Tenant further acknowledges that, if applicable, (i) the prohibition on contributions applies to each Tenant; each member of Tenant's board of directors, and Tenant's principal officers, including its chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten (10%) percent in Tenant; and any subcontractor listed in the Tenant's bid or contract; and (ii) within thirty (30) days of the submission of a proposal for the contract, the Port is obligated to submit to the Ethics Commission the parties to the Lease and any subtenant(s). Additionally, Tenant certifies that if this Section 28.13 applies, Tenant has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract and has provided to City the names of the persons required to be informed.

[END OF ADDENDUM]

EXHIBIT B

DESCRIPTION OF PREMISES – PHASE I PREMISES

[Attachment on following page]

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SAN FRANCISCO BAY



PIER
33

PARCEL A
BERTH/SUBMERGED LAND
AREA = 60,000 Sq Ft

PIER
31

PARCEL B
AREA = 43,890 Sq Ft

THE EMBARCADERO

INITIALS: PORT:

MM

TENANT:

DATE:

5/7/19

EXHIBIT B
PHASE I

LEASE NO.

L-16273



SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING

TENANT

NPS FERRY
CONCESSIONER

PHASE
I

DRAWN BY: J. DOMINGUEZ

DATE: JULY 28th, 2017

CHECKED BY: J. EDWARDS

SCALE: 1" = 80'

PLACE CODE NO.

1335-00

SHEET NO.

OF SHEETS

SAN FRANCISCO BAY



PIER 33

PIER 31

EXHIBIT B
PHASE I

INITIALS: PORT: *MM*

TENANT:

DATE: *5/2/19*

PARCEL D
SHED SPACE
AREA = 4,062 Sq Ft

PARCEL D-1
BULKHEAD BUILDING
AREA = 1,191 Sq Ft

PARCEL C
SHED SPACE
AREA = 5,300 Sq Ft

THE EMBARCADERO

LEASE NO.
L-16273

 SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING

TENANT
NPS FERRY CONCESSIONER
PHASE I

DRAWN BY: J. DOMINGUEZ	DATE: NOV. 28th, 2017
CHECKED BY: J. EDWARDS	SCALE: 1" = 80'
PLACE CODE NO. 1335-00	SHEET NO. OF SHEETS

EXHIBIT B-1

DESCRIPTION OF PREMISES – PHASE II PREMISES

[Attachment on following page]

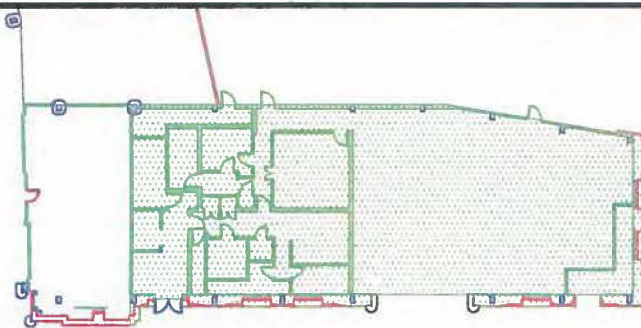
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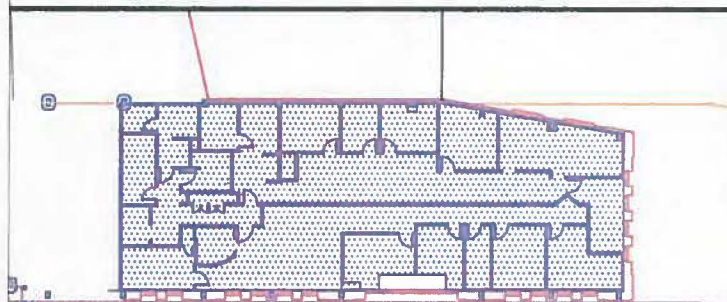
TENANT: af

DATE: 5/7/19

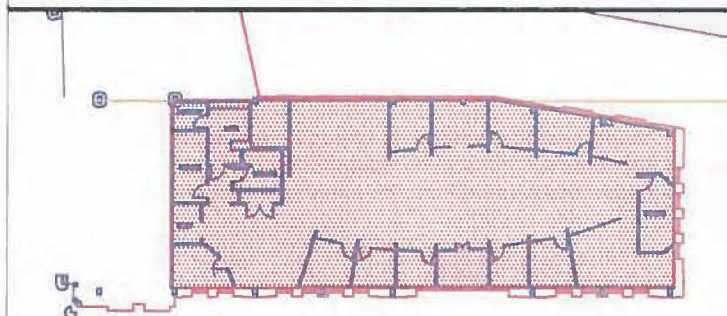
EXHIBIT B-1
PHASE II



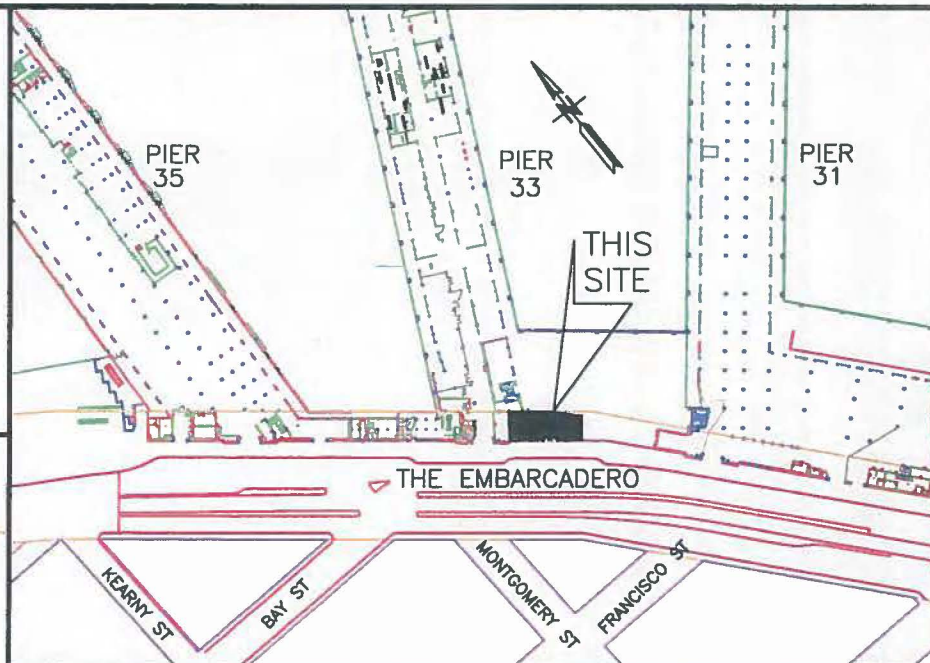
PARCEL E
FIRST FLOOR



PARCEL F
SECOND FLOOR



PARCEL G
THIRD FLOOR



LOCATION PLAN
NO SCALE

PIER 33 SOUTH BULKHEAD

PARCEL E
FIRST FLOOR = 4,612 Sq Ft

PARCEL F
SECOND FLOOR = 4,555 Sq Ft

PARCEL G
THIRD FLOOR = 4,612 Sq Ft

LEASE NO.

L-16273



SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING

TENANT

NPS FERRY PHASE II
CONCESSIONER

DRAWN BY: J. DOMINGUEZ

DATE: NOV. 28, 2017

CHECKED BY: J. EDWARDS

SCALE: 1" = 40'

PLACE CODE NO.

1335-00

SHEET NO.

OF SHEETS

EXHIBIT B-2

**DESCRIPTION OF PREMISES – FINAL PIER 33 SOUTH BULKHEAD PREMISES
REPLACEMENT EXHIBIT FOR EXHIBIT B-1**

[Attachment on following page]

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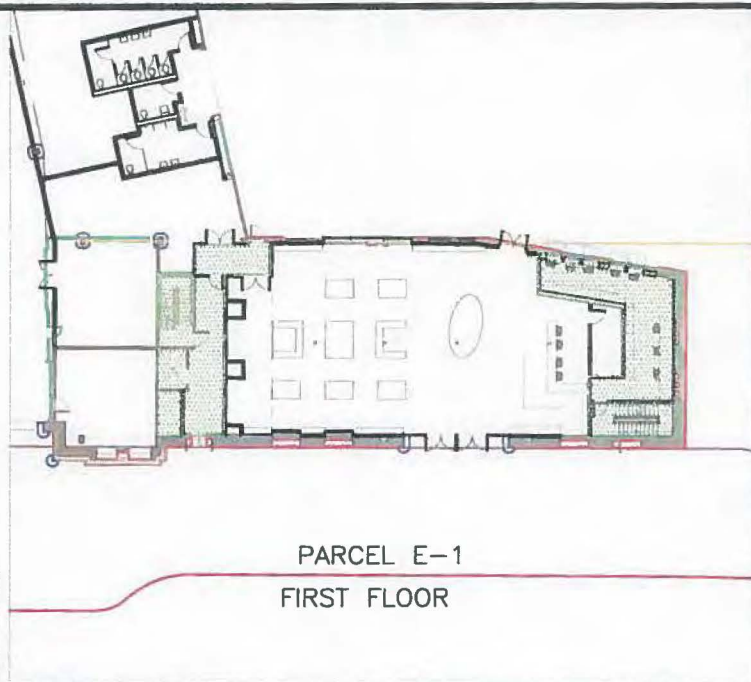
INITIALS: PORT: MM

TENANT: MM

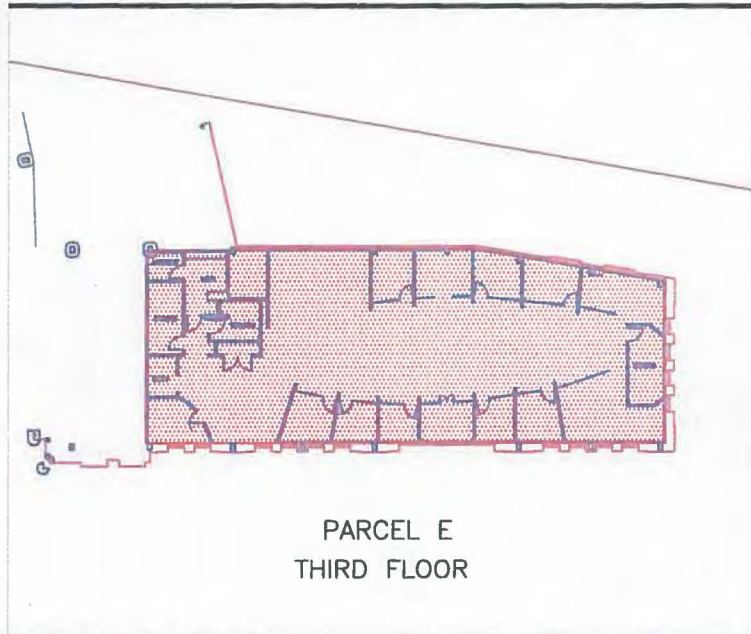
DATE: 5/2/19

PHASE III - FINAL PIER 33 SOUTH BULKHEAD PREMISES

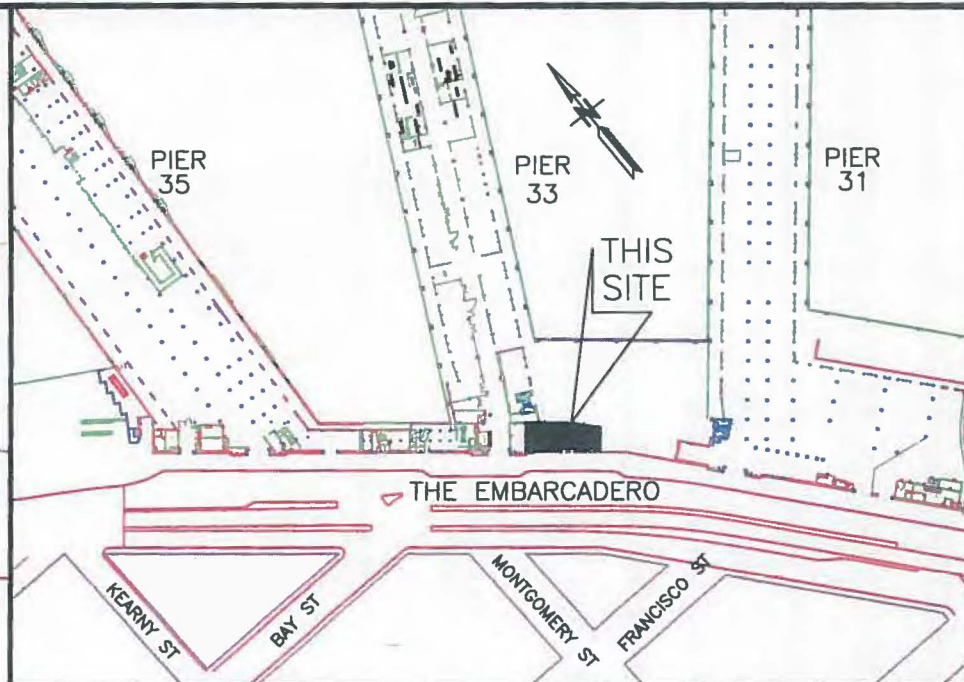
EXHIBIT B-2



PARCEL E-1
FIRST FLOOR



PARCEL E
THIRD FLOOR



LOCATION PLAN
NO SCALE

PIER 33 SOUTH BULKHEAD

PARCEL E-1
FIRST FLOOR = 1,382 Sq Ft

PARCEL E
THIRD FLOOR = 4,612 Sq Ft

LEASE NO.

L-16273



SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING

TENANT

NPS FERRY PHASE
CONCESSIONER III

DRAWN BY: J. DOMINGUEZ

DATE: NOV. 28, 2017

CHECKED BY: J. EDWARDS

SCALE: 1" = 40'

PLACE CODE NO.

1335-00

SHEET NO.

OF SHEETS

EXHIBIT B-3

DESCRIPTION OF APRON SITES

[Attachment on following page]

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PIER 31 North & 33 South LAY BERTHING + APRON SITES

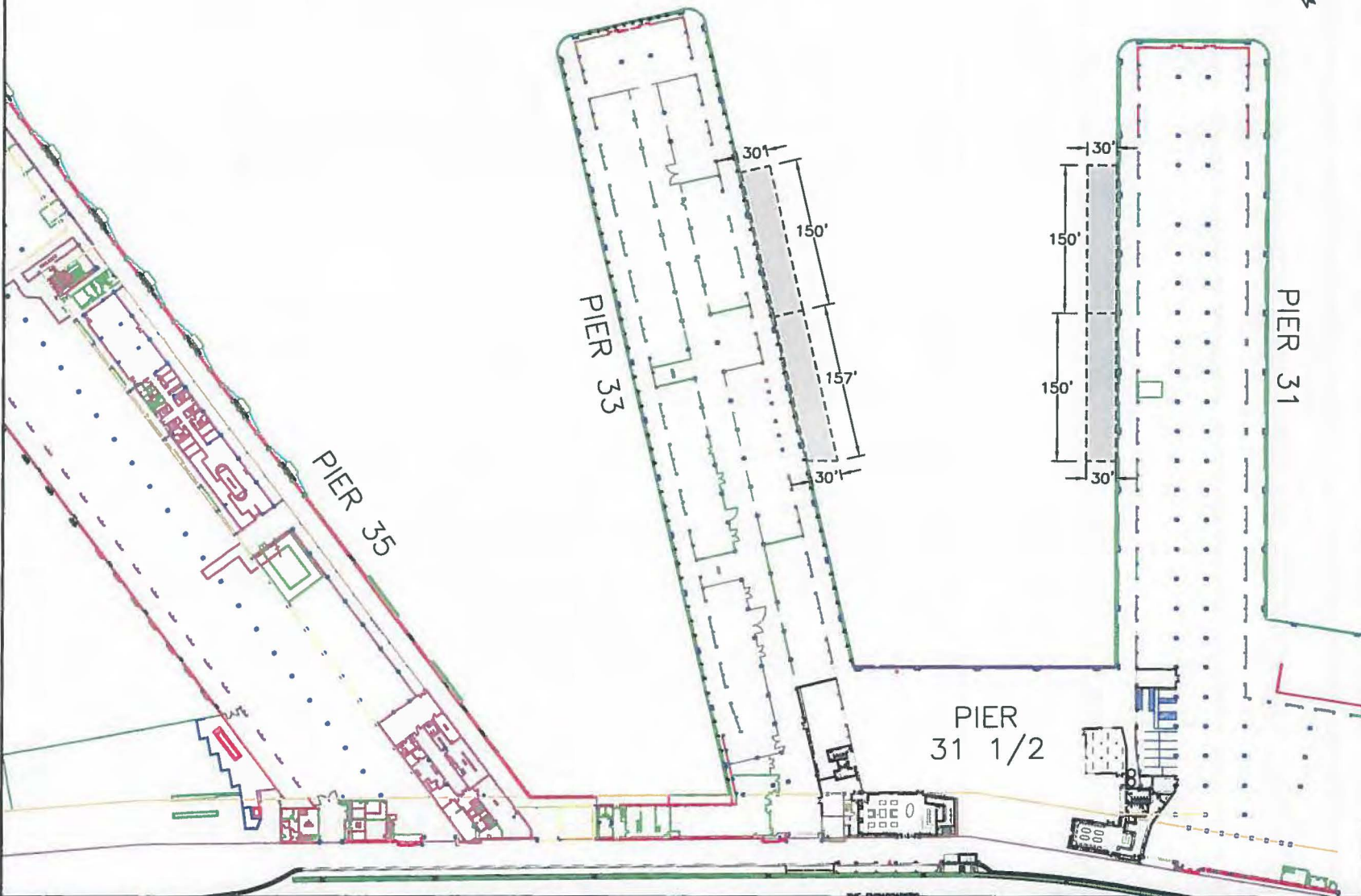


EXHIBIT B-3

INITIALS: PORT: MM

TENANT: MM

DATE: 5/7/19

LEASE NO.

L-16723



SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING

TENANT

NPS FERRY
CONCESSIONER

DRAWN BY: J. DOMINGUEZ

DATE: JULY 9TH, 2018

CHECKED BY: J. EDWARDS

SCALE: 1"=150'

PLACE CODE NO.

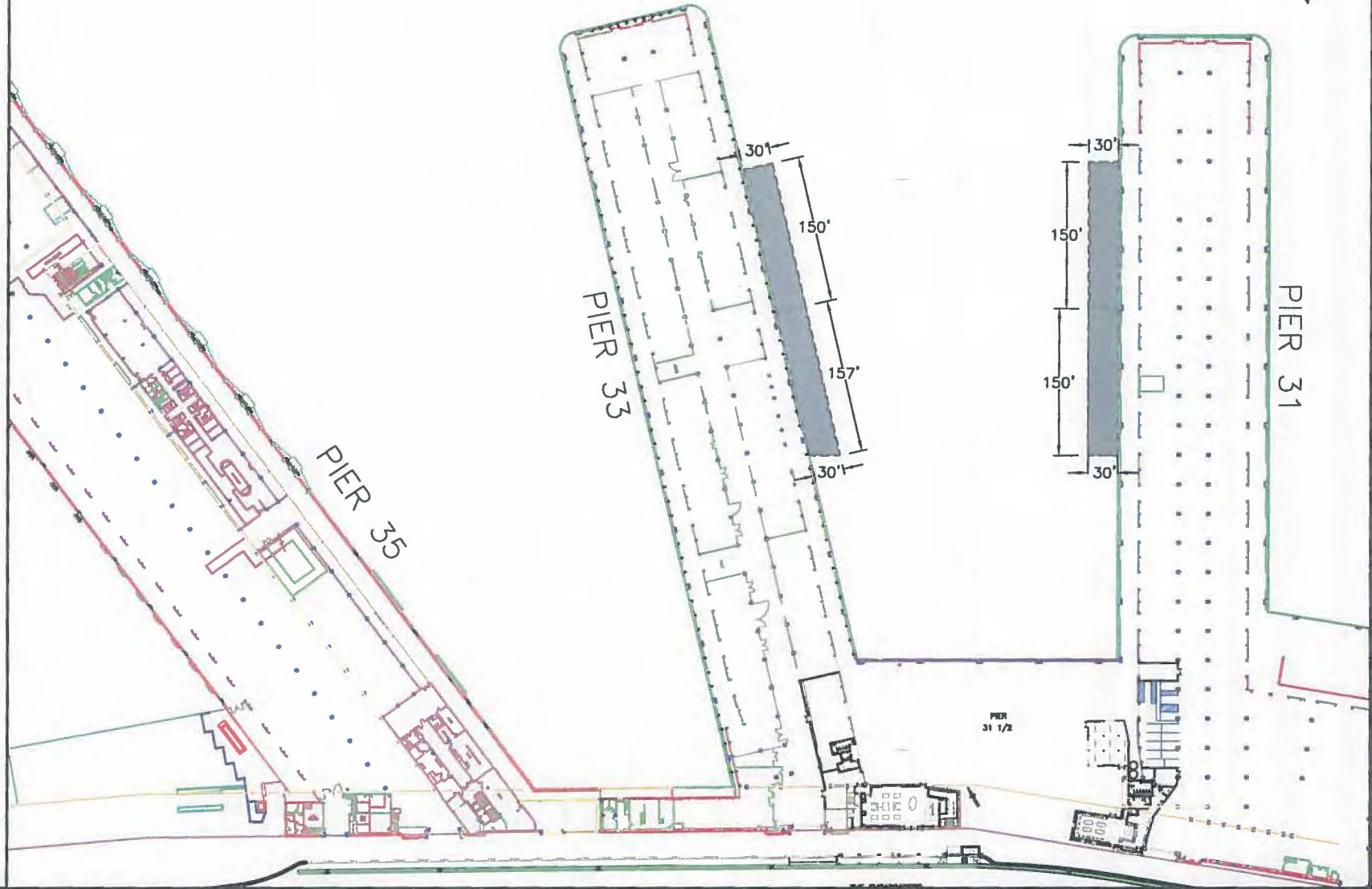
1234-56

SHEET NO.

OF SHEETS

PIER 31 North & 33 South BERTHING

■ PARCEL J BERTHING = 18,105 Sq Ft



INITIALS: PORT: MM

TENANT: MM

DATE: 5/7/19

EXHIBIT B-3

LEASE NO.

L-16723



SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING

TENANT

NPS FERRY
CONCESSIONER

DRAWN BY: J. DOMINGUEZ

DATE: DEC. 07, 2017

CHECKED BY: J. EDWARDS

SCALE: 1"=150'

PLACE CODE NO.

1234-56

SHEET NO.

OF SHEETS

EXHIBIT B-4

**APPROXIMATE LOCATION OF SEAWALL
IN RELATION TO THE PREMISES**

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INITIALS: PORT:

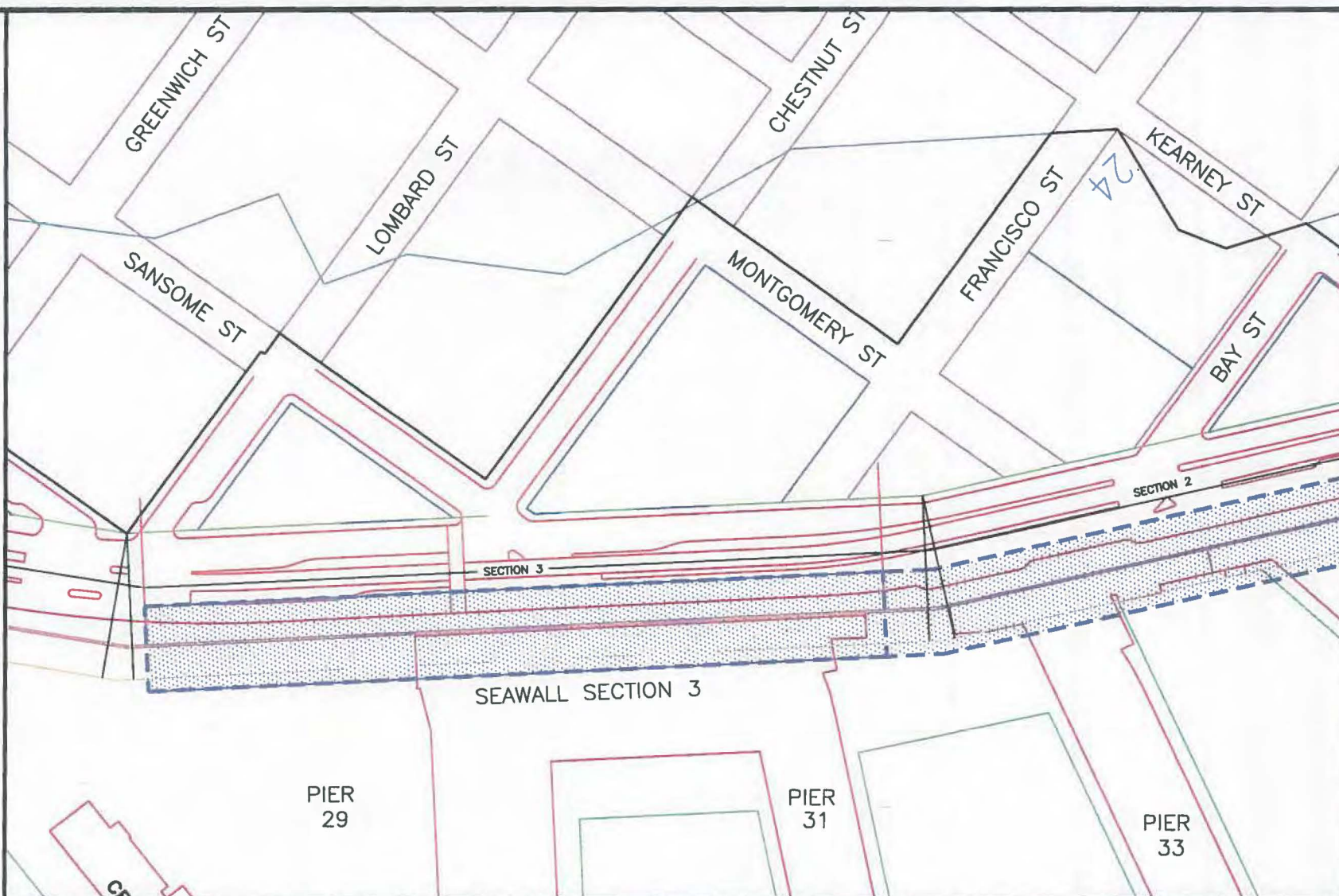
MM

TENANT:

DATE:

5/7/19

EXHIBIT B-4



ROCK DYKE SECTION 3

SCALE: 1"=150'



LEASE NO.

L-16723



SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING

TENANT

NPS FERRY
CONCESSIONER

DRAWN BY: J. DOMINGUEZ

DATE: ANY DAY

CHECKED BY: J. EDWARDS

SCALE: 1"=200'

PLACE CODE NO.

1234-56

SHEET NO.

OF SHEETS

EXHIBIT C
OPERATIONS PLAN

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Operations Plan

April 15, 2019

Alcatraz Cruises, LLC

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Alcatraz Cruises, LLC

Operations Plan

I certify that Alcatraz Cruises, LLC has prepared this Operations Plan, dated _____, 2019 and will comply with its terms and conditions. Tenant and Port may, from time to time, review Tenant's Operations Plan and make recommendations for revisions. All revisions to the Operations Plan, whether initiated by Port or Tenant, are subject to the mutual agreement of the parties, each in its reasonable discretion. Under no circumstances will the Operations Plan allow activities that do not comply with applicable Laws or the FMND.

Alcatraz Cruises, LLC



Signature

5/7/19

Date

Terry McRae

Printed Name

CEO

Title

Port of San Francisco



Signature

5/7/19

Date

Michael Martin

Printed Name

Deputy Director, Real Estate & Development

Title

1.0 INTRODUCTION

This Operations Plan (including its appendices which are hereby incorporated) covers conditions and requirements related to management of hazardous materials, stewardship and protection of the environment and governs all operations and activities undertaken by Alcatraz Cruises, LLC ("Tenant") and all of their Agents and Invitees conducting activities on Port property. The Operations Plan sets forth various requirements, followed by a description of the major operations. With each operation, protocols are discussed and then distilled into a series of Best Management Practices or BMPs. Following this is a review of the major regulatory requirements that pertain to the Tenant's operations. Last is a series of appendices that includes a consolidation of operational BMPs, pertinent Port Rules and Regulations and additional supporting documents. In the event of any conflict between the provisions of this Operations Plan and the relevant Lease, the terms and provisions of the Lease shall prevail.

Definitions used in this Operations Plan, are found in the specified locations in this Operations Plan or are set forth in Appendix K. Other capitalized terms are defined in the relevant Lease.

2.0 GENERAL OPERATIONS

2.1 Key Staff

In the event of an emergency, the following staff are primary points of contact.

TABLE 1: Key Staff

NAME	TITLE	PHONE	EMAIL
Denise Rasmussen	General Manger	415-559-3122 (24/7)	drasmussen@alcatrazcruises.com
Aaron Warren	Director of Marine Operations	415-559-3126	awarren@alcatrazcruises.com
Nick Linder	Associate Director of Marine Operations	415-747-0652	nlinder@alcatrazcruises.com

2.2 Key Locations and Activities

A wide variety of activities will occur throughout the term of the Lease. These will vary by location and time. The following table lists several locations and activities that are planned or

Operations Plan

that are being considered at these locations. This information shall be updated as needed throughout the term of the Lease.

TABLE 2: Locations and Activities

LOCATION	ACTIVITIES
Parcel A Submerged Land	Vessel berthing and marine operations for the vessel(s) permitted under this Lease; use of floats and ramps; vessel provisioning; overnight berthing; passenger loading and unloading; construction activities and other activities to support concession operations
Parcel B Pier 31 ½ Marginal Wharf and plaza	Public assembly; visitor circulation; passenger queueing, and staging; information and sales kiosks, interpretive exhibits; souvenir photography directly serving passengers; protected seating and dining area; and support for routine/minor maintenance of ferry vessels, ticket booth, visitor contact desk; construction activities and other activities to support concession operations
Parcel C Pier 31 Shed	Maritime storage, operations and other storage, including food storage; employee and accessible vehicular parking; public restrooms; and bicycle parking; drinking fountains; café service and seating; prep kitchen; accessible seating; trash and recycling service area; service loading; construction activities and other activities to support concession operations
Parcel D and D-1 Pier 33 Shed	Maritime storage and other storage, including food storage; employee break area and locker room; utility area and public restrooms; construction activities; operations storage; drinking fountains; mechanic shop; service loading; and other activities to support concession operations
Parcel E and E-1 Pier 33 South Bulkhead Building 1 st Floor	Ticketing, office and circulation areas; interpretive retail; ticketing and sales office; point of sales; staff circulation; construction activities and other activities to support concession operations
Parcel F Pier 33 South Bulkhead Building 2 nd Floor	Office
Parcel G Pier 33 South Bulkhead Building 3 rd Floor	Office uses
Exhibit B-3 (if exercised)	Lay-berthing of vessels to service the Alcatraz Embarkation and Interpretive Park Cruises.

2.3 Use of Port Facilities – Protecting The Bay

Most Port piers and the structures on them drain to the San Francisco Bay. Therefore, materials that are released on pier aprons and inside pier sheds could ultimately be released into the Bay. Materials can also be conveyed to the Bay by stormwater or wind. Even materials that are spilled in the dry summer months can be washed into the Bay with the winter rains.

TABLE 3a: Potential Pollutants and Activities of Concern

POTENTIAL POLLUTANTS	ACTIVITIES OF CONCERN
Trash / Debris	Waste Management
Vehicle Fluids	Parking, Deliveries/Provisioning
Equipment Fluids	Operation of equipment
Hazardous Materials	Boat Maintenance and Repair

TABLE 3b: Port Facilities and Environmental Risks

PORT FACILITY TYPE	ENVIRONMENTAL RISKS
Pier Aprons and Decks	Discharge via sheet flow or storm drains to SF Bay Wind carries debris into SF Bay
Pier Sheds	Indoor area drains lead directly to SF Bay

The two most important Best Management Practice (BMP) when using Port facilities are:

- 1) Be aware of the potential to pollute the Bay.
- 2) Train staff to protect the Bay.

The following Port of San Francisco's Best Management Practices (BMPs) shall be used at all times as general guidelines. The Port acknowledges that the Tenant utilizes ISO 14001 management plans, and undergoes internal and external audits. The Tenant may deploy specific plans whose BMPs may differ at times even though they adhere to the intent of the Port's BMPs.

BMPs– General Use of Port Facilities

- **BE AWARE:** Be aware of the potential to pollute the Bay.
- **TRAIN STAFF:** Train staff to be partners in protecting the Bay.
- **DEBRIS MANAGEMENT:** Place trash and debris in the proper containers.

Operations Plan

- **END OF DAY CLEAN-UP:** At the end of the day or when activities are over, conduct a general clean-up to remove debris, trash, and inspect for spills.
- **SWEEP:** When practical, use dry cleaning methods rather than pressure washing surfaces.
- **CLEAN SPILLS IMMEDIATELY:** Keep equipment clean. Avoid excessive build-up of oil and grease.

3.0 DESCRIPTION OF OPERATIONS

GENERAL

This section describes the Tenant's operations and activities that are authorized by the Lease. These operations and activities shall be conducted in accordance with this Operations Plan. Operations that are not approved shall be prohibited.

In the event the Tenant identifies a conflict between this Operations Plan and the Operations Plan required under the NPS Concession Contract, then Tenant shall notify in writing concurrently the Port of San Francisco and the National Park Service regarding the specific nature of the conflict and the impact to its operations. After consultation with the National Park Service, the Port shall advise the Tenant accordingly. During the pendency of resolving of a bona fide conflict, Port will not issue a notice of default to Tenant provided that Tenant is using best efforts to comply with the Lease.

If the Tenant would like to conduct new activities and operations, it shall submit a revised Operations Plan to the Port for approval. A revised Operations Plan shall specify at a minimum:

- Proposed new activities.
- Additional venues for activities approved elsewhere.
- New permit requirements (new permits and modifications to existing permits).
- BMPs that will be employed.
- Other information reasonably required by Port.
- Any required/applicable environmental review and approval

The Port will respond promptly to any request to revise the Operations Plan.

3.1 Vessel and Vehicle Operations

Vessel and vehicle operations will be located at Piers 31.5, 31 and 33. Certain Vessel and vehicle maintenance activities are permitted to take place on the Premises, and boat yard maintenance is recognized under the Clean Water Act as a regulated activity. This section describes the activities and Best Management Practices (BMPs) required to ensure that the operations are clean and comply with the standards of the Clean Water Act and the Port of San Francisco.

Operations Plan

Typical **vessel maintenance activities** consistent with the operation of heavily used commercial passenger and concession support vessels may include, but not limited to:

- Boat washing and cleaning
- Boat Maintenance
 - Simple hull and equipment Repair
 - Engine, Propulsion, and Systems Repair
 - Electronics Repair
 - Safety equipment
- Boat equipment storage
- Emergency repairs

Typical **industrial activities** may include, but not limited to:

- Tools and equipment storage
- Hazardous Materials storage and mixing
- Metal recycling
- Parts washing
- Mechanic and maintenance work

If the Tenant would like to conduct additional activities, it shall submit a revised Operations Plan to the Port for approval, in its reasonable discretion.

The following activities are permitted only when conducted in strict compliance with the provisions of the Lease, applicable environmental requirements, and this Operations Plan.

- Handling any Hazardous Materials on or off any vessels, and fueling of vessels.
- Handling any Hazardous Materials on or off any vessels on behalf of third parties.

FUELING

Fueling of vessels, vehicles or equipment, shall be permitted in strict compliance with Port requirements and BMPs, and all other applicable regulatory requirements. Fueling materials include propane, gasoline and diesel, marine gear oil (MGO), alternate fuels (e.g., hydrogen), and lubricant. In-water fueling of boats on the Premises shall only occur at Pier 31.5 with evidence of compliance with a Certificate of Financial Responsibility from the California Department of Fish & Wildlife. Propane fueling (consisting of exchanging empty tanks for full ones which are filled offsite) of forklifts and other equipment may be conducted where use of the equipment is approved and listed in the Operations Plan.

All operational fueling activities shall be incorporated into the Industrial Stormwater Pollution Plan. Fueling for construction activities shall be addressed in the Port's Construction Stormwater Prevention Plan.

Operations Plan

Fueling of forklifts, carts, and other equipment that use propane shall be done in accordance with BMPs and regulatory requirements for the handling of compressed flammable gases. Propane tanks that are being stored shall be secured in a cage on the exterior of the building and secured against earthquakes. Empty tanks shall be clearly identified.

Electric Charging of Vessels

Tenant to supply information regarding electric charging uses and BMPs.

Miscellaneous Fueling

Miscellaneous and intermittent fueling of equipment such as forklifts, where consumption of fuel is less than a total of 10 gallons per day, shall be performed by on-site stored fuel in 5 portable containers cans. No more than two 5-gallon portable containers for either diesel or gas (total of four 5-gallon containers max) may be kept on site at any time. These containers shall be stored in an approved flammable liquids cabinet and in a properly-ventilated area. Filling of jerry cans shall take place offsite. Fueling using portable containers shall take place in a designated area and operated in accordance with the following BMPs:

BMPs – Miscellaneous Fueling

- **CLEAN AREA:** Maintain clean fuel-dispensing area using dry cleanup methods such as sweeping for removal of litter and debris, or use of rags and absorbents for leaks and spills.
- **DRIP PANS:** Place drip pans or other containment beneath each connection point to capture all spills and drips.
- **COVER DRAINS:** Cover storm drains in the immediate vicinity during transfer.
- **OBSERVE:** Designate one person to watch the connection point to the fueling truck and another to watch the vehicle.
- **SPILL KIT:** Maintain ample spill clean-up equipment adjacent to the fueling area.
- **EMERGENCY INFORMATION:** Maintain emergency response and contact information.
- **TRAINING:** Train staff annually on response to a fueling emergency.

Mobile Fueling of Vessels and Equipment

Regular fueling of vessels will be fueled using a method known as “mobile fueling” which means that fuel will be dispensed directly from a fuel tanker truck. Equipment will be fueled by portable containers in a designated area. The designated fueling area will be delineated using temporary berms in such a way to exclude any storm drains. The storm drains immediately outside the bermed area shall be covered.

Operations Plan

The fuel company will deliver a maximum of 9,000 gallons diesel with each delivery. The frequency will be as needed. Tenant's initial designated Fueling Coordinator(s) are Director of Marine Operations and Associate Director of Marine Operations. Tenant shall notify POSF if such Fueling Coordinators are changed. Before each fueling event, the Fueling Coordinator will ensure that the temporary berm is set and the storm drains are covered. Before fueling begins, a drip pan will be placed beneath the connection point of each piece of equipment as it is fueled within the containment area. The fuel-delivery operator shall conduct a pre-fueling inspection. Once fueling of the equipment has been completed, the fueling operator will move to next equipment within fueling area, place spill pan again beneath connection point and begin fueling. Once fueling is completed, the fueling coordinator will survey the containment area for spills and leaks to be immediately cleaned up. Spill material and equipment listing is attached.

BASIC WET FUELING INFORMATION

Initial Fuel Provider*	Diesel Direct
EMERGENCY PHONE	John Weihrouch (209) 410-8970
Phone	(916) 857-1000
Email	John.weihrouch@dieseldirect.com
Address	3861 Duck Creek Drive Stockton, CA 95215

FUELING EVENT

Location	Premises
Maximum Amount of Fuel On Site	9,000 x gallons plus onboard vessel inventory
# Vehicles/Vessels Fueled per Event	4 vessels per event
Hours of Fueling	1700 - 0500 or as needed
Fueling Frequency	As needed

FUELING COORDINATORS

FUELING COORDINATOR	TITLE	PHONE
	Director of Marine Operations	(415) 559-3126
	Associate Director of Marine Operations	(415) 747-0652

* Alternate licensed and insured fuel providers may be used at times in order to complete required fueling operations, subject to Tenant providing notice to Port and provided the fueling operator is a licensed and insured including CA F&W COFR Requirements.

BMPs– Fueling

- **DESIGNATED BERMED AREA:** Use a designated, bermed area.
- **CLEAN AREA:** Maintain clean fuel-dispensing area using dry cleanup methods such as sweeping for removal of litter and debris, or use of rags and absorbents for leaks and spills.
- **DRIP PANS:** Place drip pans or other containment beneath each connection point to capture all spills and drips.
- **COVER DRAINS:** Cover storm drains in the immediate vicinity during transfer.
- **OBSERVE:** Designate one person to watch the connection point to the fueling truck and another to watch the vessel/equipment.
- **SPILL KIT:** Maintain ample spill clean-up equipment adjacent to the fueling area.
- **EMERGENCY INFORMATION:** Maintain emergency response and contact information.
- **TRAINING:** Train staff annually on response to a fueling emergency.

TOOLS / EQUIPMENT: STORAGE AND USE

A variety of tools and equipment will be used, from small hand tools to large cranes. Tools and equipment accumulate grease and other pollutants and may require cleaning. Equipment that uses fuels, oils, and hydraulic fluids requires regular inspections and maintenance to stop leaks and prevent spills.

SECONDARY CONTAINMENT

Tools and equipment will be stored in containers that can be secured, and provide adequate containment for leaks and spills. Absorbent pads, when placed under equipment reservoirs and hose connections, help to identify and contain leaks. For large equipment, drip pans are an effective and inexpensive alternative.

MAINTENANCE AREAS

Maintenance of equipment shall be conducted in designated areas. All maintenance areas shall have an appropriate spill kit available.

The following Best Management Practices (BMPs) shall be used for the storage and use of tools and equipment.

BMPs– Storage and Use of Tools and Equipment

- **KEEP CLEAN:** Keep tools clean and free of excessive grease and grime.

- **TOOL CONTAINER:** Properly store when not in use. Do not leave tools lying around. Store under cover.
- **CATCH DRIPS:** Place absorbent pads or drip pans under equipment that contains fluids.
- **INSPECT EQUIPMENT:** Inspect equipment regularly for leaks and needed repairs.
- **CLEAN SPILLS IMMEDIATELY:** Clean spill immediately and completely. If absorbent materials are used, they must be removed and disposed promptly.
- **SPILL KIT:** Keep a properly sized spill kit in all areas with the potential for leaks.

WEIGHT LOAD RESTRICTIONS ON FUEL TRUCKS

Fuel trucks that enter the Premises for on-site mobile fueling of vessels shall be weight restricted and are not to exceed 16.0 KIPS per wheel "H2O Loading" within the Premises. Vehicle weight loads may be substantially less than H2O Loading in other designated areas. The Port shall provide Tenant with available information regarding the condition of the substructure at Tenant's request. Tenant will submit a proposed path of travel for fuel trucks, stamped by a licensed engineer and accompanied by a memorandum confirming the proposed path is in compliance with any weight load restrictions, for Port approval..

MATERIALS MANAGEMENT

Hazardous Materials as well as non-Hazardous Materials will be used at the Premises. These materials must be stored under cover and are ideally stored indoors. All materials must be stored in accordance with regulatory requirements and permit conditions. These materials will be stored in containers that can be secured and provide adequate containment for leaks and spills.

DESIGNATED AREAS

All materials should be stored in specific areas with signs that designate them as materials storage. Incompatible materials such as corrosives and flammables should be segregated. Empty containers should be identified and stored separately.

Recyclable materials, compostable materials, and landfill waste shall be separated and stored in designated area. Each area shall have clear signage.

SECONDARY CONTAINMENT

All Hazardous Materials must be stored with proper secondary containment. Absorbent pads are an inexpensive and effective management tool. When placed under equipment reservoirs and hose connections, absorbent pads help to identify and contain leaks. For large equipment, drip pans are an effective and inexpensive alternative. All drums shall be stored on secondary containment pallets. Drums that are used for dispensing shall use secondary containment that includes a drip reservoir under the dispenser.

SPILLS

Spills and drips around Hazardous Materials storage areas shall be cleaned up immediately. Appropriate spill kits shall be kept at all areas where Hazardous Materials are stored. When absorbent material is used, it shall be promptly removed and properly disposed.

LABELS

All materials storage containers shall be properly labeled. All containers shall be stored so that the labels are visible. Any hazardous waste that is generated shall be immediately and properly labeled. Empty containers should be so designated.

SPILL KITS

The purpose of the spill kit is to be prepared to clean up liquid releases of Hazardous Materials such as hydraulic oil and motor oil from parked trucks and vehicles or paints, solvents, or fuels. Burst hydraulic lines are a common source of pollution from heavy vehicles.

Spill Kit Contents

- Absorbent spill pads and socks.
- Absorbent material (e.g. solvent absorbent, vermiculite, etc.)
- Hydrophobic mop (i.e. a mop that absorbs oil, but not water)
- Safety gloves (that are appropriate for oils, and other petroleum)
- Disposal bucket/drum with lid
- Hazardous Waste Labels

The following Best Management Practices (BMPs) shall be used for the storage and use of materials.

BMPs– Materials Management

- **MATERIALS STORAGE AREAS:** Designate areas for storage of specific materials;
- **SECONDARY CONTAINMENT:** Store all materials with secondary containment;
- **DISPENSER CONTAINMENT:** Use secondary containment with drip reservoirs for dispensers;
- **CATCH DRIPS:** Place absorbent pads or drip pans under equipment that contains fluids;
- **CLEAN SPILLS IMMEDIATELY:** Clean spill immediately and completely. If absorbent materials are used, they should be removed and disposed promptly;
- **SPILL KIT:** Keep a properly sized spill kit in all areas with the potential for leaks;
- **LABELS:** Properly label all materials;
- **WASTE AREAS:** Designate areas to manage recyclable, compostable and landfill waste.

Boat Repair / Maintenance

Boat repairs can involve a variety of activities. Activities of concern include woodwork, grinding and cutting of materials, welding, and painting. Wind and stormwater may easily carry materials into the Bay. There are several Best Management Practices (BMPs) to assist with the performance of these activities to mitigate pollution.

DESIGNATED AREAS

Designating areas for specific activities is the best way to ensure that the activities are conducted safely and without generating pollution.

Tenant shall designate areas or create temporary enclosures for specific boat maintenance activities:

- Grinding / Cutting – Dust Control Area
- Hazardous Materials / Resin Mixing Room – Liquid Containment
- Woodworking

BOAT HULL WORK AREA

Work on a specific area of the hull to either add gear to the hull, do a modification, or a small/medium repair.

CHEMICALS / RESIN MIXING ROOM

Chemicals or Hazardous Materials mixing room for resins or any material that needs to be mixed in a contained environment before it is brought into the shop to be applied to or used on the boat.

GRINDING / CUTTING ROOM/WELDING

Any activity that generates dust from metals, carbon fibers or similar materials shall be confined to an enclosed area to contain the dust and make collection of dust easy.

WOOD WORKING & TOOL ROOM

Tenant shall designate the location of the “tool container”. It is simply an area where hand tools are stored between jobs, and maintained.

HEAT ROOM / HEAT TENT

A containment structure around the part or the part of the boat they want heat for the application of materials. This will commonly be a temporary tent-like structure.

WORKSHOP ROOM

A typical workshop container with a workbench, storage for parts, etc., which can be below deck on a vessel. Parts washing solutions for cleaning items shall be aqueous-based with secondary containment and proper management of all materials.

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ENGINE REPAIR

Inboard engine repair in boats too large to be hoisted conveniently shall be performed aboard assuming all work takes place in a contained area and in conformance with the BMPs.

BOAT WASHING

Boat washing shall be performed in designated areas with full containment to collect wash water. Wash water shall be pumped to a holding tank and properly disposed. In-water boat washing shall be limited to bay water or potable water only without additives or other products.

TEMPORARY CONTROLS

When designated indoor/covered areas are not available for specific activities, each team shall employ best management practices to contain all materials. This shall include the use of temporary controls for containing all materials. Common temporary controls include

- Wind-blocking tarps;
- Plywood or plastic sheeting or to cover open areas on decks surfaces;
- Drop cloths, tarpaulins, drip pans and other protective devices to contain;
- Use vacuum sanders that have dust containment bags or are connected to extraction units.

PROHIBITED ACTIVITIES

The following activities shall be prohibited without adequate containment structures in place.

- Spray painting
- Spray applications of materials
- Blasting activities to remove or prepare surface coatings.
- Sanding, by hand or power tools unless the power sander has vacuum containment bags.
- Sanding during windy conditions.

GENERAL HOUSEKEEPING

Good housekeeping by all personnel is one of the most effective strategies to prevent pollution. Key features of good housekeeping include:

- Clean spills immediately and completely.
- Putting away materials/tools when not in use.
- Using clear signs and labels for areas and materials.
- Clean all areas after use on a daily basis.

The following Best Management Practices (BMPs) shall be used for the storage and use of tools and equipment.

BMPs – Boat Repair and Maintenance

- **CONTAIN ALL MATERIALS:** Use secondary containment;
- **DESIGNATED AREAS:** Designate specific areas for specific activities;
- **TEMPORARY CONTROLS:** Use temporary controls to contain materials when working outside;
- **ADHERE TO PROHIBITIONS;**
- **GENERAL HOUSEKEEPING:** Maintain general housekeeping by all staff.

3.2 Floating Docks and Berthed Vessels

All vessels using Port property or temporary floating docks identified in Table 2.2 shall comply with all applicable laws and regulations, including maritime rules & regulations set forth by the Port.

GENERAL PROHIBITION ON DISCHARGES

Discharges or releases of any kind are prohibited in the San Francisco Bay, unless specifically authorized under a state or federal permit. All vessels are prohibited from releasing ballast water into San Francisco Bay unless authorized under governing state or federal law. All vessels are prohibited from releasing into San Francisco Bay sewage, gray water, hazardous waste, solid waste, fuel, or oil-related substances. Discharges from Type II Marine Sanitation Devices are also prohibited in the Bay. These prohibitions include incidental discharges.

Prohibited Discharges

- Ballast Water (without authorization)
- Sewage
- Gray Water
- Hazardous Waste
- Solid Waste
- Fuel
- Oil-Related Substances
- Type II Marine Sanitation Device Contents

Additionally, Tenant shall be prohibited from the following activities unless expressly permitted in the relevant Lease as necessary to complete its construction activities, and in the Stormwater Pollution Prevention Plan:

- Storage of loose bulk materials such as gravel, sand, soil, and aggregates.

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- Storage or placement of construction waste.
- Parking, storage, or operation of heavy equipment such as front loaders and excavators.

EMERGENCY PLANNING

Tenant must report spills to both the U.S. Coast Guard National Response Center 800.424.8802 and Office of Emergency Services in your jurisdiction immediately.

TABLE 4: Emergency Oil Spill Notifications

AGENCY	PHONE
National Response Center	(800) 424-8802
California Emergency Management Agency	(800) 852-7550
U.S. Coast Guard, Marine Safety Office	(510) 437-3073
Port of San Francisco	(415) 274-0400

Tenant will utilize spill response call plan identified in Appendix B.

Each temporary floating dock shall be equipped with spill response resources.

Spill Response Resources

- Absorbent spill pads and socks.
- Absorbent material (e.g. solvent absorbent, vermiculite, etc.)
- Hydrophobic mop (i.e. a mop that absorbs oil, but not water)
- Safety gloves (that are appropriate for oils, and other petroleum)
- Disposal bucket/drum with lid
- Hazardous Waste Labels

If absorbent materials are used, they must be removed and disposed promptly.

VESSEL MAINTENANCE SERVICES and OPERATIONS

Maintenance services such as bilge pump-out, and sewage pump-out will not be allowed at the Premises. Vessel operators who require these services will need to contact one of the marinas in the San Francisco Bay to arrange for these services. Should there be available Port of San Francisco sites available these services may be performed as permitted in any applicable agreement.

TABLE 4: Marina Services and Locations in San Francisco

SERVICE	LOCATION	PHONE
Sewage Pump Out Station	<ul style="list-style-type: none">• Hyde Street Harbor• Pier 39 Marina• SF Marina, West Harbor & Gashouse Cove• South Beach Harbor	<ul style="list-style-type: none">(415) 274-0513(415) 705-5500(415) 831-6322(415) 495-4911
Port-a-Potty Dump Station	<ul style="list-style-type: none">• SF Marina, West Harbor & Gashouse Cove	<ul style="list-style-type: none">(415) 831-6322

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Bilge Pumpout Station	• Hyde Street Harbor	(415) 274-0513
Marine Battery Disposal	• South Beach Harbor	(415) 495-4911
Used Oil Collection	• Hyde Street Harbor	(415) 274-0513
	• SF Marina, West Harbor & Gashouse Cove	(415) 831-6322
	• South Beach Harbor	(415) 495-4911

For additional locations and services, Tenant may consult the ***San Francisco Bay Area Clean Boating Map***, which is also available online.

http://www.coastal.ca.gov/ccbn/SF_Bay_Clean_Boating_Map.pdf.

BOAT WASHING & CLEANING

In-water boat washing & cleaning shall be conducted with saltwater or freshwater. Sanding, refinishing, and painting are prohibited. All cleaning activities shall adhere to vessels General Permit requirements (VGPs). The Tenant must not use detergents or any chemical harmful to the water environment if water is to be washed overboard.

The following Best Management Practices (BMPs) shall be used for the storage and use of tools and equipment.

BMPs – Floating Docks and Berthed Vessels

- **EDUCATION:** Provide educational resources to all employees, vendors and contractors berthing at Tenant's Premises.
 - Select Maritime Rules & Regulations
 - Emergency Response Resources
 - Prohibition on discharges
- **SPILL RESPONSE:** Maintain Oil Spill Response Resources including:
 - Clean up Equipment
 - Emergency Notification Contacts
- **VESSEL SERVICES:** Ensure vessel owners/operators know where to obtain services.
- **BOAT CLEANING:** Educate vessel owners/operators on proper boat cleaning.
- **ZERO WASTE:** Assist Vessel owners with compliance with the Zero Waste Plan.

3.3 Tenant Parking

Vehicle parking areas are a source of common pollutants such as fuel, grease, motor oils, antifreeze, sediments, metals, trash and debris. There are several Best Management Practices (BMPs) that help prevent this pollution. Tenant shall follow these protocols at all venues listed on Table 2 with vehicle parking.

HOUSEKEEPING

The parking areas shall be kept clean and orderly, and BMPs shall be followed in the removal of debris and the inspection of parking lots for debris and leaking vehicles.

SPILL CLEAN UP

When leaks are discovered from vehicles, staff shall clean them immediately using a proper spill kit. If absorbent materials are used, they must be removed and disposed promptly.

PREVENT DISCHARGES TO STORM DRAINS

The use of water to wash surfaces shall be minimized. Sweeping surfaces is a preferred method of cleaning. If water is used to wash parking areas, staff shall use screens or filter fabrics to cover storm drains to prevent trash and debris from entering storm drains.

3.4 Office Use

The approximately 4500 square feet dedicated office area on the third floor of Pier 33 of the Leased Premises may be used as offices or related uses by Tenant. Use of these facilities for these purposes shall be subject to the Port's *Rules and Regulations for Office Buildings* (see Appendix D).

4.0 CONSTRUCTION ACTIVITIES

This section pertains to construction activities that the Tenant will undertake pursuant to the Lease. All provisions regarding construction, maintenance and repairs are subject to all the pertinent provisions in the Lease including but not limited to, Section 13 Improvements and Exhibit E Work Letter. Prior to any construction work Tenant shall review and the applicable provisions to ensure understanding and compliance and shall communicate these requirements to its contractors, vendors and suppliers.

The following are Best Management Practices to ensure construction activities are safe and limit negative impact to adjacent tenants and the public:

- Tenant, while performing any construction or maintenance or repair ("**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.
- All Work shall be within Tenant's leased Premises only.
- No contractor vehicles shall be parked outside of or at the Premises without proper Port parking permits, if available.
- No deliveries shall block any required exits from any Port property.
- All construction staging or materials shall be stored within Tenant's Premises.
- Any required permits for such Work shall be displayed on site and any Port personnel or regulatory personnel shall be allowed access to inspect ongoing or completed construction during normal business hours generally as defined between 7 am and 5 pm Monday through Friday.
- All hazardous construction materials shall be stored as required in this Operations Plan.
- 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.
- 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.
- All work shall be performed during normal business hours except in the case of an emergency or upon pre-approval of the Work schedule by Port in writing.

5.0 REGULATORY/PERMITS SECTION

Several local, state, and federal agencies might have jurisdiction over the Tenant's activities. This section provides a summary of some of these agencies and their regulatory requirements. A summary table of these select requirements can be found in Appendix E. Tenant is

responsible for determining the full range of Laws applicable to its operations and compliance with such Laws.

5.1 City and County of San Francisco

Several City and County of San Francisco agencies exercise jurisdiction over the activities of tenants on Port property. These include:

- Department of Public Health – Hazardous Material Unified Public Agency
- Department of Public Health – Food Service Establishments
- Public Utilities Commission – Fats, Oils, and Grease (FOG) Control
- Public Utilities Commission – Industrial Waste Water (sewer discharges)
- Fire Department – Flammable Materials, Hot Works, etc.

Tenant shall be responsible for complying with the requirements of these and other local agency requirements at locations listed in 2.2.

SAN FRANCISCO FIRE DEPARTMENT

Tenant will obtain all necessary permits from the San Francisco Fire Department. The SF Fire Department issues several types of permits that might pertain to the Tenant's activities. Commonly issued permits pertain to the storage and use of flammable materials, hazardous chemicals and compressed gases, burning removal of paint, spray painting, hot works and welding, battery systems, and places of assembly for occupancy. A complete list of SF Fire Department permits is provided in Appendix I.

HAZARDOUS MATERIALS UNIFIED PROGRAM AGENCY – (HMUPA)

The Tenant will obtain a permit from the San Francisco Department of Public Health Hazardous Materials Unified Program Agency (HMUPA). The HMUPA permit includes six program elements that involve the storage and use of Hazardous Materials, including the generation of hazardous waste.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

As described in the Lease, the San Francisco Planning Department certified a Mitigated Negative Declaration (FMND) pursuant to the California Environmental Quality Act. Notwithstanding anything to the contrary, all operations shall comply with all the conditions of the FMND.

TARIFF

The Port of San Francisco Tariff No. 5 establishes the rules, regulations, rates, and other provisions applying to the services and for the use of the wharfing facilities under the jurisdiction of the San Francisco Port Commission. Tenant must comply with those provisions of the Tariff described in Appendix C.

5.2 State of California

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH (Cal-OSHA)

California Division of Occupational Safety and Health (Cal-OSHA) is the regulator agency for pressure vessel permitting as well as employee health and safety standards.

DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC)

Department of Toxic Substances Control is the regulatory agency for hazardous wastes recycling and disposal.

CALIFORNIA HIGHWAY PATROL (CHP)

As part of the Federal Department of Transportation permit requirements, California Highway Patrol (CHP) routinely inspects commercial vehicles.

DEPARTMENT OF RESOURCES, RECYCLING, AND RECOVERY (DRRR)

DRRR oversees the states waste **MANAGEMENT** and recycling programs.

STATE WATER BOARDS

The State Water Resources Control Board (SWRCB) and the Regional Water Quality Control Board are charged with protection of the water quality of the state waters. As required by these agencies, the Tenant shall file a Notice of Intent for coverage under the *National Pollutant Discharge Elimination System – General Permit for Discharges of Storm Water Associated With Industrial Activities* (Industrial General Permit) for its operations at Piers 31.5 and 33. The Industrial General Permit is required of all activities that include, material handling equipment, or activities, raw materials, immediate products, final products, waste materials, by-products, or industrial machinery that are exposed to storm water. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate produce, finished product, by-product, or waste product. Tenant's Waste Discharger Identification Number will be incorporated into this Operations Plan when issued.

Additionally, the Tenant's Project is subject to a conditional water quality certification pursuant to Section 401 of the Clean Water Act 33 U.S.C. §1251 et seq. as issued by the Regional Water Quality Control Board. Tenant and Tenant's employees, agents, guests, vendors and contractors shall comply with all conditions of this authorization.

CALIFORNIA DEPARTMENT OF FISH & WILDLIFE (DF&W)

The California Department of Fish and Wildlife (DF&W) maintains jurisdiction over commercial and recreational activities that can affect fish, wildlife, and natural habitats.

5.3 Federal

FEDERAL DEPARTMENT OF TRANSPORTATION (DOT)

The Federal DOT authority includes regulating the transportation of Hazardous Materials.

6.0 TRANSPORTATION MANAGEMENT

Tenant shall provide transportation management plan. The plan will address, at a minimum, the following:

- Visitor parking, if applicable
- Employee parking, if applicable
- Curbside traffic management
- Vendor deliveries
- Traffic control personnel/staffing
- Enforcement

The goal of the transportation management plan is to maintain access to the Leased Premises, prevent traffic delays through proactive curbside management, and manage vendor deliveries in such a manner as to ensure constant access to the Leased Premises and adjacent facilities.

7.0 SECURITY

Tenant shall provide a copy of its security plan for the Premises. and are in accordance with CFR 105, Subpart D-Facility Security Plan (FSP) or an Alternative Security Program (ASP) in accordance with 33 CFR 105.140. Tenant must operate in full compliance with, and as directed by the Port's Director or his or her designee, the FSP or ASP and any amendments thereto as required by the Maritime Transportation Security Act of 2002.

8.0 WASTE MANAGEMENT

Tenant shall provide a copy of its waste management plan. The plan will address, at a minimum, the following:

- Method for containing waste, including trash and recycling options.
- Handling of waste containers, including frequency of service to containers.
- Waste removal and storage procedure that keeps waste storage and sorting out of public areas.
- Waste pick-up procedure.
- Frequency of waste removal and pick up.

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- Procedures for sorting recyclables and minimizing waste diverted to landfill.
- Procedures for keeping waste out of the Bay.

9.0 CUSTODIAL MANAGEMENT

Tenant shall provide a copy of its custodial management plan. The plan will address, at a minimum, the following:


- A list of custodial services to be provided for the Premises, both indoors and outdoors, and public and private.
- Schedules for the custodial services to be provided to ensure the Premises is clean, waste and debris is minimized, and well stocked with supplies.
- Procedure for handling possible hazardous waste, biological waste, needles, etc. that may be found on the Premises.
- Procedure for responding to emergency custodial needs.

10.0 MISCELLANEOUS

Tenants Official Communications Protocol contributes effectively to the business relationships of the organizations that we partner with. By standardizing the preparation and distribution of written correspondences we are able to effectively communicate, track contract deliverables/changes, and manage obligations.

Official Correspondence Formatting & Distribution:

All Official correspondences are prepared on a standardized form that is clear and concise in content. All correspondences are drafted to distinct guidelines with focus on substance, format and grammar. Every Official Correspondence receives a unique reference number ("OC Number") for tracking and reference purposes. Said number is then used as a formal reference for future Correspondences and written obligations. On every Correspondence reference is made to the subject, category and applicable contract reference section. We will work with the Port to establish a mutually agreeable format. A sample:

 HORNBLOWER®		OFFICIAL CORRESPONDENCE	
PROJECT NAME:		OC #:	
PROJECT NUMBER:		Date Created:	
Subject:		Date Required:	
Category:		Discipline:	
Answer Company:		Author Company:	
CC: Company Name	Contact Name:	Copies:	Notes:
Correspondence:			
Contract Section Reference:			

The originating party is responsible for distribution of out-going Official Correspondences. All Correspondences are sent via email with a standardized subject line evidencing the OC Number and Subject. Every Correspondence is sent to the action individual concerned, including their name, title and address ("Answer Company"). All outgoing correspondences are requested to be acknowledged by the Answer Company either by way of email confirmation or signature acknowledgement in the body of the Correspondence

From Tenant to Port:

Correspondence:	Subject:	Date Delivered:
AC-POSF-OC-01	SAMPLE	January 7th, 2019
AC-POSF -OC-02	SAMPLE	January 9th, 2019
AC-POSF -OC-03	SAMPLE	January 28th, 2019
AC-POSF -OC-04	SAMPLE	February 15th, 2019
AC-POSF -OC-05	SAMPLE	March 16th, 2019

From Port to Tenant:

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Correspondence:	Subject:	Date Delivered:
POSF-AC-OC-01	SAMPLE	January 15th, 2019
POSF-AC -OC-02	SAMPLE	January 29th, 2019
POSF-AC -OC-03	SAMPLE	March 22th, 2019
POSF-AC -OC-04	SAMPLE	April 05th, 2019
POSF-AC -OC-05	SAMPLE	May 14th, 2019

11.0 APPENDICES

11.1 Appendix A – Summary of Best Management Practices

General Use of Port Facilities

- **BE AWARE:** Be aware of the potential to pollute the Bay.
- **TRAIN STAFF:** Train staff to be partners in protecting the Bay.
- **DEBRIS MANAGEMENT:** Place trash and debris in the proper containers.
- **END OF DAY CLEAN-UP:** At the end of the day or when activities are over, conduct a general clean-up to remove debris, trash, and inspect for spills.
- **SWEEP:** Use dry cleaning methods rather than pressure washing surfaces.
- **CLEAN SPILLS IMMEDIATELY:** Keep equipment clean. Avoid excessive build-up of oil and grease.

Storage and Use of Tools and Equipment

- **KEEP CLEAN:** Keep tools clean and free of excessive grease and grime.
- **TOOL CONTAINER:** Properly store when not in use. Do not leave tools lying around. Store under cover.
- **CATCH DRIPS:** Place absorbent pads or drip pans under equipment that contains fluids.
- **INSPECT EQUIPMENT:** Inspect equipment weekly for leaks and needed repairs.
- **CLEAN SPILLS IMMEDIATELY:** Clean spill immediately and completely. If absorbent materials are used, they should be removed and disposed promptly.
- **SPILL KIT:** Keep a properly sized spill kit in all areas with the potential for leaks.

Materials Management

- **MATERIALS STORAGE AREAS:** Designate areas for storage of specific materials;
- **SECONDARY CONTAINMENT:** Store all materials with secondary containment;
- **DISPENSER CONTAINMENT:** Use secondary containment with drip reservoirs for dispensers;
- **CATCH DRIPS:** Place absorbent pads or drip pans under equipment that contains fluids;
- **CLEAN SPILLS IMMEDIATELY:** Clean spill immediately and completely. If absorbent materials are used, they should be removed and disposed promptly;
- **SPILL KIT:** Keep a properly sized spill kit in all areas with the potential for leaks;

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- **LABELS:** Properly label all materials;
- **WASTE AREAS:** Designate areas to manage recyclable, compostable and landfill waste.

Boat Repair and Maintenance

- **CONTAIN ALL MATERIALS;**
- **DESIGNATED AREAS:** Designate specific areas for specific activities;
- **TEMPORARY CONTROLS:** Use temporary controls to contain materials when working outside;
- **ADHERE TO PROHIBITIONS;**
- **GENERAL HOUSEKEEPING:** Maintain general housekeeping by all staff.

Floating Docks and Berthed Vessels

- **EDUCATION:** Provide educational resources to all employees, vendors and contractors berthing at the Premises
 - Select Maritime Rules & Regulations
 - Emergency Response Resources
 - Prohibition on discharges
- **SPILL RESPONSE:** Maintain Oil Spill Response Resources including:
 - Clean up Equipment
 - Emergency Notification Contacts
- **VESSEL SERVICES:** Ensure vessel owners/operators know where to obtain services.
- **BOAT CLEANING:** Educate vessel owners/operators on proper boat cleaning.
- **ZERO WASTE:** Assist Vessel owners with compliance with the Zero Waste Plan.
- **PETS WASTE:** Pet waste must be cleaned up and disposed in the garbage.

Spill Kit Contents

- Absorbent spill pads and socks.
- Absorbent material (e.g. solvent absorbent, vermiculite, etc.)
- Hydrophobic mop (i.e. a mop that absorbs oil, but not water)
- Safety gloves (that are appropriate for oils, and other petroleum)
- Disposal bucket/drum with lid
- Hazardous Waste Labels

11.2 Appendix B – Spill Response

In the event of a significant spill or release the following steps will be taken immediately.

- **SAFETY FIRST!** – Ensure the safety of personnel
- **STOP SPILL** – Stop spill at the source if safe to do so.
- **CONTAIN** – Initiate containment activities
- **REPORT** – Report the spill to emergency and regulatory agencies.
- **CLEAN UP** – Initiate cleanup activities.

NOTIFICATION: in case of an oil spill in or along U.S. navigable waters, the Emergency Coordinator will call:

Will Call:	National Response Center	800-424-8802
	SF Department of Public Health	415-252-3900
	CA Office of Spill Prevention and Response	800-852-7550

Will Call:	Port of San Francisco	415-274-0400
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If Hazardous Materials/Waste spills or leaks into a sewer, also notify:

SF Department of Public Works	415-695-2020
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Information to be reported includes:

1. **LOCATION** – Location of spill and company name.
2. **TIME** – Time of spill, or time first observed.
3. **SOURCE** – Note the source of spill, if known.
4. **MATERIAL** – Note type of material spilled.
5. **AMOUNT** – Estimate of amount spilled.
6. **WEATHER** – Describe the on-scene weather.
7. **HAZARDS** – Describe any known fire or health hazards posed by the spill.
8. **DESTINATION** – Where is the spill going and affected waters. Sensitive receptors?
9. **ACTION** – Action being taken to contain and clean up the spill.
10. **ADDITIONAL** – Any information requested by the agency, so long as the information is known to be factual. Do not guess regarding the cause of potential impacts of spill.

11.3 Appendix C –Select Maritime Rules & Regulations

- (a) **Sufficient Personnel.** Tenant shall have sufficient personnel to immediately and efficiently secure the vessel at the premises (landing site") , to control Tenant's passengers, to provide for safe embarkation and debarkation and to direct passengers to and from the premises
- (b) **Two Way Communication System.** Each of Tenant's vessels shall have a two way shore communication system capable of communicating with other vessels in the San Francisco Bay area
- (c) **Sunken, Disabled or Damaged Vessels.** (i) In the event that a vessel operated by Tenant is disabled or damaged or is in danger of sinking, or shall in fact sink while located at a landing site, the approaches thereto, or while coming into or going from a landing site, or while turning, whether such damage be partial or total and regardless of the cause thereof, as soon as possible Tenant will, at its own expense, remove the disabled or damaged vessel and leave the landing site and the land and water approaches thereto free of any disabled or damaged vessels or wreckage. If in Port's opinion, Tenant fails to remove any such obstruction promptly on demand, Port may remove it or cause it to be removed at the sole risk and expense of Tenant. In addition, Tenant shall be liable to Port for the loss of other revenues due to the inaccessibility of a landing site.
- (d) **Reporting Accidents.** Tenant shall notify Port in writing of any incident or accident involving personal injury or personal property damage which occurs on or in proximity of a landing site. Such notice shall be given within twenty-four (24) hours after said incident or accident occurs.

PROHIBITED USES; OPERATIONAL RESTRICTIONS.

- (a) Tenant shall use the Lease Area solely for Permitted Activities and for no other purpose. In addition, the following are prohibited (each, a "Prohibited Use") in on or around the Lease Area or surrounding or adjacent Port property: waste, nuisance, or unreasonable annoyance to Port, its other licensees, tenants, or the owners or occupants of adjacent properties; any action or inaction that could cause damage to a Landing Site interference with Port's use of its property or obstruction of vessel traffic.
- (b) **Operational Restrictions. :**
 - (i) **Passenger Capacity.** Tenant shall not transport passengers in excess of the passenger capacity as stated in a vessel's U. S. Coast Guard Certificate of Inspection (COI) or as otherwise limited by Port or governmental rules and regulations.

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- (ii) **Noise Control.** Tenant shall not use any devices, nor operate or conduct any activity, nor allow any activities, which violate any provision of the San Francisco Noise Control Ordinance. Any devices or activities which are subject to the San Francisco Noise Control Ordinance shall incorporate advances in the art of noise control developed for the kind and level of noise emitted or produced by such devices and activities, in accordance with regulations issued by the San Francisco Police Department.

11.4 Appendix D - 1 – Rules and Regulations for Office Buildings

These Rules and Regulations shall apply to Tenant's use of approximately 4500 square feet of office on the third floor of Pier 33 buildings on Tenants Premises.

OBSTRUCTIONS

Sidewalks, entrances, passages, courts, elevators, vestibules, stairways, corridors or halls shall not be obstructed or encumbered by Tenant or used for any purpose other than ingress and egress to and from the Premises and if the Premises are situated on the ground floor of the Building, Tenant shall further, at Tenant's own expense, keep the sidewalks and curb directly in front of the Premises clean and free from rubbish.

APPEARANCES

Tenant shall not place anything against or near glass partitions, doors or windows which may appear unsightly from outside the Premises or the Property. No awning, showcase, articles or other unauthorized items shall be attached to the outside walls or windows of the Building without the prior written consent of Port. No curtains, blinds, shades, drapes or screens shall be attached to or hung in, or used in connection with any window or door of the Premises, without the prior written consent of Port. Such awnings, unauthorized items, curtains, blinds, shades, drapes, screens and other fixtures must be of a quality, type, design, color, material and general appearance approved by Port, and shall be attached in the manner approved by Port. All lighting fixtures hung in offices or spaces along the perimeter of the Premises must be of a quality, type, design, bulb color, size and general appearance reasonably approved by Port and subject to any historic guidelines.

SIGNS

No sign, advertisement, notice, lettering, decoration or other thing shall be exhibited, inscribed, painted or affixed by Tenant on any part of the outside or inside of the Premises or of the Building, without the prior written consent of Port and subject to Port sign guidelines. In the event of the violation of the foregoing by Tenant, Port may remove it without any liability, and may charge the expense incurred by such removal to Tenant.

LIGHT

The sashes, sash doors, skylights, windows and doors that reflect or admit light or air into the halls, passageways or other public places in the Building shall not be covered or obstructed by Tenant, nor shall any bottles, parcels or other articles be placed on the window sills or in the public portions of the Building.

FIXTURES

The water and wash closets and other plumbing fixtures shall not be used for any purposes other than those for which they were constructed, and no foreign substances shall be thrown

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therein. Tenant shall shut off all water faucets or other water apparatus at the end of each day. Tenant shall be responsible for any damage or injuries sustained by other tenants or occupants of the Property or by Port for noncompliance with this rule.

ATTACHMENTS

Tenant shall not mark, paint, drill into or in any way deface any external part of the building without obtaining a POSF building permit prior to the work commencing. No boring, cutting or stringing of wires shall be permitted, except with the prior written consent of Port, and as Port may direct. If Tenant requires wiring, conduit or connections for telecommunications, computer, burglar alarm or similar services, it shall first obtain, and comply with, Port's instruction in their installation. Tenant shall not go onto the roof or install any antenna or other devices on the roof or exterior walls of the Property without Port's written permission. Tenant shall not interfere with media broadcast reception to or from the Premises or elsewhere. Tenant shall repair or be responsible for the cost to repair any damage resulting from noncompliance with this rule.

USE

Tenant shall not use the Premises for any business or activity other than that specified in the Lease.

SECURITY

Tenant must, upon the termination of the tenancy, restore to Port all keys to stores, offices and toilet rooms, either furnished to, or otherwise procured by Tenant, and in the event of the loss of any keys so furnished, Tenant shall pay to Port the cost thereof.

SALES

Canvassing, soliciting, peddling and distribution of handbills in the Building is prohibited and Tenant shall cooperate to prevent the same unrelated to the Tenant's product offerings, in the building.

RIGHT OF ENTRY

Port reserves the right to exclude or expel from the Premises or Common Area any person who, in the judgment of Port, is intoxicated, under the influence of alcohol or drugs, or who shall in any manner do any act in violation of law or the rules and regulations of the Leased area. Port reserves the right to prevent access to the Property in case of invasion, mob, riot, public excitement or other commotion by closing the doors or by other appropriate action.

NOISE AND ODORS

Tenant shall not make, or permit to be made, any unseemly or disturbing noises or odors or disturb or interfere with occupants of the Building, or neighboring buildings or premises, or those doing business with them.

ANIMALS

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No live animal, fish or bird of any kind shall be brought into or kept in or about the Premises or the Building, except seeing-eye dogs or other trained assistance animals

FOOD

Tenant shall not prepare any food nor do any cooking, operate or conduct any restaurant, luncheonette or cafeteria for the sale or service of food or beverages to its employees or to others without acquiring all required permits to do so, Food and beverage preparation by Tenant's employees using microwave ovens or coffee makers shall be permitted provided no odors of cooking or other processes emanate from the Premises. Tenant shall not install or permit the installation or use of any vending machine or permit the delivery of any food or beverage to the Premises except by such persons and in such manner as are approved in advance in writing by Port.

PEST CONTROL

If the Premises becomes infested with vermin as a result of the use, misuse or neglect of the Premises by Tenant, its agents, servants, employees, contractors, visitors or licensees, Tenant shall forthwith, at Tenant's expense, cause the same to be exterminated to the satisfaction of Port and shall employ licensed exterminators.

TRASH / WASTE MANAGEMENT

- All trash and waste shall be kept in locations specified by Port. Trash carts/containers shall be placed outside of fenced trash enclosures for collection / pick-up in locations specified by Port.
- Tenant shall ensure that all waste materials from their operations are properly managed, contained, and disposed to prevent pest activity. All trash bags shall be placed in waste containers, dumpsters, bins, or comparable. At no time shall Tenant place non-containerized trash bags on sidewalks, streets, in trash enclosures, or in other Common Areas.
- Tenant shall adhere to the City's Integrated Pest Management (IPM) Ordinance which governs the way pests are managed on City properties. These requirements include using pesticides / rodenticides as a last resort. Tenant shall not place pesticides / rodenticides on Port property. If Port should so require, Tenant shall use, at Tenant's cost, a pest extermination contractor as directed by Port and at such intervals as Port may require.
- Tenant shall ensure that waste materials are not released onto the pier decking, valley floor, sidewalk, trash enclosure paved surface, other Common Areas, or into the Bay. These areas shall be kept clean and free from dirt and rubbish by Tenant to Port's satisfaction.

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- Tenant shall close and lock all waste containers when not in active use. Tenant shall close and lock fenced trash enclosures when not in active use.
- For public health and safety, Tenant shall store all waste materials to prevent removal / scavenging by other persons at all times.
- Tenant shall keep all waste bins, containers, dumpsters, and trash compactors clean and in good repair at all times.
- Tenant shall be responsible for the separating of waste in compliance with all governmental ordinances including mandated recycling and composting. Tenant shall compost all organic waste materials from their operation.
- Tenant shall not overload waste bins prior to transfer.
- Tenant shall immediately pick up and properly dispose of any waste that is spilled during transfer.
- Tenant shall not burn any trash or garbage in, on, or about the Premises or Common Areas.
- Each Tenant shall designate a Waste Management Coordinator to oversee waste management activities for their operations, ensure compliance with these Rules and Regulations, and serve as Port's primary point-of-contact for waste management issues.
- Tenant shall maintain strict compliance with these trash / waste management Rules and Regulations.

HAZARDOUS MATERIALS

Neither Tenant nor any of Tenant's agents, servants, employees, contractors, visitors or licensees shall at any time bring or keep upon the Premises any flammable, combustible or explosive fluid, chemical or substance. Tenant shall not bring any Hazardous Materials onto the Premises except for those, which are in general commercial use and are incidental to Tenant's business office operations and only in quantities suitable for immediate use.

DELIVERIES

There shall not be used in any premises, or in the public halls, plaza areas, lobbies, or elsewhere in the Building, either by Tenant or by jobbers or others, in the delivery or receipt of merchandise, any hand trucks or dollies, except those equipped with rubber tires and sideguards. All deliveries shall be made at such reasonable hours and under such reasonable regulations as may be fixed by Port.

EQUIPMENT

Tenant shall not place a load upon any floor of the Premises which exceeds the load per square foot, which such floor was designed to carry and which is allowed by law. Tenant shall not install any machine or equipment which causes noise, heat, cold or vibration to be transmitted to the structure of the building in which the Premises are located without Port's prior written consent, which consent may be conditioned on such terms as Port may require.

MOVING

No equipment, materials, furniture, packages, supplies, merchandise or other property which when loaded into an elevator reasonably eliminates the use thereof for any period of time may be received in the Property or carried in the elevators without prior written notice to Port, and all moving of the same into or out of the Property shall be done at such time and in such manner as Port shall designate.

SAFES

All removals, or the carrying in or out of any safes, freight, furniture, construction material, bulky matter or heavy equipment of any description must take place during the hours which Port or its agent may determine from time to time. Port reserves the right to prescribe the weight and position of all safes, which must be placed upon two-inch thick plank strips to distribute the weight. The moving of safes, freight, furniture, fixtures, bulky matter or heavy equipment of any kind must be made upon previous notice to the Building Manager and in a manner and at times prescribed by him, and the persons employed by Tenant for such work are subject to Port's prior approval. Port reserves the right to inspect all safes, freight or other bulky articles to be brought into the Building and to exclude from the Building all safes, freight or other bulky articles which violate any of these Rules and Regulations or the Lease of which these Rules and Regulations are a part.

ENERGY

Tenant shall not waste gas, electricity, water, heating or air-conditioning and agrees to cooperate fully with Port to assure the most efficient operation of the Property's heating and air-conditioning and to comply with any governmental energy-saving rules, laws or regulations of which Tenant has actual notice. Tenant shall keep corridor doors closed and, prior to leaving the Premises for the day, Tenant shall draw or lower window coverings and turn off all lights and water fixtures. Tenant shall keep its window coverings closed during any period of the day when the sun is shining directly on the windows of the Premises.

FIRE SAFETY

Tenant shall install and maintain, at Tenant's sole cost and expense, an adequate, visibly marked, and at all times properly operational fire extinguisher next to any duplicating or photocopying machine or similar heat producing equipment, which may or may not contain combustible material, in the Premises.

SMOKING

Smoking is prohibited in the Premises and all enclosed Common Areas of the Building, including, without limitation, the main lobby, all hallways, all elevators, all elevator lobbies, all restrooms and the parking areas.

ADVERTISING

Port shall have the right to prohibit any advertising or business conducted by Tenant referring to the Building which, in Port's opinion, tends to impair the reputation of the Building or its desirability as a first class building for offices and/or commercial services and upon notice from Port, Tenant shall refrain from or discontinue such advertising unless it obtains prior written approval from the Port

COIN MACHINES

Tenant shall have the right to place in and upon the Common area pay phones and coin-operated machines for the sale of beverage, candy and other merchandise or service subject to Port's written consent.

PARKING

Tenant, Tenant's agents, servants, employees, contractors, licensees, or visitors shall not park any vehicles in any driveways, service entrances, or restricted parking areas and shall comply with any other parking regulations imposed by Port from time to time.

AMENDMENTS

Port reserves the right at any time to add, change or rescind any one or more of these rules and regulations or to make such other and further rules and regulations as the Port shall determine is in the best interest of the Common Area, the Tenants and their business agents and invitees. In the event of any conflict between these or any modified rules and regulations and the Lease the terms and provisions of the Lease shall prevail.

Appendix D - 2 – Rules and Regulations for Sheds, Wharfs and Aprons Piers 31-33

1. All loading and unloading of goods shall be done only in the areas, and through the entrances designated by Port. The delivery or shipping of products and supplies shall be subject to Port's reasonable rules and regulations
2. Tenant shall not in any way obstruct the common corridors, driveways, entrances and exits to the Premises, or any of the Common Areas, and shall use the same only as passageways to and from their respective work areas. Tenant shall not display, or allow portable signs, devices or other objects to be stored or to remain outside the Premises. Port may remove and discard any of the same at any time without notice.

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3. Nothing shall be erected on the roof or exterior walls of the Premises or on the Common Areas without, in each instance, the written consent of Port. Any item so installed without such written consent may be removed and discarded without notice at any time.
4. There is no parking of employee or personal vehicles allowed in the sheds. Personal vehicles in the shed will be cited and towed without notice. Port may enforce this rule by having any non-complying vehicle towed. The owner of the vehicle shall pay any and all costs to redeem any towed vehicles. In addition, Tenant shall be liable to Port for all costs incurred by Port in affecting such towing, which shall be paid by Tenant, as Additional Rent, within ten (10) days of Port's written demand.
5. The plumbing facilities shall be used solely for the purpose for which they are constructed, and no foreign substance of any kind shall be thrown therein. The expense of clearing any blockage, repairing any breakage or damage resulting from a violation of this provision shall be borne by Tenant.
6. All entrances and exits to the Premises shall be kept unobstructed at all times.
7. Tenant shall not mark, drive nails, screw or drill into, penetrate, paint or in any way deface the exterior walls, roof, foundations, bearing walls, columns or pillars without the prior written consent of Port. The expense of repairing any damage resulting from a violation of this rule shall be borne by Tenant.
8. No awning or shade or sign shall be affixed or installed over or in the windows or the exterior of the Premises except with the prior written consent of Port.
9. Tenant shall observe all security procedures/regulations/instructions issued by Port or any security contractor of Port.
10. Port reserves the right to exclude or expel from the Premises or Common Area any person who, in the judgment of Port, is intoxicated, under the influence of alcohol or drugs, or who shall in any manner do any act in violation of law or the rules and regulations of the Premises.
11. Tenant assumes any and all responsibility for protecting the Premises from burglary, theft, robbery, pilferage and vandalism which includes keeping man doors and roll up doors locked and other means of entry to the Premises secured. Tenant agrees to use due diligence for protecting the Common Area from burglary, theft, robbery, pilferage and vandalism which include securing all Common Area man doors and roll up doors at close of business.

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12. Tenant's business equipment, commercial vehicles, personal property or any other items shall not be placed in the common areas, aprons, driveways or shed and shall not, at any time block any entry, exit or drive aisle. Port reserves the right to immediately remove any of these items after a notice to remove has been tagged on the items. Port is not responsible for the storage of these items once removed, or their return. Likewise, unattended fork lifts and other commercial vehicles will be removed.

13. Tenant shall comply with the attached Best Management Practices.

14. TRASH / WASTE MANAGEMENT

- All trash and waste shall be kept in locations specified by Port. Trash carts/containers shall be placed outside of fenced trash enclosures for collection / pick-up in locations specified by Port.
- Tenant shall ensure that all waste materials from their operations are properly managed, contained, and disposed to prevent pest activity. All trash bags shall be placed in waste containers, dumpsters, bins, or comparable. At no time shall Tenant place non-containerized trash bags on sidewalks, streets, in trash enclosures, or in other Common Areas.
- Tenant shall adhere to the City's Integrated Pest Management (IPM) Ordinance which governs the way pests are managed on City properties. These requirements include using pesticides / rodenticides as a last resort. Tenant shall not place pesticides / rodenticides on Port property. If Port should so require, Tenant shall use, at Tenant's cost, a pest extermination contractor as directed by Port and at such intervals as Port may require.
- Tenant shall ensure that waste materials are not released onto the pier decking, valley floor, sidewalk, trash enclosure paved surface, other Common Areas, or into the Bay. These areas shall be kept clean and free from dirt and rubbish by Tenant to Port's satisfaction.
- Tenant shall pressure wash / steam clean the trash enclosure pavement and any area with debris and / or grease buildup from Tenant waste at Tenant's cost. Pressure washing / steam cleaning shall be performed by Tenant on an as-needed basis. Port may require additional cleaning, at Tenant's cost, to Port's satisfaction. Tenant shall collect all trash / debris prior to cleaning to prevent these materials from entering drain inlets. Only wash water is allowed in the drain. Under no circumstance shall Tenant allow wash water to flow into the Bay.
- Tenant shall close and lock all waste containers when not in active use. Tenant shall

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close and lock fenced trash enclosures when not in active use.

- For public health and safety, Tenant shall store all waste materials to prevent removal / scavenging by other persons at all times.
- Tenant shall keep all waste bins, containers, dumpsters, and trash compactors clean and in good repair at all times.
- Tenant shall be responsible for the separating of waste in compliance with all governmental ordinances including mandated recycling and composting. Tenant shall compost all organic waste materials from their operation.
- Tenant shall not overload waste bins prior to transfer.
- Tenant shall immediately pick up and properly dispose of any waste that is spilled during transfer.
- Tenant shall not burn any trash or garbage in, on, or about the Premises or Common Areas.
- Each Tenant shall designate a Waste Management Coordinator to oversee waste management activities for their operations, ensure compliance with these Rules and Regulations, and serve as Port's primary point-of-contact for waste management issues.
- Tenant shall maintain strict compliance with these trash / waste management Rules and Regulations.

The Port reserves the right at any time and from time to time to change or rescind any one or more or all of these Rules and Regulations or to make such other and further Rules and Regulations as the Port shall determine are in the best interest of the Port, the environment and/or Tenant. In the event of any conflict between these or any modified Rules and Regulations and the Lease, the terms and provisions of the Lease shall prevail.

11.5 Appendix E – Select Permitted & Regulated Activity – Summary Table

CITY & COUNTY OF SAN FRANCISCO				
AGENCY	REGULATED ACTIVITY	REQUIREMENT	APPLIES	PERMIT N
Port of San Francisco	- Post-Construction Stormwater	Stormwater Control Plan	YES	
SF Department of Public Health – Hazardous Materials Unified Program Agency (HMUPA)	- Hazardous Materials Storage - Hazardous Waste - Aboveground Storage Tanks - Underground Storage Tanks - Cellular Antennae	Hazardous Materials Business Plan	YES	
		Review/Approval of Proposal	YES	
SF PUC	- Industrial Wastewater - Fats, Oils, Grease Control - Chemical toilets, etc.	Industrial Discharge Permit FOG Control Compliance	YES	
SF Fire Department	- Flammable Materials - Compressed Gases - Open Flame Devices - Vehicle Garage, Repair - Hot Works, Welding, Cutting		YES	
SF Planning Department	- Project subject to CEQA	CEQA conditions	YES	2010.04931
STATE OF CALIFORNIA				
AGENCY	ACTIVITY	REQUIREMENT	APPLIES	PERMIT N
DTSC	Hazardous Waste Generation	EPA ID Numbers	YES	
WATER BOARDS	- Industrial - Construction - Post-Construction - In-Water Activities	Conditions of 401 Permit	YES	
			YES	
			YES	
			YES	
Department of Resources, Recycling, and Recovery	- Waste Tire Program			
Highway Patrol	- Required Vehicle and Driver Record Inspections			
CA PUC	- Carry Passengers - Issuance of Livery Plates - Certain Transit Routes - Reviews Passenger Rates			
Cal-OSHA	- Employee Health and Safety		YES	
FISH & WILDLIFE – OFFICE OF SPILL PREVENTION & RESPONSE	- Fueling Over Water - Yachts > 300 gross tons	Certificate of Financial Responsibility		
BCDC				
FEDERAL				
AGENCY	ACTIVITY	REQUIREMENT	APPLIES	PERMIT N
DOT				
			YES	

Operations Plan

Army Corps	- Temporary structures in navigable waters - Dredging	Rivers and Harbors Act Section 10 Permit	YES YES	

11.6 Appendix F – Hazardous Materials Inventory

Not yet available - To Be Provided By Tenant

11.7 Appendix G – Reserved

11.8 Appendix H – Industrial Stormwater Pollution Prevention Plan

Not yet available - To Be Provided By Tenant

11.9 Appendix I – Fire Department Permit List

Available as pdf document

11.10 Appendix K – Definitions

1.1. **Definitions.** Definitions used in this Operations Plan are found in the specified locations in this Operations Plan or are set forth below. Definitions that are not capitalized below are not capitalized when used in this Operations Plan.

"Agents" is defined in the relevant Lease.

"Berth" or **"Berthing"** is defined in the relevant Lease.

"Berthing Area" is defined in the relevant Lease.

"Berthing Area Improvements" is defined in the relevant Lease.

"Best Management Practice" means those practices identified as Best Management Practices this Operations Plan.

"BMPs" means Best Management Practice.

"CCR" means the California Code of Regulations.

"CFR" means the Code of Federal Regulations.

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

"Commission" means the San Francisco Port Commission.

"Environmental Laws" is defined in the relevant Lease.

"Environmental Regulatory Action" is defined in the relevant Lease.

"Environmental Regulatory Agency" is defined in the relevant Lease.

"Environmental Regulatory Approval" is defined in the relevant Lease.

"EPA" means the US Environmental Protection Agency.

"Excursion Vessel" is defined in the relevant Lease.

"Hazardous Material" is defined in the relevant Lease.

"Invitees" is defined in the relevant Lease.

"Law" is defined in the relevant Lease.

"Premises" is defined in the relevant Lease.

"Regulatory Agency" is defined in the relevant Lease.

"Regulatory Approval" is defined in the relevant Lease.

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"Release" is defined in the relevant Lease.

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

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

"Tenant" means the Party identified as Tenant in the Basic Lease Information.

"

EXHIBIT D

PERMITTED VESSEL INFORMATION

[Attachment on following page]

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EXHIBIT E

WORK LETTER

This Work Letter sets forth Tenant's obligation to construct the Embarkation Site Improvements and shall be deemed part of the Lease. The "Embarkation Site Improvements" are described in the Basic Lease Information, this Work Letter and its attachments and associated Port Building Permits and any amendments thereto.

1. General Terms

1.1. Definitions. Initially capitalized terms used in this Work Letter have the meanings given them when first defined. Any initially capitalized words or acronyms used but not defined in this Work Letter shall have the same meanings as in the Lease.

1.2. Relationship between Work Letter and the Lease. This Work Letter governs Tenant's obligations to construct the Embarkation Site Improvements or, in the event Tenant fails to complete such improvements by the Embarkation Site Improvements Outside Completion Date, as defined in the Basic Lease Information, to such later date of Completion as determined by Port for the Embarkation Site Improvements. This Work Letter addresses, among other matters, the scope of Tenant's obligations to design and construct the Embarkation Site Improvements in accordance with the Schematic Design and Drawings, Tenant's obligations to obtain final approvals for the Embarkation Site Improvements, and the Schedule of Performance. Before the termination of this Work Letter, this Work Letter shall control in the event of any inconsistency between this Work Letter and the Lease. Upon expiration of this Work Letter, the Lease alone will govern the rights and obligations of the parties with respect to use and occupancy of the Premises.

1.3. Term. This Work Letter shall commence and become effective as of the Effective Date and shall expire on the date of Completion of the Embarkation Site Improvements.

1.4. Lease Provisions. The provisions of the Lease, except where clearly inconsistent or inapplicable to this Work Letter, are incorporated into this Work Letter.

1.5. Extensions by Port. Upon the request of Tenant, Port's Executive Director may, by written instrument, extend the time for Tenant's performance of any term, covenant or condition of this Work Letter or permit the curing of any default of this Work Letter upon such terms and conditions as she or he determines appropriate, including but not limited to the time within which Tenant must perform such terms and/or conditions, provided, however, that any such extension or permissive curing of any particular default will not operate to relieve Tenant of its obligations to pay Rent or release any of Tenant's obligations nor constitute a waiver of Port's rights with respect to any other term, covenant or condition of this Work Letter or the Lease or any other default in, or breach of, the Work Letter or the Lease or otherwise effect the time with respect to the extended date or other dates for performance hereunder.

2. Construction Of The Embarkation Site Improvements

2.1. Tenant's Construction Obligations.

(a) Project Requirements. Tenant hereby agrees for itself, successors, and assignees, to complete for the benefit of the Port the construction of the Embarkation Site Improvements by the Embarkation Site Improvements Outside Completion Date. Tenant shall Complete said construction free of claims, demands, actions and liens for labor, materials or equipment furnished for the construction, and shall be performed in accordance with applicable requirements of (i) all Laws; (ii) this Work Letter, including the Scope of Development; (iii) the Port Building Code as applicable; (iv) required Regulatory Approvals; (v) the Waterfront Land Use Plan; (vi) the design approved by the Port and, if required, the Planning Commission, pursuant to Section 240 of the Planning Code; and (vii) the Lease including without limitation

Section 13. All such requirements are sometimes referred to collectively as the “**Project Requirements.**”

(b) Scope of Development; Schedule of Performance. Tenant shall use commercially reasonable efforts to construct or cause to be constructed the Embarkation Site Improvements on the Premises within the times and in the manner set forth in this Work Letter and the Scope of Development attached hereto as *Attachment 1*. All construction with respect to the Embarkation Site Improvements shall be accomplished expeditiously, diligently and in accordance with good construction and engineering practices and applicable Laws. Tenant shall undertake commercially reasonable measures to minimize damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected by such work. Tenant, while performing any construction with respect to the Embarkation Site Improvements, shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining tenants, properties and improvements, or the risk of injury to members of the public, caused by or resulting from the performance of such construction.

(c) Costs; Private Development. Tenant shall bear all of the cost of construction of all Embarkation Site Improvements. Without limiting the foregoing, Tenant shall be responsible for performing all Premises preparation work necessary for construction of the Embarkation Site Improvements. Such preparation of the Premises shall include, among other things, asbestos and lead abatement investigation required for development or operation of the Embarkation Site Improvements, all structure and substructure work, disabled access improvements and public access improvements and tenant improvements.

2.2. Utilities. Tenant, at its sole expense, shall arrange for the provision and construction of all on-Premises utilities necessary to use the Premises for the Permitted Use. Tenant and Port shall coordinate, if necessary, with respect to installation of any off-Premises utility infrastructure and design of the Embarkation Site Improvements, including providing advance notice of trenching requirements, and coordinate any modification of utilities to any adjacent Port tenants or uses.

2.3. Submittals after Completion. Tenant shall furnish Port both design/permit drawings in their finalized form and "As-Built" Drawings, specifications and surveys with respect to the Premises (core and shell, and tenant improvements) within sixty (60) days after Completion of the Embarkation Site Improvements. If Tenant fails to provide such surveys and as-built plans and specifications to Port within such period of time, Port after giving notice to Tenant shall have the right, but not the obligation, to cause the preparation by an architect of Port's choice of final surveys and as-built plans and specifications, at Tenant's sole cost, to be paid by Tenant to Port within thirty (30) days after Port's request therefor.

2.4. Insurance. At all times during the construction of the Embarkation Site Improvements, in addition to the insurance required to be maintained by Tenant under the Lease, Tenant shall require Tenant's contractor to maintain (a) commercial general liability insurance with limits of not less than 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) workers' compensation with statutory limits and employer's liability insurance with limits of not less than One Hundred Thousand Dollars (\$100,000) per accident, Five Hundred Thousand Dollars (\$500,000) aggregate disease coverage and One

Hundred Thousand Dollars (\$100,000) disease coverage per employee. Tenant shall cause Tenant's Agents (other than Tenant's contractor) to carry such insurance as shall be reasonably approved by Port taking into account the nature and scope of the work and industry custom and practice. In addition, Tenant shall carry "**Builder's All Risk**" insurance covering the construction of the Embarkation Site Improvements as set forth in the Lease. The liability insurance shall be written on an "**occurrence**" basis and shall name Port as additional insureds (by endorsement reasonably acceptable to Port). All of the insurance required to be carried by Tenant or Tenant's Agents hereunder shall provide that it is primary insurance, and not excess over or contributory with any other valid, existing, and applicable insurance in force for or on behalf of Port, shall provide that Port shall receive thirty (30) days' written notice from the insurer prior to any cancellation or change of coverage, and shall be placed with companies which are rated A-VIII or better by Best's Insurance Guide and licensed to business in the State of California. All deductibles and self-insured retentions under Tenant's policies are subject to Port's reasonable approval, and all insurance, except workers' compensation, maintained by Tenant's Agents shall preclude subrogation claims by the insurer against anyone insured thereunder. Tenant's compliance with the provisions of this Section 2.4 shall in no way limit Tenant's liability under any of the other provisions of this Work Letter or the Lease.

2.5. Performance Bond. At least five (5) business days prior the start of construction, Tenant shall provide Port, at Tenant's sole cost and expense, (i) a corporate surety payment bond and a performance bond substantially in the form attached hereto as **Attachment 2** obtained by each of Tenant's contractors performing work on the Embarkation Site Improvements or, (ii) a financial guarantee, in a form approved by Port in its sole discretion, from a third party with liquid assets in an amount of no less than One Hundred Twenty-five percent (125%) of the cost of the Embarkation Site Improvements. Each bond shall be in an amount equal to one hundred percent (100%) of the estimated costs of such work on the Embarkation Site Improvements. Each performance bond shall guarantee the contractor's faithful performance of its contract(s) with Tenant. Each payment bond shall guarantee the Contractor's payment of labor, materials, supplies and equipment used in the performance of its contract(s) with Tenant. The bonds are intended to help protect the Port against any liability for mechanics' and materialmen's liens, stop notices and to ensure completion of the work. Corporate sureties issuing these bonds shall be legally authorized to engage in the business of furnishing surety bonds in the State of California. All sureties shall have a current A.M. Best Rating not less than A-, VIII. Each corporate surety bond shall obligate the surety to Tenant and the City and County of San Francisco as co-obligees.

2.6. Compliance with Laws. At its sole cost and expense, Tenant shall comply (taking into account any variances or other deviations properly approved) with: (i) all Laws; (ii) all Regulatory Approvals which place requirements on the Embarkation Site Improvements; (iii) all requirements of all policies of insurance which may be applicable to the Premises as to the Embarkation Site Improvements or Tenant's Personal Property; and (iv) all other applicable Project Requirements. It is expressly understood and agreed that the performance required of Tenant by the preceding sentence shall include the obligation to make, at Tenant's sole cost and expense, all additions to, modifications of, and installations on the Premises which may be required by any Laws regulating the Premises or any insurance policies covering the Premises as to the Embarkation Site Improvements or Tenant's Personal Property. Tenant shall, promptly upon request, provide Port with reasonable evidence of compliance with Tenant's obligations under this Section.

2.7. Port and Other Governmental Permits. Except as provided in the Basic Lease Information with respect to the BCDC permit(s) for the construction of the Embarkation Site Improvements, Army Corps of Engineers permit for construction of the Embarkation Site Improvements; and RWQCB permit for construction of the Embarkation Site Improvements, Tenant has the sole responsibility, at its sole cost and expense, for obtaining all necessary permits for the Embarkation Site Improvements and shall make application for such permits

directly to the applicable Regulatory Agency; subject to the requirements of Section 10.2 of the Lease.

2.8. Port Rights of Access. Without limiting the rights of Port in its regulatory capacity, Port and its Agents will have the right of access to the Premises to the extent reasonably necessary to carry out the purposes of this Work Letter, including, but not limited to, the inspection of the work being performed in constructing the Embarkation Site Improvements upon reasonable prior written notice to Tenant during regular business hours; provided, however, Port shall take such reasonable action necessary to minimize any interference with Tenant's construction activities. Port will provide Tenant promptly upon request with a copy of any written reports prepared by Port or its Agents with respect to the Embarkation Site Improvements under any such inspection, subject to withholding documents otherwise privileged or confidential. Port disclaims any warranties, representations and statements made in any such reports, will have no liability or responsibility with respect to any such warranties, representations and statements, and will not be estopped from taking any action (including, but not limited to, later claiming that the construction of the Embarkation Site Improvements is defective, unauthorized or incomplete) nor be required to take any action as a result of any such inspection. For purposes of clarity, this Section 2.8 does not apply to inspections, approvals, or other actions taken by the CHE in his/her regulatory capacity as the Port's chief building official.

2.9. Construction Signs and Barriers. Tenant shall provide appropriate construction barriers, construction signs and a project sign or banner describing the Embarkation Site Improvements, and shall post the signs on the Premises during the period of construction. The size, design, test and location of such signs and the composition and appearance of any non-moveable construction barriers shall be submitted to Port for approval before installation pursuant to Port's sign policy, which approval may not be withheld unreasonably. Failure by Port to disapprove any such submission within forty-five (45) days after submittal of all documents required or requested by Port, will be deemed to be an approval.

3. Preparation And Approval Of Plans

3.1. The Construction Documents.

(a) Definition of Construction Documents. The Construction Documents shall be as follows:

(i) "Schematic Design and Drawings" for the Embarkation Site Improvements prepared by NPS on May 22, 2017, titled Alcatraz Embarkation Site Schematic Design Package, and attached hereto as part of the Scope of Development which includes, without limitation, the following:

(1) Perspective drawings sufficient to illustrate the Embarkation Site Improvements.

(2) Site plans at appropriate scale showing relationships of the Embarkation Site Improvements with their respective uses, designating public areas, open spaces, seating areas, walkways, canopies, buildings, service areas, boat docks, parking, and location of the monument sign and subordinate wayfinding signs. Adjacent existing and proposed streets, piers, arcades and structures should also be shown.

(3) Building plans, floor plans and elevations sufficient to describe the development proposal, the general architectural character, and the location and size of uses.

(4) Building and site cross sections showing height relationships of those areas noted above.

(5) Booklets submitted to the San Francisco Bay Conservation and Development Commission (BCDC) Design Review Board dated July 27, 2017 and January 22 2018 that are hereby incorporated by reference.

(6) the December 20, 2017 Embarkation Site Waterside Improvements and Maintenance Specifications.

(ii) **"Preliminary Construction Documents"** prepared by Tenant in sufficient detail and completeness to show that the Embarkation Site Improvements and the construction thereof shall comply with the Project Requirements, and which shall generally include, without limitation:

(1) Premises plan(s) at appropriate scale showing the buildings, canopies, streets, boat docks, walkways, and other open spaces. All land uses shall be designated. All Premises development details and bounding streets, points of vehicular and pedestrian access shall be shown.

(2) All building plans and elevations at appropriate scale.

(3) Cross section of buildings, canopies, and site showing all typical dimensions, materials, and connections at appropriate scale.

(4) Floor plans.

(5) Preliminary interior improvement plans.

(6) Plans and other detailed illustrations to sufficiently describe the proposed public areas including but not limited to, walls, fences, railings, benches, bicycle racks, interpretive markers, plaques, models, pavements, exterior lighting, signs, trash/recycling receptacles, and other site furnishings.

(7) Outline specifications for materials, finishes and methods of construction.

(8) Interior and Exterior Signage Plans.

(9) Exterior lighting plans.

(10) Material and color samples.

(11) Roof plans showing all mechanical and other equipment.

(iii) **"Final Construction Documents"** prepared by Tenant which shall include all plans and specifications required under applicable codes to be submitted with an application for a Premises Permit.

(b) Exclusion. As used in this Work Letter **"Construction Documents"** do not mean any contracts between Tenant and any contractor, subcontractor, architect, engineer or consultant.

3.2. Scope of Tenant Submissions of Construction Documents. The following provisions apply to all stages of Tenant's submission of Construction Documents. Each of the Construction Document stages is intended to constitute a further development and refinement from the previous stage. The elements of the Preliminary Construction Documents requiring Port's approval shall be in substantial conformance with the Scope of Development including the Schematic Design and Drawings, and shall incorporate conditions, modifications and changes specified by Port or required as a condition of Regulatory Approvals as approved by Port. Preliminary Construction Documents shall be in sufficient detail and completeness to show that the Embarkation Site Improvements and the construction of the Embarkation Site Improvements will be in compliance with the Project Requirements and matters previously approved. The Final Construction Documents shall be a final development of, and be based upon and conform to, the approved Preliminary Construction Documents. The elements of the Final Construction

Documents requiring Port approval shall incorporate conditions, modifications and changes required by Port for the approval of the Preliminary Construction Documents. The Final Construction Documents shall include all drawings, specifications and documents necessary for the Embarkation Site Improvements to be constructed and completed in accordance with this Work Letter.

3.3. Construction Document Review Procedures.

(a) Method of Port Action/Prior Approvals. Port shall approve, disapprove or approve conditionally the Construction Documents, in writing, in accordance with the Schedule of Performance, but, in any event, within ninety (90) days after submittal, so long as the applicable Construction Documents are properly submitted in accordance with the Schedule of Performance. If Port fails to either approve or disapprove within five (5) business days after Tenant's second written request made to Port after such ninety (90) day period, the applicable Construction Documents shall be deemed disapproved.

(b) Timing of Port Disapproval/ Conditional Approval and Tenant Resubmission. If Port disapproves of the Construction Documents in whole or in part, Port in the written disapproval shall state the reason or reasons and may recommend changes and make other recommendations. If Port conditionally approves the Construction Documents in whole or in part, the conditions shall be stated in writing and a time shall be stated for satisfying the conditions. Tenant shall make a resubmittal as expeditiously as possible. Tenant may continue making resubmissions until the approval of the submissions or the time specified in any conditional approval.

3.4. Changes in Construction Documents.

(a) Approval of Changes in Construction Documents. Tenant shall not make or cause to be made any material changes in any Port-approved Construction Documents without Port's express written approval in its reasonable discretion as provided in Section 3.4(b) below. Prior to making any changes that Tenant considers to be non-material to any Port-approved Construction Documents, including, without limitation, substituting materials which are the architectural equivalent as to aesthetic appearance, quality, color, design and texture, Tenant shall notify Port in writing. If Port in its reasonable discretion determines that such noticed changes are material, then such changes shall be subject to Port's approval under Section 3.4(b). Port's determination of whether such changes are material will be conclusive. Without otherwise limiting the requirements of this Section 3.4(a), any changes that cost Five Thousand Dollars (\$5,000.00) or less in the aggregate and that would not otherwise affect the structural elements of the Embarkation Site Improvements shall be presumed to be non-material changes.

(b) Response. Tenant shall request in writing Port's approval in connection with all material changes to the Construction Documents. Port shall respond to Tenant in writing within thirty (30) days after receipt of Tenant's request. If Port fails to respond within five (5) business days after Tenant's second written request made to Port after the thirty (30) day period, such changes will be deemed disapproved.

3.5. Conditions for Surrender of Portion of Parcel E; Parcel F and Parcel D- 1.

The Embarkation Site Improvements will include build out of a "warm shell" for the following areas of the Pier 33 South Bulkhead Building and Pier 33 Shed which will then be surrendered to Port to be leased to the Conservancy for build out of the surrendered premises ("Surrendered Premises") and subsequent operation of an interpretive welcome center and ancillary uses under Port Lease No. L-16274: (i) approximately 3,280 sq. ft. on the first floor (Parcel E); (ii) approximately 992 square foot on the mezzanine (after demolition of the second floor) (Parcel F); and (iii) Parcel D-1. Completion of the Embarkation Site Improvements for these three areas shall be consistent with the Schematic Design and Drawings prepared by NPS on May 22, 2017, titled Alcatraz Embarkation Site Schematic Design Package and shall include:

(a) Installation of dedicated Utilities (including but not limited to valve boxes, sewer and storm structures, electrical, water, sewer, gas, telephone boxes and vaults) to a single drop point within the Surrendered Premises within each of the (i) the Pier 33 South Bulkhead Building and (ii) Parcel D-1 sufficient to support the intended subsequent occupancy and use. Tenant shall not be responsible for distribution of Utilities within the Surrendered Premises;

(b) Installation of a meter for each Utility service that meters use only within each of the (i) the Pier 33 South Bulkhead Building and (ii) Parcel D-1;

(c) Installation of functioning heating, cooling and ventilation systems to a single point within the Surrendered Premises within the Pier 33 South Bulkhead Building. Tenant shall not be responsible for distribution of such systems within the Surrendered Premises;

(d) Installation of infrastructure to support all required fire and life safety systems including but not limited to single point of entry for water for fire suppression within each of the (i) the Pier 33 South Bulkhead Building and (ii) Parcel D-1. Tenant shall not be responsible for distribution of such systems within the Surrendered Premises or for sprinklers, fire alarms, smoke detectors, or intrusion alarms;

(e) Establishment of a hub for telephone and internet service within each of the (i) the Pier 33 South Bulkhead Building and (ii) Parcel D-1;

(f) Removal of all Hazardous Materials, including but not limited to ACM, PACM and lead-based paint;

(g) Installation of a minimally finished interior with open walls and an open ceiling with no grid in place and concrete floor that is poured, leveled and sanded at a minimum within the Pier 33 South Bulkhead Building;

(h) All Utilities shall be installed so as to facilitate/enable a LEED® Gold rating;

(i) All Common Area space shall be ADA compliant; and

(j) All debris and construction materials shall be removed and the areas shall comply with standards for surrender in Section 26.1.

3.6. Progress Meetings/Consultation. During the preparation of Construction Documents, Port staff and Tenant agree to hold regular progress meetings, as appropriate considering Tenant's Construction Document progress, to coordinate the preparation of, submission to, and review of Construction Documents by Port. Port staff and Tenant (and its applicable consultants) agree to communicate and consult informally as frequently as is reasonably necessary to assure that the formal submittal of any Construction Documents to Port can receive prompt and speedy consideration.

4. Completion of Construction.

4.1. Completion. Subject to Force Majeure, Tenant shall use its best efforts to commence, prosecute and Complete the Embarkation Site Improvements by the Embarkation Site Improvements Outside Completion Date. During the Construction Period, Tenant shall submit written progress reports to City, in form and detail as may be required reasonably by Port, but at least on a monthly basis. Tenant's obligation to Complete construction of the Embarkation Site Improvements shall not be subject to Port delays, Regulatory Approval delays or any other delays (other than Force Majeure).

4.2. Port's Remedy for Tenant's Failure to Timely Complete Construction. In the event Tenant fails to Complete the Embarkation Site Improvements by the Embarkation Site Improvements Outside Completion Date, at Port's discretion, Tenant shall pay to Port an amount equaling Three Hundred Dollars (\$300.00) per day commencing on the Embarkation Site Improvements Completion Date and continuing at such rate until Port has determined that the Embarkation Site Improvements are Complete in addition to the Rent that would otherwise be

payable for such period. Under no circumstances shall these deadlines be extended due to Port delays or other reasons (other than as explicitly provided in this Lease).

THE PARTIES HAVE AGREED THAT PORT'S ACTUAL DAMAGES IN THE EVENT OF TENANT'S FAILURE TO COMPLETE CONSTRUCTION OF THE EMBARKATION SITE IMPROVEMENTS BY THE EMBARKATION SITE IMPROVEMENTS OUTSIDE COMPLETION DATE WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THEY HAVE AGREED UPON THE SUM SPECIFIED ABOVE, AFTER NEGOTIATION, AS THEIR REASONABLE ESTIMATE OF PORT'S DAMAGES IN SUCH EVENT.

TENANT 

PORT 

5. Certificate Of Completion.

5.1. Completion.

(a) After Tenant has Completed construction of the Embarkation Site Improvements in accordance with all the provisions of this Work Letter, including, but not limited to, the Project Requirements, Tenant may request a Completion determination.

(b) Port's issuance of any Completion determination does not relieve Tenant or any other Person from any obligations to secure or comply with any Regulatory Approval of any agency (including Port) that may be required for the occupancy or operation of the Embarkation Site Improvements.

(c) **Condition to Approval.** If there remain uncompleted (i) finishing details, minor omissions, decorations and mechanical adjustments of the type normally found on an architectural "punch list", (ii) landscaping, (iii) exterior finishes (to the extent Tenant can demonstrate to Port's reasonable satisfaction that such exterior finishes would be damaged during the course of later construction of Interior Improvements), or (iv) any other item that Port approves in writing in its sole and absolute discretion (collectively "Deferred Items"), Port may reasonably condition approval upon provision of security or other assurances in form, substance and amount satisfactory to Port that all the Deferred Items will be completed in a timely fashion. Such security may include a letter of credit (in a form and issued by an institution acceptable to Port) in the amount of one hundred ten percent (110%) of the cost of completion of the Deferred Items as reasonably determined by Port. The obligations set forth in this subsection shall survive a termination of the Lease.

6. Termination Of Lease.

6.1. Plans and Data. If the Lease terminates as a result of an Event of Default by Tenant before Completion of the Embarkation Site Improvements, Tenant shall assign and deliver to Port (without cost to Port) any and all copies of reports in its possession regarding the Premises and all Construction Documents in the possession of or prepared for Tenant, for the contracting of the Embarkation Site Improvements within thirty (30) days after written demand from Port. Port may use said reports and Construction Documents for any purpose whatsoever relating to the Premises; provided, however, Port shall release Tenant and Tenant's contractor, architect, engineer, agents, employees and other consultants from any losses arising out of Port's use of such reports and Construction Documents except to the extent such contractor, architect, engineer, agent, employee or other consultant is retained by Port to complete the Embarkation Site Improvements. Tenant shall include in all contracts and authorizations for services pertaining to the planning and design of the Embarkation Site Improvements an express agreement by the Person performing such services that Port may use such reports or Construction Documents as provided in this Section 6.1 without compensation or payment from Port in the event such reports or Construction.

Documents are delivered to Port under the provisions of this Section 6.1, provided that Port agrees (i) not to remove the name of the preparer of such reports of Construction Documents without the preparer's written permission or (ii) to remove it at their written request.

6.2. *Return of Premises.* If the Lease terminates pursuant to this Section 6, Tenant shall, at its sole expense and as promptly as practicable, return the Premises to Port in a safe condition, and unless otherwise requested by Port, shall promptly remove all Improvements, loose building materials and debris present at the Premises resulting from Tenant's construction activities. In the event that Tenant is required to return the Premises as aforesaid, Tenant shall obtain those authorizations, permits and approvals customary and necessary to enter upon the Premises in order to complete such work and shall otherwise comply with applicable Law. In such event, Port shall cooperate with Tenant in Tenant's efforts to obtain such permits, provided that Port will not be required to expend any money or undertake any obligations in connection therewith. The provisions of this Section shall survive any termination of the Lease.

ATTACHMENTS

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| ATTACHMENT 1 | SCOPE OF DEVELOPMENT (INCLUDING THE SCHEMATIC DESIGN AND DRAWINGS AND SCHEDULE OF PERFORMANCE) |
| ATTACHMENT 2 | FORM OF PERFORMANCE BOND & PAYMENT (LABOR AND MATERIAL) BOND |

ATTACHMENT 1
SCOPE OF DEVELOPMENT

SCHEMATIC DESIGN AND DRAWINGS

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