

MASTER LEASE AGREEMENT

**(Master Lease of Real Property
Located in City of Oakland,
County of Alameda)**

Between

PORT OF OAKLAND

And

[]

Dated as of

[], 20[]

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MASTER LEASE AGREEMENT

This **MASTER LEASE AGREEMENT**, dated for reference purposes as of _____, __, 20__ (“Execution Date”), by and between the **CITY OF OAKLAND**, a municipal corporation, acting by and through its Board of Port Commissioners, and [_____
_____] (including any successors and assigns, the “the Master Lessee”),

RECITALS:

WHEREAS, the Port is the owner of that certain property located in portions of the former Oakland Army Base and other lands, and is the beneficiary of certain easements, all in the Port Area of the City and consisting of approximately 168 acres of land hereinafter referred to as the “Property”, the Property together with the improvements presently and thereafter constructed and/or installed thereon being sometimes collectively being referred to hereinafter as the “Premises.” The Premises is more particularly described and depicted respectively in Exhibit A and Exhibit B; and

WHEREAS, the Board of Port Commissioners of the City of Oakland, acting for and on behalf of the City (the “Board”), is vested with the complete and exclusive power, and it is the Board’s duty for and on behalf of the City with respect to the Port Area, to make provisions for the needs of commerce, shipping, and navigation of the Port, including for the development, maintenance, operation, or promotion of the Port, and in the exercise of such power and fulfillment of such duty, the Port may enter into any master lease of the Port-owned (or easement) properties in the Port Area upon such terms and conditions as the Board shall prescribe, which terms and conditions shall include control over the rates, charges, and practices of the public facilities or appliances of the Port to the extent permitted by Law; and

WHEREAS, the Port has determined that commerce, shipping, and navigation of the Port will be promoted and enhanced by master leasing the Premises to the Master Lessee for the uses and purposes, and subject to the terms and conditions, set forth in this Master Lease; and

WHEREAS, the Port desires to enter into this Master Lease to provide the Master Lessee a long-term master lease for the master operation, maintenance, design, construction, finance, and lease of facilities on the Premises, including the project described by Exhibit C, which has been approved by the Port’s Director of Maritime (the “Project”), which service and enhance commerce, navigation, and fishery or incidents thereof; and

NOW, THEREFORE, for the better promotion of commerce, shipping, and navigation, and the development and master operation of the Premises, and for and in consideration of the faithful performance by the Port and the Master Lessee of the terms, covenants, and conditions hereof and of the payments herein provided to be made by the Master Lessee, the Port and the Master Lessee hereby agree as follows:

ARTICLE 1 DEFINITIONS

The following terms, when used in this Master Lease with the initial letter(s) capitalized, whether in the singular or plural, shall have the following meaning:

“Action”: Any claim whether by regulatory notice (which shall be deemed to include, without limitation, verbal or written notice by a Governmental Authority of an informational request, or to take any Response Action), or any other claim or notice of any claim by a Third Party, any demand, legal action, arbitration, mediation, proceeding or lawsuit, whether threatened or filed, and any demand, judgment, order, settlement or compromise relating thereto.

“Additional Casualty Cash”: Has the meaning ascribed thereto in Section 15.1.

“Additional Rent”: All amounts that the Master Lessee is required to pay to the Port under this Master Lease, other than Monthly Rent and Variable Rent.

“Administrative Record”: The written record as defined under California Public Resources Code Section 22167.6.

“Affiliate”: When used to indicate a relationship with a specified Person, a Person that, directly or indirectly, through one or more intermediaries controls, is controlled by or is under common control with such specified Person, and a Person shall be deemed to be controlled by another Person, if controlled in any manner whatsoever that results in control in fact by that other Person (or that other Person and any Person or Persons with whom that other Person is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

“Air Emissions Filter Facilities”: Structures or devices that are intended to filter or reduce air emissions before any such air emissions are emitted from any building structure, vehicle or equipment owned by or under the control of the Master Lessee.

“Airport”: The Metropolitan Oakland International Airport.

“Approved Construction Schedule”: The construction schedule set forth on Exhibit E, which has been approved by the Port’s Director of Maritime.

“Arbitration”: Arbitration proceedings conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitrators shall have no power to modify any of the provisions of this Master Lease and their jurisdiction is limited accordingly. Each Party hereby consents to the entry of judgment by any court having jurisdiction in accordance with the arbitration decision. No change in such Arbitration Rules which would deprive a Party of the rights to be represented by counsel, to present evidence or to cross-examine witnesses presented by the other Party shall be effective in any arbitration proceeding arising out of this Master Lease. Any arbitration provided for herein shall be conducted in the Port’s offices in Alameda County. Disputes under this Master Lease shall be subject to Arbitration only to the extent expressly provided for in other Sections of this Master Lease.

“Army”: The United States of America, acting through the Secretary of the Army, Department of the Army, and any successor department, agency or instrumentality.

“Army Quitclaim Deed”: The Quitclaim Deed conveying the OAB EDC Property from the Army to OBRA, recorded on August 8, 2003, in the Official Records of the Alameda County as Document No. 2003 466370.

“AST”: Above-ground storage tank.

“Authorization”: Any determination, approval, certificate of approval, authorization, consent, waiver, variance, exemption, declaratory order, exception, license, filing, registration, permit, notarization, special lease or other requirement of any Person that applies to all or any part of the Premises or the Master Lessee Operations.

“BAAQMD”: The Bay Area Air Quality Management District, and any successor Governmental Authority of the BAAQMD.

“BASELINE”: BASLINE Environmental Consulting, the Port’s OAB RAP environmental consultant.

“Basic Conditions”: Has the meaning ascribed thereto in Section 7.2.

“BCDC”: The San Francisco Bay Conservation and Development Commission, and any successor authority of BCDC.

“Board”: Has the meaning ascribed thereto in the Recitals.

“bona fide agency”: Has the meaning ascribed thereto in Article 40.

“bona fide employee”: Has the meaning ascribed thereto in Article 40.

“Building 807 RAP Site”: The OAB RAP Site which generally consists of chlorinated solvent impacted groundwater located between the eastern end of Building 807 and the Knight Railyard along the eastern boundary of the OAB EDC Property.

“Building 991 RAP Site”: The OAB RAP Site which generally consists of an area of petroleum hydrocarbon and pesticide Contamination in the Building 991 area, located at the northeast corner of the OAB EDC Property, north of West Grand Avenue, but does not include any Contamination in the adjacent wetland.

“Business Day”: Any day that is neither a Saturday, a Sunday, nor a day observed as a holiday by either the Port or the State of California or the United States government.

“CARB”: The California Air Resources Board, and any successor Governmental Authority of CARB.

“Casualty Cost”: Has the meaning ascribed thereto in Section 15.1.

“Casualty Event”: Has the meaning ascribed thereto in Section 15.1.

“Casualty Extension”: Has the meaning ascribed thereto in Section 15.8.

“Casualty Extension Notice”: Has the meaning ascribed thereto in Section 15.8.

“Casualty Restoration Funds”: Has the meaning ascribed thereto in Section 15.1.

“CEQA”: The California Environmental Quality Act as enacted under California Public Resources Code Section 21000, et seq.

“CEQA Project”: Any project as defined under CEQA, including any equivalent project or activity under NEPA.

“Change in Control”: With respect to any Person, whether accomplished through a single transaction or a series of related or unrelated transactions and whether accomplished directly or indirectly, either (a) a change in ownership, as compared to the ownership as of the Execution Date, so that 50% or more of the direct or indirect voting or economic interests in such Person is transferred to another Person or group of Persons acting in concert, (b) the power directly or indirectly to direct or cause the direction of management, operations, controls and policy of such Person, whether through ownership of voting securities, by contract, management agreement, or common directors, officers or trustees or otherwise, is transferred to another Person or group of Persons acting in concert, or (c) the merger, consolidation, amalgamation, business combination or sale of substantially all of the assets of such Person; provided, however, that (i) transfers of shares of the Master Lessee or its direct or indirect parent pursuant to an initial or “follow on” public offering on the New York Stock Exchange, NASDAQ, London Stock Exchange or comparable securities exchange and the purchase and sale of shares of the same as a publicly traded company shall not constitute a “Change in Control” for purposes of this Master Lease; provided that the purchaser of securities in any such transaction (other than any underwriter of a public offering) is not one Person or group of Persons acting in concert, (ii) transfers of direct or indirect ownership interests in the Master Lessee by any Equity Participant or its beneficial owner(s) to any Person shall not constitute a “Change in Control” so long as (x) such transfer is to another Equity Participant or to an Affiliate of an Equity Participant, or (y) the Equity Participants or their respective beneficial owner(s) having ownership interest in the Master Lessee as of the Execution Date together retain, in the aggregate, 50% or more of the direct or indirect voting interests in such Person or the power directly or indirectly to direct or cause the direction of management policy of such Person through direct or indirect ownership of voting securities or common directors, officers or trustees, and (iii) the granting of a security interest in, or the pledge of, the equity securities issued by the Master Lessee or any Equity Participant to an Institutional Lender in connection with, and as security for, a financing being made to or for the benefit of such Equity Participant or its beneficial owner shall not, in and of itself, constitute a “Change in Control.”

“Charter of the City of Oakland”: The Charter of the City of Oakland adopted by the people of the City on November 5, 1968, as duly amended from time-to-time thereafter.

“City”: The City of Oakland, a charter city organized and existing under the Constitution of the State of California.

“Clean Up Standard”: The level of remediation or the remediation standard allowed by the Governmental Authority having jurisdiction over such Toxic Materials or Response Action for remediation and removal of the Toxic Materials from the Environment, including, but not limited to, any remediation or clean up standard set forth in Environmental Laws establishing standards for clean up where Toxic Materials are left in place.

“Closure Activities”: Any and all activities required to be taken pursuant to Section 22.6, and applicable Environmental Laws, in order to complete all Response Actions for which the Master Lessee has responsibility under the Master Lease or Exhibit F, in compliance with all applicable Environmental Laws and to the satisfaction of the Governmental Authorities having jurisdiction over any Toxic Material or Response Action referred to in said Section 22.6.

“Completion of Construction”: Has the meaning ascribed thereto in Section 18.1(f)(3).

“Construction Drawings”: Has the meaning ascribed thereto in Section 7.2(b).

“Construction General Permit”: The permit regulating storm water discharges from construction or otherwise from the Premises issued by a State or Federal Governmental Authority, currently SWRCB Order No. 99-08-DWQ, NPDES General Permit No. CAS000002, Waste Discharge Requirements for Storm Water Discharges Associated with Construction.

“Contamination” All Toxic Materials contamination on, at, under, or emanating from or to the Premises.

“Contest”: Has the meaning ascribed thereto in Section 10.4.

“contingent fee”: Has the meaning ascribed thereto in Article 40.

“CPI Index”: The Consumer Price Index for All Urban Consumers for San Francisco-Oakland-San Jose, California (1982-84=100), as calculated by the Bureau of Labor Statistics of the United States Department of Labor or other successor United States government agency responsible for calculating such statistics; provided, however, if the CPI Index is changed so that the base year of the CPI Index changes, the CPI Index shall be converted in accordance with the conversion factor published by the U.S. Department of Labor, Bureau of Labor Statistics; provided, further, that if the CPI Index is discontinued or revised during the Term, such other index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI Index had not been discontinued or revised.

“CRUP”: Covenant to Restrict Use of Property, Environmental Restriction or any similar deed restriction.

“CTMP”: The Port’s Comprehensive Truck Management Program, which, as of May 8, 2009, is currently under development.

“CWA”: The Federal Water Pollution Control Act, 33 U.S.C. §§ 1251, et seq.

“Depositary”: A savings bank, a savings and loan association or a commercial bank or trust company which would qualify as an Institutional Lender, designated by the Master

Lessee and approved by the Port, to serve as depository pursuant to this Master Lease, provided that such Depository shall have an office, branch, agency or representative located in the State of California.

“Designated Person”: The representative of each Party who is designated as such for the purposes of Article 26.

“Dispute Resolution Procedure”: The dispute resolution procedure set forth in Article 26.

“Document”: Any correspondence, plan, budget, proposal, drawing, specification, contract, agreement, schedule, list, record, report, certification, notice, or other written, photographic, or electronic material.

“Domestic Water Supply Permit”: A permit issued to operate a public water supply system by the California Department of Health Services or any successor Governmental Authority pursuant to the California Safe Drinking Water Act, H&S Code, Section 116270 et seq. or other Law.

“DPM”: Diesel particulate matter.

“DTSC”: The State of California, Environmental Protection Agency, Department of Toxic Substances Control, and any successor Governmental Authority of DTSC.

“Early Actions”: Air emissions reductions measures implemented prior to the dates that such measures are required by Laws of any Governmental Authority, including California and other States, and the Federal government.

“East Maritime Army Reserve Property”: The Former United States Army Reserves (Buildings 780 & 762) property comprised of approximately 6.76 acres of the Premises that the Port acquired from the United States Army Reserves on June 29, 2007, and is also referred to as “Reserves 2007 Property.”

“EBMUD”: The East Bay Municipal Utility District, a municipal utility district organized under the laws of the State of California, and any successor Governmental Authority of EBMUD.

“EIR”: Environmental Impact Report.

“Eligible Investments”: Any one or more of the following obligations or securities: (a) direct obligations of, and obligations fully guaranteed by, the United States of America or any agency or instrumentality of the United States of America, the obligations of which are backed by the full faith and credit of the United States of America; (b) demand or time deposits, Federal funds or bankers’ acceptances issued by any Institutional Lender (provided that the commercial paper or the short-term deposit rating or the long-term unsecured debt obligations or deposits of such depository institution or trust company at the time of such investment or contractual commitment providing for such investment have been rated “Aa2” by Moody’s Investors Service, Inc, “AA” by Standard & Poor’s Ratings Services, or “AA” by Fitch Ratings or higher or any other demand or time deposit or certificate of deposit fully insured by

the Federal Deposit Insurance Corporation); (c) commercial paper (including both non-interest-bearing discount obligations and interest-bearing obligations payable on demand or on a specified date not more than 1 year after the date of issuance thereof) which has been rated “P-1” by Moody’s Investors Service, Inc, “A-1” by Standard & Poor’s Ratings Services, or “F-1” by Fitch Ratings or higher at the time of such investment; or (d) any money market funds, the investments of which consist of cash and obligations fully guaranteed by the United States of America or any agency or instrumentality of the United States of America, the obligations of which are backed by the full faith and credit of the United States of America and which have been rated “Aa2” by Moody’s Investors Service, Inc, “AA” by Standard & Poor’s Ratings Services, or “AA” by Fitch Ratings or higher provided, however, that no instrument or security shall be an Eligible Investment if such instrument or security evidences a right to receive only interest payments with respect to the obligations underlying such instrument or if such security provides for payment of both principal and interest with a yield to maturity in excess of 120% of the yield to maturity at par.

“Encumbrance”: Any mortgage, deed of trust, claim, levy, lien, judgment, execution, pledge, charge, security interest, restriction, covenant, condition, reservation, rights of way, liens, encumbrances, certificate of pending litigation, judgment or certificate of any court, and other matters of any nature whatsoever, whether arising by operation of Law or otherwise created, affecting the Premises.

“Environment”: Soil, soil vapor, surface waters, groundwaters, land, stream, ocean and bay sediments, surface or subsurface strata and ambient and indoor air.

“Environmental Audit”: The audit, inspection, and testing of the Premises and the Master Lessee Operations to determine whether the Premises and the Master Lessee Operations, including the Master Lessee’s and its Representatives’ activities and use, handling, storage or disposal of all Toxic Materials comply with Exhibit F and whether there has been any Release caused by the Master Lessee Operations.

“Environmental Condition Documents”: Has the meaning ascribed thereto in Section 9 of Exhibit F.

“Environmental Documents”: Any and all Documents required to be provided, filed, lodged, or maintained by the Master Lessee or obtained by or issued by the Master Lessee pursuant to any Environmental Law or Exhibit F, including, but not limited to, Documents related to CEQA and NEPA and to the handling, storage, disposal and emission of Toxic Materials.

“Environmental Indemnification Obligation”: The general obligation of the Master Lessee to indemnify, protect, defend and hold harmless the Indemnitees as said obligation is more fully described in Section 8 of Exhibit F.

“Environmental Laws”: All Laws issued by any Governmental Authority, including, but not limited to, those so defined in or regulated under any of the following: 15 U.S. Code Section 2601, et seq. (the Toxic Substances Control Act); 33 U.S. Code Section 1251, et seq. (the Federal Water Pollution Control Act); 42 U.S. Code Section 6901, et seq. (the Resource Conservation and Recovery Act); 42 U.S. Code Section 7401, et seq. (the Clean Air Act); 42 U.S.

Code Section 9601, et seq. (the Comprehensive Environmental Response, Compensation and Liability Act); 49 U.S. Code Section 1801, et seq. (the Hazardous Materials Transportation Act); 42 U.S. Code Section 4321, et seq. (NEPA); H&S Code Section 116270 et seq. (California State Drinking Water Act); H&S Code Section 25100, et seq. (Hazardous Waste Control); H&S Code Section 25300, et seq. (the Hazardous Substance Account Act); H&S Code Section 25404, et seq. (Unified Hazardous Waste and Hazardous Materials Management Regulatory Program); Government Code Sections 66600 et seq. (McAteer Petris Act); H&S Code Section 25531, et seq. (Hazardous Materials Management); H&S Code Section 18901, et seq. (California Building Standards); California Water Code Section 13000, et seq. (the Porter-Cologne Water Quality Control Act); H&S Code Section 25249.5, et seq. (the Safe Drinking Water and Toxic Enforcement Act of 1986); Division 26, of the H&S Code (including H&S Code Section 39000 et seq. and 40200 et seq. among others, (authorizing regulation by CARB and the BAAQMD); Division 25.5 of the H&S Code (H&S Code section 38500 et seq. - the Global Warming Solutions Act); California Public Resources Code Section 21000, et seq. (CEQA); local fire codes; the regulations adopted and promulgated pursuant to such statutes, including any regulations adopted pursuant to such statutes after the Execution Date, as well as any subsequently enacted Federal, California, local and Port law, statute, ordinance, rule, regulation, program, plan, resolution, policy, program, permit, order, or other directive issued by any Governmental Authority as may be modified, amended or reissued, in any way relating to or regulating the Master Lessee Operations with regard to:

(a) Human health, safety and industrial hygiene related to Toxic Materials;

(b) The Environment, including natural resources, pollution or contamination of the air, soil, sediment, soil gas, surface water, groundwater, structures, and subsurface structures including utility vaults, corridors or conduits, or noise or light pollution;

(c) Toxic Materials, including, without limitation, the handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release, treatment or disposal of any Toxic Materials, or Response Actions associated with same; or

(d) Global warming or generation of green house gases.

“Equipment Lessor”: Has the meaning ascribed thereto in Section 9.2(b).

“Equipment Sub-Lessor”: Has the meaning ascribed thereto in Section 9.2(b).

“Equity Participant”: Any Person who holds any partnership interest, membership interest, capital stock or other ownership interest in the Master Lessee.

“Estimated Project Completion Costs”: The estimated completion costs for the Project as set forth on Exhibit D.

“Estimated Reinstatement Costs”: Has the meaning ascribed thereto in Section 22.3(a)(3).

“Execution Date”: Has the meaning ascribed thereto in the preamble.

“Executive Director”: The Port’s Executive Director referred to in the Charter of the City of Oakland and any other person authorized by the Board to act for the Executive Director, or the Board.

“Final Construction Schedule”: Has the meaning ascribed thereto in Section 7.2(b).

“Financially Acceptable”: A rating of A-VII or higher in the most current available “Best’s Insurance Reports,” or such other ratings or carriers as may be acceptable at the sole discretion of the Port; provided, however, that the Port may disapprove carriers with an A+VII or higher rating if the Port has a reasonable basis for such disapproval.

“FISCO”: The former Fleet Industrial Supply Center Oakland comprising approximately 531 acres which the Port acquired from the Navy on June 16, 1999.

“Force Majeure Delay Period”: That period during which a Party claiming a Force Majeure Event in accordance with the notice provisions of Section 11.2 is not actually capable, despite using all commercially reasonable efforts, of performing or observing or causing to be performed or observed one or more of its obligations or covenants under this Master Lease as a direct result of the Force Majeure Event being claimed by such Party, provided, however, that no Force Majeure Delay Period shall be in excess of 365 consecutive calendar days.

“Force Majeure Event”: Any event beyond the reasonable control of the Master Lessee or the Port, as the case may be, that delays or interrupts the performance of the obligations or covenants of the Master Lessee or the Port, respectively, hereunder, including an intervening act of God or public enemy, war, act of terror, invasion, armed conflict, act of foreign enemy, blockade, revolution, sabotage, interference by civil or military authorities, earthquake, riot or other public disorder, epidemic, quarantine restriction, strike, stop-work order or injunction issued by a Governmental Authority (other than the Port) of competent jurisdiction, governmental embargo, restrictions, priorities or allocations of any kind and all kinds, nuclear or other explosion, radioactive or chemical contamination or ionizing radiation, fire, tornado, hurricane or other natural disaster; but only if such event is not (a) a Taking Event or otherwise specifically dealt with in this Master Lease and (b) the result of (i) the negligence or misconduct of the Master Lessee or the Port, as the case may be, or their respective Representatives, (ii) any act or omission by the Master Lessee or the Port, as the case may be, or their respective Representatives in breach of the provisions of this Master Lease, or (iii) lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of the Master Lessee or the Port, as the case may be.

“Government List”: Has the meaning ascribed thereto in Section 43.8.

“Governmental Authority”: Any court, Federal, State or local government, department, commission, board, bureau, agency or other regulatory, administrative, governmental or quasi-governmental authority, including the Port, of the United States of America, including any successor agency.

“Gross Revenue”: Has the meaning ascribed thereto in Section 5.2(b).

“Guaranty Funds”: An amount equal to the total of three times the Monthly Rent due for the applicable Master Lease Year that the Guaranty Funds guaranty in the form of a Letter of Credit with a 12-month term that starts on the first day of the applicable Master Lease Year and expires on the last day of such Master Lease Year. The Port reserves the right, in the exercise of its reasonable business judgment, to adjust the Guaranty Funds requirement during the Term based upon the Master Lessee’s payment history and credit history in accordance with the Port’s adopted collections policy as it now exists or as it may be amended by the Board from time to time.

“Handback”: Has the meaning ascribed thereto in Section 22.1(a).

“Handback Guaranty”: Has the meaning ascribed thereto in Section 22.4(a).

“Handback Plan”: Has the meaning ascribed thereto in Section 22.2(a).

“H&S Code”: The California Health and Safety Code.

“HRC”: Hydrogen Release Compound TM.

“improper influence”: Has the meaning ascribed thereto in Article 40.

“Improvements”: Buildings, landscaping and other permanent improvements located from time to time on the Property, including, without limitation, the Project Improvements.

“Improvements Requiring Consent”: Has the meaning ascribed thereto in Section 10.2(a).

“Indemnified Liability”: Has the meaning ascribed thereto in Section 29.3.

“Indemnitees”: In reference to any Environmental Indemnification Obligations, the Port and the Port’s Commissioners, agents, employees, Representatives, contractors, the Port-designated secondary users of the Premises, directors and officers.

“Industrial General Permit”: The permit regulating storm water discharges associated with industrial activities or otherwise from the Premises issued by a State or Federal Governmental Authority, currently SWRCB Order No. 97-03-DWQ, NPDES General Permit No. CAS000001, Waste Discharge Requirements for Storm Water Discharges Associated with Industrial Activities, Excluding Construction Activities.

“Industrial Group Monitoring Program”: A Port-wide voluntary storm water sampling and analysis program conducted by the Port in which the Port tenants may elect to participate in lieu of conducting their own storm water sampling and analysis to satisfy the requirements of the tenant's permit for storm water discharges associated with industrial activities.

“Initial Inspection Report”: Has the meaning ascribed thereto in Section 22.2(a).

“Institutional Lender”: (a) The United States of America, any State thereof or any agency or instrumentality of either of them, any municipal agency, public benefit corporation or public authority, advancing or insuring mortgage loans or making payments which, in any manner, assist in the financing, development, operation and maintenance of projects, (b) any (i)

savings bank, savings and loan association, commercial bank, trust company (whether acting individually or in a fiduciary capacity) or insurance company organized and existing under the laws of the United States of America or any State thereof (including, without limitation, any lease financing company, industrial lending company or other credit providing entity owned or controlled by any of the foregoing types of financial institutions), (ii) foreign insurance company or commercial bank qualified to do business as an insurer or commercial bank as applicable under the Laws of the United States, the State of California or any other State in the United States of America, (including, without limitation, any lease financing company, industrial lending company or other credit providing entity owned or controlled by any of the foregoing types of financial institutions) (iii) pension fund, foundation or university or college endowment fund, (iv) real estate investment fund, infrastructure investment fund, investment bank, pension advisory firm, mutual fund, investment company or money management firm, (v) entity which is formed for the purpose of securitizing mortgages, whose securities are sold by public offering or to qualified investors under the Securities Act, or (vi) Person engaged in making loans in connection with the securitization of mortgages, to the extent that the mortgage to be made is to be so securitized in a public offering or offering to qualified investors under the Securities Act within 1 year of its making, (c) any “qualified institutional buyer” under Rule 144(a) under the Securities Act or any other similar Law hereinafter enacted that defines a similar category of investors by substantially similar terms, or (D) any other financial institution or entity designated by the Master Lessee and approved by the Port (provided that such institution or entity, in its activity under this Master Lease, shall be acceptable under then current guidelines and practices of the Port); provided, however, that each such entity (other than entities described in clause (b)(v) and clause (c) of this definition) or combination of such entities, if the Institutional Lender shall be a combination of such entities, shall have individual or combined assets, as the case may be, of not less than \$500 million, which shall include, in the case of an investment or advisory firm or fund, assets controlled by or under management.

“JAMS”: Has the meaning ascribed thereto in Section 26.3.

“June 2007 Army Reserves CRUP”: The “Covenant to Restrict Use of Property Environmental Restriction, Oakland United States Army Reserve Center #2, Parcel 18 and Subparcels 19 and 21, Former Oakland Army Base, Oakland, California”, recorded on June 29, 2007.

“Knight Railyard”: That certain parcel of real property situated in the City that comprises a portion of the OAB EDC Property, as more fully described in the Army Quitclaim Deed.

“Law”: Any resolution, order, writ, injunction, decree, judgment, law, ordinance, decision, opinion, ruling, policy, program, permit, statute, code, rule or regulation of, or conditions applicable to the Premises or the Master Lessee under any permit, license, Master Lease, authorization or other approval by, or other directives issued by, any Governmental Authority, including any adopted, promulgated or enacted subsequent to the Execution Date, as the same may be modified, amended, or reissued, and including, but not limited to, the Charter of the City (including, without limitation, Section 728 entitled “Living Wages and Labor Standards at the Port-Assisted Businesses” and laws which seek to reduce the risk from, and to mitigate the results of, an act that threatens the safety and security of personnel, the Port’s facilities, private property and the public, such as the Federal Maritime Transportation Security Act of 2002), the Port’s Tariff, any

project labor agreements that the Port is a party to, land use restrictions or limitations relating to human or public health, the Environment, water, sanitation, safety, security, welfare, the filling of or discharges to the air or water or navigation and use of the Port Area.

“LBA”: Has the meaning ascribed thereto in Section 28.5.

“LBP”: Lead-based paint.

“Leasehold Mortgage”: Any collateral assignment, lease, indenture, pledge, mortgage, deed of trust or other security agreement or arrangement, including, without limitation, a securitization transaction (each as modified from time-to-time), encumbering any or all of this Master Lease and/or the Master Lessee Interest that satisfies all of the conditions in Article 17.

“Lender”: The party or parties who are beneficiaries of a Leasehold Mortgage or the representative of more than one Lender, acting on behalf of such Lenders, whose notice was earliest received by the Port pursuant to the Lender Notice Requirements unless the context otherwise requires.

“Lender Notice Requirements”: The delivery, by a Lender to the Port, not later than ten Business Days after the execution and delivery of a Leasehold Mortgage by the Master Lessee, of a true and complete copy of the executed original of such Leasehold Mortgage, together with a notice containing the name and post office address of the holder of such Leasehold Mortgage.

“Lender’s Notice”: Has the meaning ascribed thereto in Section 17.6(a).

“Lessor”: A Lender that has purchased all or a portion of the Master Lessee Interest and leased the Master Lessee Interest to the Master Lessee.

“Letter of Assent”: Has the meaning ascribed thereto in Section 7.5(c)(1).

“Letter of Credit”: An irrevocable, unconditional, commercial letter of credit, solely in favor of the Port, in the form of Exhibit G, or such successor form as the Port may from time to time require by written notice to the Master Lessee, payable in U.S. dollars immediately upon presentation of a sight draft and a certificate from the Port confirming that the Port has the right to draw under such letter of credit in the amount of such sight draft, which letter of credit (a) shall not require presentation of any other Document, statement, authorization or notice (including to the Master Lessee, provided that the Port shall send the Master Lessee a copy of any sight draft and certificate), and (b) is issued by a commercial bank or trust company that is a member of the New York Clearing House Association and that has a current short-term credit rating in the highest two rating categories in at least two Rating Agencies or by such other commercial bank or trust company reasonably acceptable to the Port and approved by the Port prior to the submission of the letter of credit. The office for presentment of sight drafts specified in the Letter of Credit shall be located at a specified street address within the City of San Francisco or other city approved by the Port’s Deputy Executive Director of Financial Services.

“LIA”: Has the meaning ascribed thereto in Section 28.5.

“LID”: Low impact development elements and design features, facilities or devices, required by the Port as reasonably necessary to achieve compliance with any Municipal Storm

Water Permit or other Environmental Law. However, the Master Lessee acknowledges that the LID is an evolving term, and agrees to abide by Governmental Authority definitions and interpretations as such may be clarified or modified from time-to-time.

“Loss”: With respect to any Person, any loss, liability, damage, penalty, charge, cost, claim, or expense, including consequential, indirect, special, punitive or incidental loss, injury or damages of any nature whatsoever (including, without limitation, loss of income or revenue or business interruption and reasonable attorneys’ fees).

“MAPLA”: Has the meaning ascribed thereto in Section 7.5(c).

“MAQIP”: The Port’s Maritime Air Quality Improvement Plan, including Supplement No. 1, approved by the Board on April 7, 2009, provided that the last paragraph and schedule in Section 10.6.2: “The Port Funding Sources” in Supplement No. 1 are deleted, and all modifications, supplements, and amendments thereto, as well as any other plan adopted by the Board of similar import.

“Master Lease”: This Master Lease Agreement (including all schedules and exhibits referred to herein), as amended, modified and supplemented from time-to-time in accordance with the terms hereof.

“Master Lease Grant”: Has the meaning ascribed thereto in Section 2.1(a).

“Master Lease Year”: A period of twelve consecutive months during the Term commencing on the Execution Date, and continuing for each twelve consecutive calendar months thereafter.

“Master Lessee”: Has the meaning ascribed thereto in the preamble.

“Master Lessee Contractors”: Has the meaning ascribed thereto in Section 7.2(b).

“Master Lessee Default”: Has the meaning ascribed thereto in Section 20.1.

“Master Lessee Improvements”: All buildings, structures, alterations or improvements, including, without limitation, the installation, construction, extension, erection, remodeling or repair of any fixtures, building or structure on the Premises, and all substitutions or replacements thereof or to existing improvements on the Premises, both interior and exterior, structural and non-structural, and ordinary and extraordinary, including any new improvement, change in the grade of the Premises and any gasoline, diesel or other fuel storage or fueling facility, in each case made by the Master Lessee.

“Master Lessee Interest”: The interest of the Master Lessee in the Premises created by this Master Lease and the rights and obligations of the Master Lessee under this Master Lease.

“Master Lessee Operations”: The operation, management, maintenance, improvement and redevelopment of the Premises and all other actions relating to the Premises that are or may be performed by or on behalf of the Master Lessee pursuant to the Master Lease, or any sublease that the Master Lessee may enter into.

“Material Safety Data Sheet”: Written or printed material concerning a hazardous chemical which is prepared in accordance with Title 8, Section 5194(g) of the California Code of Regulations or other Environmental Law.

“Material Taking Event”: A Taking Event that directly affects 70% or more of the Premises taken.

“Minimum Condition”: Has the meaning ascribed thereto in Section 22.1(a).

“Mitigated Negative Declaration”: The Negative Declaration prepared for a CEQA [[Project]] as defined in California Public Resources Code Section 21064.5.

“MMRP”: The Mitigation, Monitoring and Reporting Programs approved by the Port for the implementation, monitoring and reporting of mitigation measures required to reduce or avoid significant environmental impacts.

“Monthly Rent”: Has the meaning ascribed thereto in Section 5.1(b).

“MTBE”: Methyl Tertiary Butyl Ether, a chemical compound manufactured by the chemical reaction of methanol and isobutylene.

“Municipal Storm Water Permit”: An Authorization applicable to the Port, issued by a State or Federal Governmental Authority to regulate the discharge of municipal storm water.

“NASDAQ”: National Association of Securities Dealers Automated Quotations.

“Navy”: The United States of America, acting through the Secretary of the Navy, Department of the Navy, and any successor department, agency or instrumentality.

“Negative Declaration”: A written statement as defined in California Public Resources Code Section 21064.

“NEPA”: The National Environmental Policy Act, as set forth at 42 U.S.C. 4321 et seq.

“New Cost Cap Insurance Policy or Policies”: The insurance policy referred to by that term in Section 10(b) of Exhibit F, with the terms and requirements described in Section 10(b) of Exhibit F

“New CPI Index”: Has the meaning ascribed thereto in Section 5.1(d).

“New Master Lease”: Has the meaning ascribed thereto in Section 17.4(a).

“New PLL Insurance Policy or Policies”: The Pollution Legal Liability Insurance Policy, sometimes also referred to as “Environmental Site Liability Insurance Policy,” described in Section 10(c) of Exhibit F.

“NOI”: The notice of intent to the SWRCB of the Master Lessee’s intent to seek coverage under any permit issued by the SWRCB to discharge storm water from the Premises,

including but not limited to, the Construction General Permit and the General Permit for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities pursuant to SWRCB Order No. 97-03-DWQ, NPDES General Permit No. CAS000001.

“NPDES”: Any individual or general National Pollutant Discharge Elimination System Authorization, or equivalent Authorization.

“OAB” The area comprising the former Oakland Army Base, located in the City, Alameda County, California.

“OAB ARMOA”: The Amended and Restated Memorandum of Agreement for Oakland Army Base dated February 27, 2008, among ORA, the City, a municipal corporation, acting by and through its City Council, and the Port.

“OAB EDC Property”: The approximately 364 acres of the former OAB and all appurtenant buildings, rights-of-way, beneficial easements, and utilities thereto conveyed to OBRA by the Army pursuant to the Army Quitclaim Deed.

“OAB Insurance Policy”: The Remediation Cost Cap Environmental Site Liability Insurance Policy covering the OAB EDC Property issued by Chubb Custom Insurance Company, Policy No. 3730-58-78, which covers the period from August 7, 2003 to August 7, 2013.

“OAB MMRP”: The Mitigation, Monitoring and Reporting Programs applicable to the OAB and approved by the Port in September 2002 and any subsequent MMRPs or amended portions, for the monitoring and reporting of mitigation measures required to reduce or avoid significant environmental impacts.

“OAB RAP”: The Final Remediation Action Plan dated September 27, 2002, amended on July 29, 2004 to include the Subaru Lot and on December 4, 2006 to include the East Maritime Army Reserve Property, to address Toxic Materials at the OAB EDC Property, as it may be amended from time-to-time.

“OAB RAP Sites”: The seven (7) specific sites located at the OAB EDC Property identified in the OAB RAP as sites requiring remediation of Toxic Materials.

“OAB RMP”: The Final Risk Management Plan, attached as Appendix E to the OAB RAP, setting forth the procedures for addressing Toxic Materials at the OAB EDC Property as they are identified, as it may be amended from time-to-time.

“OAB RMP Locations”: Either specific or categorical locations where, among other things, past land uses or features have the potential to cause limited Contamination of the soil and/or groundwater.

“OAB RWQCB Order”: Order No. R2-2004-0086 issued by the RWQCB concerning the OAB EDC Property.

“OBRA”: The Oakland Base Reuse Authority, a joint powers authority composed of the City and the Redevelopment Agency of the City, and any successor Governmental Authority of OBRA.

“OFAC”: Has the meaning ascribed thereto in Section 43.8.

“Operation and Maintenance”: Cleaning, operation, repair, and periodic inspection and maintenance.

“Option Agreement”: That certain Option to Master Lease Property (including all schedules and exhibits referred to therein), by and between the City, acting through the Board, and the Master Lessee, dated as of [_____, 20__], as amended, modified, and supplemented from time-to-time in accordance with the terms thereof.

“Option Consideration”: The total option consideration fees, excluding any interest earned thereon, paid by the Master Lessee to the Port pursuant to the Option Agreement.

“ORA”: The Redevelopment Agency of the City, a community redevelopment agency organized and existing under the California Community Redevelopment Law, and any successor Governmental Authority of ORA.

“Other Insurance”: Has the meaning ascribed thereto in Section 10(e) of Exhibit F.

“Packages”: The demolition areas within the PDA.

“Party”: A party to this Master Lease; and “Parties” means all of them, including successors or assigns in accordance with this Master Lease

“PCBs”: Polychlorinated biphenyl.

“PDA”: The Port Development Area portion of the OAB EDC Property.

“Permitted Leasehold Mortgage Purpose”: Any *bona fide* debt made, issued or lent for only the following purposes (1) to finance construction of the Master Lessee Improvements required to be constructed under this Master Lease; (2) to provide “take-out” financing of any construction loan not to exceed the greater of 90% of the original cost of construction and 90% of the value of the Master Lessee’s leasehold interest in the Premises as determined by a qualified real estate appraiser holding the MAI designation of the American Institute of Real Estate Appraisers or its successor organization with at least 5 years full-time appraisal experience involving primarily commercial property in the San Francisco Bay Area; (3) to provide for refinancing of existing financing on the Premises previously approved by the Port; (4) to finance the Master Lessee’s capital additions and equipment, acquisitions and/or replacements reasonably required in pursuit of its business activities on the Premises; (5) to finance a purchase of the Master Lessee’s leasehold interest in the Premises, the encumbrance of which financing together with all other encumbrances on the leasehold interest shall not exceed 85% of the value of the Master Lessee’s leasehold interest in the Premises (as said value is determined by the appraiser described in item (2) immediately above); and (6) for any other purpose so long as the encumbrance of such financing together with all other encumbrances on the leasehold interest shall not exceed 70% of the value of the Master Lessee’s leasehold interest in the Premises (as said value is determined by the appraiser described in item (2) immediately above).

“Person”: Any individual (including, the heirs, beneficiaries, executors, legal representatives or administrators thereof), corporation, partnership, joint venture, trust, limited

liability company, limited partnership, joint stock company, unincorporated association or other entity or Governmental Authority.

“Port”: The City of Oakland, a municipal corporation acting by and through its Board of Port Commissioners established and existing under Article VII of the Charter of the City of Oakland and which consists of the Port Department of the City, under the exclusive control and management of the Board. In any case under this Master Lease that the Port may or shall take any action, the Executive Director is authorized to take such action unless this Master Lease provides for action by the Board or by resolution or ordinance, and except as otherwise provided now or hereafter by law, the Charter of the City of Oakland, or by resolution or ordinance of the Board.

“Port Area”: Has the meaning ascribed thereto in the Charter of the City of Oakland.

“Port Default”: Has the meaning ascribed thereto in Section 23.1.

“Port’s Directives”: Has the meaning ascribed thereto in Section 10.2(a).

“Port’s Objection Notice”: Has the meaning ascribed thereto in Section 22.3(b).

“Port’s Option”: Has the meaning ascribed thereto in Section 17.6(a).

“Port’s Tariff” or “Port Tariff”: The Port of Oakland’s Maritime Tariff in effect from time-to-time.

“Premises”: Has the meaning ascribed thereto in the Recitals.

“Prevailing Wage Requirements”: Has the meaning ascribed thereto in Section 7.5(a)(1).

“Prime Rate”: The interest rate per annum as published, from time-to-time, in The Wall Street Journal as the “Prime Rate” in its column entitled “Money Rate.” The Prime Rate may not be the lowest rate of interest charged by any “large U.S. money center commercial banks” and the Port makes no representations or warranties to that effect. In the event The Wall Street Journal ceases publication or ceases to publish the “Prime Rate” as described above, the Prime Rate shall be the average per annum discount rate (the “Discount Rate”) on 91-day treasury bills (“Treasury Bills”) issued from time-to-time by the United States Treasury at its most recent auction, plus 300 basis points. If no such 91-day Treasury Bills are then being issued, the Discount Rate shall be the discount rate on Treasury Bills then being issued for the period closest to 91 calendar days.

“Private Work Prevailing Wage Requirements”: The applicable prevailing wage requirements which generally apply to all construction (other than construction to which the Public Work Prevailing Wage Requirements apply) which is made on or to the Premises and which costs more than the applicable threshold amount, which as of the Execution Date is \$50,000.00. The \$50,000.00 cost shall be adjusted annually pursuant to the CPI Index and may otherwise be amended from time-to-time.

“Project”: Has the meaning ascribed thereto in the Recitals.

“Project Improvements”: The buildings, landscaping and other permanent improvements (including any necessary infrastructure on or adjacent to the Property) that are or will be part of the Project.

“Project Uses”: [INSERT DESCRIPTION CONSISTENT WITH APPROVED BUSINESS PLAN.]

“Property”: Has the meaning ascribed thereto in the Recitals.

“Protest Conditions”: Has the meaning ascribed thereto in Section 10.4.

“Public Work Prevailing Wage Requirements”: The applicable prevailing wage requirements of California Labor Code Sections 1720 et seq. or the Port Ordinance No. [1606] which generally apply to, among other matters, construction, the cost of which is paid for in whole or in part by the Port’s advance or reimbursement to the Master Lessee or by credit against rent or other sums due the Port.

“Rating Agency”: Any of Standard & Poor’s Ratings Services, Moody’s Investors Service, Inc., or Fitch Ratings or any similar entity or any of their respective successors.

“RDIP”: A Remedial Design and Implementation Plan.

“Reinstatement Costs”: Has the meaning ascribed thereto in Section 22.3(d).

“Reinstatement Plan”: Has the meaning ascribed thereto in Section 22.3(a).

“Reinstatement Schedule”: Has the meaning ascribed thereto in Section 22.3(a)(2).

“Reinstatement Work”: Has the meaning ascribed thereto in Section 22.2(a).

“Release”: Any release, spill, discharge, disposal, leak, leaching, migration or dispersal of Toxic Materials.

“Remediation Goals”: The remediation goals established in the OAB RAP.

“Rent”: Upfront Fee, Monthly Rent, Variable Rent, and Additional Rent or any portion thereof expressed in terms of lawful money of the United States of America.

“Rent Adjustment”: Has the meaning ascribed thereto in Section 5.1(d).

“Rent Adjustment Date”: Has the meaning ascribed thereto in Section 5.1(d).

“Representative”: With respect to any Person, any director (including the directors of the Board), officer, employee, official, lender (or any agent or trustee acting on its behalf), partner, member, owner, agent, lawyer, accountant, auditor, professional advisor, consultant, engineer, contractor, Sub-Lessees, customers, or other Person for whom such Person is at law responsible or other representative of such Person and any professional advisor, consultant or engineer designated by such Person as its “Representative.”

“Response Action”: The investigation, testing, feasibility study, risk assessment, treatment, removal, disposal, reuse, handling, transport, clean up, remediation, containment, capping, encapsulating, mitigation, or monitoring of Toxic Materials or a Release; the preparation and implementation of any health and safety plans, operations and maintenance plans or any other plans related to a Release; the demolition, reconstruction or construction of any subsurface or surface structures to implement the Response Action; and the restoration of the Premises after the completion of the Response Action whether required by Environmental Laws or this Master Lease; and the costs associated with any such Response Action.

“Restoration”, “Restore”, or “Restoring”: (a) With respect to any Casualty Event, to repair, alter, restore, replace and rebuild the affected portions of the Premises to restore them to at least the same condition in which they were before the occurrence of such Casualty Event, and (b) with respect to any Taking Event, to make any repairs, alterations, restorations, replacement and rebuildings necessary to such portion of the Premises that was not subject to the Taking Event so that the Master Lessee Operations will continue, as much as reasonably possible, at the same level as before such Taking Event.

“Review Document”: Any Document whatsoever submitted to the Port for its review or approval.

“RWQCB”: The California Regional Water Quality Control Board, San Francisco Bay Region, and any successor Governmental Authority of RWQCB.

“Scheduled Termination Date”: The scheduled date for completion of Closure Activities as described in Section 22.6.

“Securities Act”: The U.S. Securities Act of 1933, as amended.

“SPCC Plans”: The Spill Prevention Control and Countermeasure Plans required by 33 U.S.C. § 1251 et seq., Title 40 of the Code of Federal Regulations, Part 112, (“40 CFR 112”), or similar Law.

“State Public Trust Act”: The State public trust for commerce, navigation and fisheries, and particularly the Act of the Legislature of the State of California, entitled “An Act Granting Certain Tidelands and Submerged Lands of the State of California to the City and Regulating the Management, Use and Control Thereof,” approved May 1, 1911 (Statutes 1911, Chapter 657), as amended.

“State Lands - Oakland Army Base Exchange Act”: The Act of the Legislature of the State of California, entitled The State Lands - Oakland Army Base Public Trust Exchange Act.” of 2005, as amended.

“Statement of Estimated Liabilities”: A statement by the Port setting forth (a) the relevant Master Lessee Default or other circumstances giving rise to its right to terminate this Master Lease, (b) all amounts that (i) are estimated to be due and payable by the Master Lessee to the Port under this Master Lease as of the date of such statement or (ii) to the best of the Port’s knowledge after due inquiry, are expected to become due and payable by the Master Lessee under this Master Lease on or prior to the date that is 30 calendar days after the date of such

statement, (c) to the extent not included in clause (b) above, all other obligations of the Master Lessee under this Master Lease known to the Port that should have been, but have not been, performed as of the date of such statement and (d) to the extent not included in clauses (b) or (c) above, all costs and expenses (including legal fees), Taxes, fees, charges and disbursements estimated to be paid or incurred by the Port in connection with any Master Lessee Default, the termination of this Master Lease, the recovery of possession from the Master Lessee, and the preparation, execution and delivery of the New Master Lease and related agreements and the Statement of Estimated Liabilities that (i) are estimated to have been paid or incurred by the Port as of the date of such statement or (ii) to the best of the Port's knowledge after due inquiry, are expected to be paid or incurred by the Port on or prior to the date that is 30 calendar days after the date of such statement.

"Storage Tanks": USTs, ASTs, mobile tanks, basins, sumps, fuel pumps, fuel piping, ancillary equipment or containment systems or any other equipment used to store, deliver or process Toxic Materials.

"Storm Water Treatment Facilities": Structures or devices that are intended to treat storm water runoff before discharge from the Premises.

"Subaru Lot": The approximately 2.51 acres of former United States Army Reserves property, also referred to as the "Reserves 2004 Property" that the Port acquired from the City on November 18, 2004.

"Subaru Lot CRUP": The "Covenant to Restrict Use of Property, Environmental Restriction, Subaru Lot, Former Oakland Army Base, Oakland, California," signed by the Army on August 31, 2004 and signed by DTSC on August 9, 2004.

"Sub-Lessee": A sublessee of all or a portion of the Premises from the Master Lessee by virtue of the Master Lessee's interest in the Premises under the Master Lease.

"Submissions": Has the meaning ascribed thereto in Section 7.2(b).

"SWPPP": Storm Water Pollution Prevention Plan, or similar plan.

"SWRCB": The California State Water Resources Control Board, and any successor Governmental Authority of SWRCB.

"Taking Cost": Has the meaning ascribed thereto in Section 16.1.

"Taking Event": Has the meaning ascribed thereto in Section 16.1.

"Taking Restoration Funds": Has the meaning ascribed thereto in Section 16.1.

"Tax": The aggregate of any Federal, State, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, business, premium, windfall profits, environmental (including taxes under Section 59A of the Internal Revenue Code of 1986, as amended), customs duties, permit fees, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, goods and services, water, school, real property, possessory interest, personal property, sales, use, transfer, registration, value added, multi-staged, alternative or

add-on minimum, special, estimated or other tax, levy, impost, stamp tax, duty, fee, withholding or similar imposition of any kind whatsoever payable, levied, imposed, collected, withheld or assessed at any time, including any interest, penalty or addition thereto, whether disputed or not, including in each case utility rates or rents, upon, concerning or applicable to the Premises, any fixtures, machinery and equipment installed or maintained on the Premises, the Master Lessee Improvements and the Master Lessee Operations by any Governmental Authority.

“Term”: Has the meaning ascribed thereto in Section 3.1.

“Termination Date”: [_____, 20__], unless sooner terminated or extended as provided in this Master Lease, and includes all holdover periods.

“Third Party”: Anyone other than the Master Lessee, the Port, a Party’s Representatives, or any of their Affiliates.

“Title Policy”: That certain 2006 ALTA Owner’s Policy of title insurance insuring the Master Lessee’s leasehold interest in this Master Lease effective as of the Execution Date.

“Toxic Materials”: (i) Substances that are toxic, corrosive, flammable or reactive; (ii) petroleum products, crude oil (or any fraction thereof) and their derivatives; (iii) explosives, asbestos, radioactive materials, hazardous wastes, sewage, infectious substances, toxic substances or related hazardous materials; (iv) air pollutants, noxious fumes, vapors, soot, smoke or other airborne contaminants; and (v) substances which now or in the future are defined by Environmental Laws as “hazardous substances,” “hazardous materials,” “hazardous wastes,” “pollutants,” “contaminants,” “reproductive toxins,” “carcinogens” or “toxic substances,” or regulated under applicable Environmental Laws.

“Trade Equipment”: Has the meaning ascribed thereto in Section 9.2(b).

“Transfer”: Has the meaning ascribed thereto in Section 18.1(a)(1).

“Transfer Agreement”: Has the meaning ascribed thereto in Section 18.1(a)(1).

“Transferee”: Has the meaning ascribed thereto in Section 18.1(b).

“Unions”: Has the meaning ascribed thereto in Section 7.5(c).

“United States EPA”: The United States Environmental Protection Agency, and any successor Governmental Authority of the United States EPA.

“unsecured amount”: Has the meaning ascribed thereto in Section 14.4.

“Upfront Fee”: An amount equal to \$[_____] in cash; provided that the Option Consideration collected by the Port shall be credited against such amount.

“UST”: Underground storage tank.

“USTs RAP Site”: The OAB RAP Site which generally consists of benzene and MTBE impacted groundwater near former USTs 11/12/13 and 11A/12A/13A, which were associated with a former gas station located at the northwest corner of 14th and Maritime Streets.

“Utility Easements”: Has the meaning ascribed thereto in Section 2.1(b).

“Variable Rent”: Has the meaning ascribed thereto in Section 5.2(a)(1).

“VOCs”: Volatile organic compounds.

“WDP”: Any wastewater discharge permit issued by EBMUD.

“worth at the time of award”: Has the meaning ascribed thereto in Section 20.2(b).

ARTICLE 2

GRANT; RESERVATIONS; OTHER MATTERS; COVENANTS

2.1 Master Lease Grant.

(a) Upon the terms and subject to the conditions of this Master Lease, the Port hereby demises and master leases, subject to the reservations and terms herein provided, unto the Master Lessee the Premises, to have and to hold (the “Master Lease Grant”) for and during the Term. The Master Lessee Interest granted hereunder shall be deemed a leasehold estate for all purposes, subject to the terms of this Master Lease.

(b) This Master Lease is subject to (1) all easements, covenants, conditions, restrictions, reservations, rights of way, liens, encumbrances, and other matters of record, (2) all matters discoverable by physical inspection of the Premises or that would be discovered by an accurate survey of the Premises (3) all matters known to the Master Lessee or of which the Master Lessee has notice, constructive or otherwise including, without limitations, those shown on attached Exhibits A and B and those made available to the Master Lessee prior to the Execution Date, and (4) the reservations, terms and conditions of this Master Lease, and (5) Encumbrances (other than Encumbrances related to Leasehold Mortgages entered into in accordance with Article 17). The Master Lessee expressly accepts the following Encumbrances: (A) The State Public Trust Act, State Tidelands Trust and the State Lands - Oakland Army Base Exchange Act; (B) the Charter of the City of Oakland; (C) utility easements for existing utilities serving the Premises or other property in the Port Area and such other utility easements as may be reasonably necessary to serve the Premises or other property in the Port Area (“Utility Easements”); (D) those set forth on the Title Policy; and (E) all Laws affecting the Premises.

(c) Governmental Intervention. If any Governmental Authority of competent jurisdiction shall have issued an Action permanently restraining, enjoining, or otherwise prohibiting the transactions contemplated by this Master Lease, and such Action has become final and nonappealable, then either Party may terminate this Master Lease by providing written notice of termination to the other Party, and the Parties shall have no continuing rights or obligations with respect to this Master Lease, except that any posted Guaranty Funds, Monthly Rent and Upfront Fee shall be refunded and prorated, if appropriate, and returned to the Master Lessee, provided that the Port shall have up to 1 year from the date of the termination notice to refund the Upfront Fee if

the Port applied the Upfront Fee to the defeasance of the bonds related to the Premises prior to the termination of this Master Lease.

(d) Delivery and Possession of Premises. Subject to the terms in this Master Lease, the Port will deliver possession of the Premises to the Master Lessee on the Execution Date.

2.2 Reserved Easements.

(a) The Port reserves to itself, including the right to grant to others in the future, easements, licenses, and permits for construction, maintenance, repair, replacement, relocation, and reconstruction, and related temporary access easements, and other easements, in each case, necessary for the utility facilities over, under, through, across, or on the Premises or related to the Utility Easements, including, without limitation, related to the following utility facilities:

[[SPECIFIC EASEMENTS TO BE INSERTED]]

(b) The Port reserves to itself, the responsibility and right to operate, maintain, repair, and improve storm drain mainlines which convey storm water runoff from areas outside of the Premises, through the Premises, and out to the San Francisco Bay. The Master Lessee's responsibilities regarding storm drain lines and other structures are provided in Exhibit F.

(c) The Port reserves to itself, including the right to grant others, the right (but unless expressly set forth in this Master Lease, not the obligation) to enter upon the Premises and perform such work as may reasonably be necessary (i) in the event of an emergency, or (ii) as otherwise provided in this Master Lease.

(d) Prior to exercising its reserved easements in this Section 2.2, the Port shall give reasonable notice thereof to the Master Lessee (except in the event of an emergency in the opinion of the Port acting reasonably). Subject to the Master Lessee's reasonable cooperation with the Port, the reserved easements in this Section 2.2 shall not unreasonably interfere with the Master Lessee Operations. Except as otherwise provided in Exhibit F, in connection with exercising its reserved easements in this Section 2.2, the Port shall repair, at no cost to the Master Lessee, any damage directly caused by such work performed by the Port, or its licensee's or permittee's (but excluding the repair of any damage caused or exacerbated by the Master Lessee's acts or omissions and excluding permanent modifications to the Premises naturally related to such work), within 30 calendar days after the Port's receipt of notice of such damage, provided that if such repair reasonably cannot be completed within 30 calendar days, such period shall be extended as reasonably necessary so long as the Port diligently pursues such repairs to completion.

2.3 Tidelands. This Master Lease and the Premises shall at all times during the Term be subject to the limitations, conditions, restrictions, and reservations contained in and prescribed by the Act(s) of the Legislature of the State of California, entitled State Tidelands Trust and the State Lands - Oakland Army Base Exchange Act.

2.4 Aviation Operations. The Master Lessee releases the Port from any present or future liability whatsoever and covenants not to sue the Port for damages or any other

relief based directly or indirectly upon noise, light, vibrations, smoke, air currents, electronic, or other emissions or flight (including overflight of the Premises) occurring as a result of aviation or airport or airport-related operations at or otherwise associated with the Airport, said release and covenant to include, but not be limited to claims (known or unknown) for damages for physical or emotional injuries, discomfort, inconvenience, property damage, death, interference with use and enjoyment of property, nuisance, or inverse condemnation, or for injunctive or other extraordinary or equitable relief. It is further agreed that the Port shall have no duty to avoid or mitigate such damages by, without limitation, setting aside or condemning buffer lands, rerouting air traffic, erecting sound or other barriers, establishing curfews, noise or other regulations, relocating airport facilities or operations or taking other measures, except to the extent, if any, that such actions are validly required by Governmental Authority.

The Port reserves from the Premises an easement for flight of aircraft in or adjacent to the airspace above the Premises and for the existence and imposition over, on, and upon said parcel of noise, light, vibrations, smoke, air currents, electronic, or other emissions, discomfort, inconvenience, interference with use and enjoyment, and any consequent reduction in market value which may occur directly or indirectly as a result of aviation, airport or airport-related operations at or otherwise associated with use of the Airport. The Master Lessee accepts the Premises subject to the risks and activities hereinabove described.

2.5 Interruption/Obstruction During the Port Improvements. The Port, acting in good faith in the performance of its duties of management, administration, and control of the Port's operations, the Port Area and other property under its jurisdiction, shall have the right at all times to make additions, improvements, replacements, or repairs to, or installations on, the other lands or property near the Premises, and in making any such additions, improvements, replacements, or repairs the Port may cause such obstructions of and interference with the use or enjoyment of the Premises as may reasonably be necessary for such purposes and may temporarily interrupt or suspend the supply of electricity, water, or other services to the Premises as may reasonably be necessary for such purposes. The Port shall give reasonable prior notice thereof to the Master Lessee (except in the event of any emergency in the opinion of the Port, acting reasonably). Subject to the Master Lessee's reasonable cooperation with the Port, the exercise of the rights in this Section 2.5 shall not unreasonably interfere with the Master Lessee Operations. Except as otherwise provided in this Master Lease, in no event shall Port be liable for any damages or loss of any kind whatsoever suffered or sustained by the Master Lessee as a result of the exercise by the Port of its rights under this Section 2.5.

2.6 Covenants of the Master Lessee. In addition to the other covenants made by the Master Lessee in this Master Lease, the Master Lessee covenants to the Port, and the Master Lessee acknowledges, that the Port and each of its Representatives is relying upon such covenants in entering into this Master Lease:

(a) Security. As of the Execution Date and during the Term, the Master Lessee assumes sole responsibility, at no cost to the Port, for all risks to the safety and security of persons and property (including, without limitation, the Premises, furniture, fixtures and equipment stored or located on the Premises) from theft, personal violence, fire, flood, and other causes, and including responsibility for guarding and safekeeping such persons and property, to whatever extent such risks arise out of the Master Lessee's occupancy or use of the Premises. The Master Lessee shall be solely responsible for assuring that the Premises comply with applicable security

requirements established by Laws, and for providing and maintaining any physical improvements required by Laws related to security requirements. Prior to the Execution Date, the Master Lessee shall be solely responsible to prepare a security plan that complies with applicable Laws and submit such security plan to the applicable Governmental Authorities. Upon the request of the Master Lessee, the Port shall reasonably cooperate with the Master Lessee in its preparation of such security plan. The Port reserves the right to design, build, operate, and maintain security plans and programs outside of the Master Lessee's own security plan or program for the purposes of its own the Port-wide monitoring, safety, and coordination purposes, and the Master Lessee shall be required to comply with any such plans and programs and any procedures determined by the Port to be applicable to the Master Lessee in order for the Port to comply with applicable security requirements established by Laws. The Port security plans and programs may require coordination with the Master Lessee, but will not relieve the Master Lessee of requirements to maintain its own security plan or program with respect to the Premises. Such security plans and programs are subject to change without notice other than ___ days prior delivery of notice thereof to the Master Lessee. The Master Lessee shall reimburse the Port, within 15 calendar days from receipt of the Port's invoice and documentation showing the amount of and that the Master Lessee is responsible for a civil penalty or fine for a violation of applicable security rules or regulations arising out of the failure of the Master Lessee to comply with all applicable Laws or the provisions of this Section 2.6 (a). In the event such penalty or fine is assessed against the Port, the Port shall also have all of its other rights and remedies provided in this Master Lease and arising at law or in equity.

(b) Document Retention. Except as otherwise provided in Exhibit F, the Master Lessee shall maintain for not less than 7 years after the Termination Date for periodic inspection by the Port and, concurrently with the receipt from or submission to a Governmental Authority, deliver to the Port true and correct copies of all Documents (except to the extent Documents are related to personal employee matters or protected by the attorney-client privilege) required to be provided, filed, lodged, maintained by the Master Lessee or obtained by or issued to the Master Lessee pursuant to Laws, including, but not limited to, those Documents listed on Exhibit H. In addition, the Master Lessee shall maintain during the Term (and promptly deliver the same to the Port upon the Termination Date) copies of all records and other documents relating to the revenues generated at the Premises in connection with the Master Lessee Operations that are in the possession of the Master Lessee or its Representatives; and

(c) Compliance by the Master Lessee's Representatives. The Master Lessee shall ensure and cause its Representatives to comply with all terms under this Master Lease during all applicable periods, whether during the Term or after the Termination Date with respect to matters that survive the Termination Date, and shall be responsible to the Port for all Port Losses in connection with the Master Lessee's Representatives' failure to do so.

The Master Lessee's obligations under this Section 2.6 shall survive the expiration or termination of this Master Lease.

ARTICLE 3 TERM

3.1 Term. The Term shall be [___] years commencing upon the Execution Date and expiring on the Termination Date (together with any extension or early termination as provided in this Master Lease, the "Term").

3.2 No Options To Extend Term. No Party has any option to extend the Term.

ARTICLE 4 USE OF PREMISES

4.1 Required and Permitted Uses.

(a) The Premises shall be used by the Master Lessee only for the design, construction, finance, master operation, and maintenance of the Project (including any changes to the scope, substance or type pre-approved by the Port, in its sole and absolute discretion), and except to the extent not reasonably practicable during said design and construction, the Premises shall be used continuously thereafter by the Master Lessee only for Project Uses, and for uses incidental and reasonably related thereto (but only to the extent allowed under the terms of this Master Lease). The Master Lessee must continuously use the Premises during the Term and the Master Lessee's agreement to do so is a material inducement to the Port's agreement to enter into this Master Lease.

(b) The Master Lessee and the Port agree that a primary purpose and an essential consideration for this Master Lease is for the Port to promote, facilitate, aid, and enhance commerce, shipping, and navigation in the Port Area by providing for the master operation, maintenance, design, construction, finance, and lease of facilities on the Premises pursuant to this Master Lease. The Master Lessee and the Port agree that consistent with that primary purpose and essential consideration, the Master Lessee under this Master Lease has an affirmative obligation to undertake the design, construction, finance, and lease of facilities on the Premises specified hereunder and during the Term to use the Premises for the mandatory purposes specified hereinabove. The Master Lessee acknowledges that this Master Lease is a part of the Port's overall planning efforts to better promote and accommodate commerce and navigation in the Port Area, and that the terms and conditions specified herein concerning use of the Premises are and will in the future be an integral part of the Port's overall planning. The Master Lessee further acknowledges that any uses of the Premises inconsistent with the uses specified herein will contravene the primary purpose of this Master Lease and interfere with the promotion and accommodation of commerce and navigation in the Port Area.

(c) This Master Lease and all the provisions hereof shall be subject to whatever right the United States Government now has, or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Port or the exclusive or nonexclusive use of the Port by the United States during the time of war or national emergency. This Master Lease shall be subordinate to the provisions and requirements of any existing or future agreements between the Port and the United States, relative to the development, operation, or maintenance of the Port.

4.2 Limited Uses; Compliance with Law.

(a) The Master Lessee shall not use or permit the Premises, or any part thereof, to be used in whole or in part for any purpose other than as set forth in Section 4.1, nor for any use, operation or activity in violation of any Law or Environmental Law, including, but not limited to the Charter of the City (including without limitation Section 728 entitled "Living Wage

and Labor Standards at Port-Assisted Businesses”), laws, ordinances, general rules, permits or regulations. The Master Lessee hereby expressly agrees at all times during the Term, at its own cost, to maintain and operate the Premises in a clean, wholesome and sanitary condition, and the Master Lessee agrees that such obligation shall apply in all cases, including circumstances such as required maintenance.

(b) The Master Lessee must at all times observe and comply with, and cause its occupancy or use of the Premises to comply with, all applicable Laws now existing or later in effect, including, but not limited to, those Laws and Environmental Laws expressly enumerated in this Article 4, Exhibit F, and those that may in any manner affect the performance of this Master Lease. The Master Lessee must notify the Port within 5 Business Days of receiving notice from a Governmental Authority that the Master Lessee may have violated or is not in compliance with any of the above. Except as otherwise expressly provided in this Master Lease, the Master Lessee shall comply with all applicable Laws at its sole cost and expense.

(c) The Master Lessee agrees to defend and indemnify the Port and its Representatives from and against all Losses for any violation or alleged violation, of any such Laws, including without limitation, laws regarding disabled or handicapped persons, including the Americans With Disabilities Act of 1990, except to the extent such violation is solely the result of the grossly negligent act or willful misconduct by the Port or its Representatives.

The Master Lessee hereby waives and releases the Port and its Representatives from any and all claims, including claims of negligence, and liability that may arise from any act or failure to act by the Port in connection with the Port’s providing advice, guidance, or assistance to the Master Lessee, its Representatives or any Transferee, or other tenant, sub-tenant, licensee or assignee, regarding compliance with any such Laws.

4.3 Encroachers, Trespassers and Other Third Party Hazards. The Master Lessee shall cause all encroachers, trespassers and other third parties not legitimately on the Premises to be lawfully removed.

4.4 Aviation Related Restrictions. In no event shall the Master Lessee in any manner at any time (a) raise the elevation, or cause, allow or suffer the raising of the elevation, at any location on the Premises or any other Port property the Master Lessee uses under this Master Lease, or any portion of any Improvements, structure or personal property, to higher than 200 feet above ground level, or such other elevation as may be specified from time to time by the Federal Aviation Administration or a successor Federal agency to be applicable, or (b) take any action, or cause, allow or suffer any occurrence, at any location on the Premises or any other Port property the Master Lessee uses under this Master Lease, which results in any Improvement, structure or personal property penetrating an imaginary surface emanating from the edge of the nearest airport runway at a 100 to 1 slope out to 20,000 feet from that runway, or penetrating any other imaginary surface as may be specified from time to time by general rule or regulation of the Federal Aviation Administration or a successor Federal agency to be applicable, unless either: (1) the Federal Aviation Administration or a successor Federal agency has issued, and the Port has received, a written determination acceptable to the Port in its sole discretion that the elevation involved at the particular location will not be a hazard to air navigation; or (2) the Port in the Port’s sole discretion otherwise provides to the Master Lessee written authorization for such elevation or such penetration of the imaginary surface, expressly stating that such

authorization is valid without the requirement for the issuance and the Port's receipt of said written determination. The Master Lessee shall provide the Port with a copy of all paperwork submitted to the Federal Aviation Administration by or on behalf of the Master Lessee prior to and in connection with the issuance of such written determination. Any submitted Federal Aviation Administration form requiring coordinates and/or elevations shall be signed and stamped by a Civil Engineer or Land Surveyor licensed in the State of California. In the event any of the foregoing provisions are breached, the Port reserves the right to enter upon the Premises and cause, or require that the Master Lessee cause, the abatement of any resulting obstruction, interference or hazard at the expense of the Master Lessee. The limitations and requirements of the foregoing provisions of this Section are in addition to all other limitations and requirements in this Master Lease, including provisions regarding the Master Lessee's Construction of Improvements and permissible use of the Premises.

4.5 The Port's Tariff. It is understood and agreed that this Master Lease adopts all rules and regulations (including all provisions relating to Toxic Materials) and definitions in the Port's Tariff (including without limitation Tariff 2A) in effect from time-to-time and incorporates them into this Master Lease with the same effect as if they were set forth in full in this Master Lease, unless otherwise expressly provided in this Master Lease. In the event of any conflict between the Port's Tariff and any express provision of this Master Lease, this Master Lease shall prevail. In the event of any conflict between the Port's Tariff and preemptive Federal or State law, the preemptive Federal law shall prevail.

ARTICLE 5 RENT; RENT ADJUSTMENT; GUARANTY FUNDS

5.1 Upfront Fee; Monthly Rent; Adjustment of Monthly Rent.

(a) Upfront Fee. The Master Lessee has paid to the Port the Upfront Fee, which is an absolute, unconditional and non-refundable fee (except as otherwise expressly provided in this Master Lease) paid to the Port in consideration of the rights granted the Master Lessee under this Master Lease.

(b) Monthly Rent. The Master Lessee covenants and agrees to pay to the Port during the first Master Lease Year on the first day of each calendar month \$_____ **[[INSERT AMOUNT OF MONTHLY RENT DETERMINED IN ACCORDANCE WITH OPTION AGREEMENT PROCEDURE]]** as monthly rent (as may be increased from time to time, the "Monthly Rent"). The Master Lessee has paid to the Port the Monthly Rent for the first month of the first Master Lease Year.

(c) Proration. If the Monthly Rent for the first month of the first Master Lease Year paid by the Master Lessee covers Monthly Rent through a date that is other than the first day of a calendar month, or if the Termination Date occurs on a date other than the expiration of a calendar month and the Master Lessee quits and surrenders the Premises in compliance with this Master Lease, then the Monthly Rental for the second month of the Master Lease Year or such last month of the last Master Lease Year shall be respectively prorated in accordance with the number of days in the calendar month involved.

(d) Adjustment of Monthly Rent. At the end of the first Master Lease Year, and at the end of every Master Lease Year thereafter (each, a “Rent Adjustment Date”), the Monthly Rent shall be increased by the percentage increase, if any, in the last CPI Index published prior to the applicable Rent Adjustment Date (“New CPI Index”) as compared to the CPI Index published 1 year prior to the New CPI Index; provided that in no event shall the adjusted Monthly Rent be less than the theretofore existing Monthly Rent (“Rent Adjustment”). The Port shall determine and provide the Master Lessee written notice of the Rent Adjustment, or if there shall be no Rent Adjustment at the end of a Master Lease Year, written notice of the same, approximately one month before an applicable Rent Adjustment Date. If the Port fails to provide written notice of a Rent Adjustment, the Monthly Rent shall continue at the same rate as the immediately preceding rental period, until the Master Lessee’s receipt of notice of a Rent Adjustment.

5.2 Variable Rent.

(a) Amount of Variable Rent.

(1) The Master Lessee shall pay to the Port, without setoff and without previous demand, within 15 days after the close of each calendar month of the Term, an additional further sum equal to [_____] % of Gross Revenue during said preceding calendar month (“Variable Rent”). Notwithstanding any other provision of this Master Lease to the contrary, the Master Lessee shall pay all Variable Rent required by this Master Lease within 30 days after expiration or earlier termination of the Term.

(2) If any Gross Revenue, upon which Variable Rent is payable and which under this Master Lease may be accounted for on an actual receipt basis, are received by or on behalf of the Master Lessee after the Termination Date, the Master Lessee shall render a full report thereof to the Port and shall pay to the Port Variable Rent thereon within 15 days after receipt of such Gross Revenue.

(3) If the Master Lessee fails to retain and maintain records necessary to enable an audit of the Gross Revenue on and from the Premises to be conducted, including, without limitation, as required under this Master Lease, or fails to deliver the reports or certified statements required under this Master Lease, then, in addition to all other remedies available to the Port for such default, the Port may estimate such Gross Revenue and from such estimate, the Port may determine the Variable Rent payable by the Master Lessee for any period during the Term. Unless the Port otherwise determines, the estimate made by the Port shall be final and binding upon the Master Lessee; provided, that the Port’s estimation may be contested by the Master Lessee in accordance with the Dispute Resolution Procedure within 30 calendar days of the Port’s notice to the Master Lessee of the Port’s estimation. The Master Lessee shall pay all out-of-pocket costs reasonably incurred by the Port in calculating such Gross Revenue, including costs in determining such estimates.

(b) Definition of Gross Revenue. The term “Gross Revenue” when used in this Master Lease shall include all gross revenue from any and all business carried on in whole or in part upon the Premises, whether the same be for cash, barter, credit, check, charge account, gift, or other disposition of value regardless of collection, by the Master Lessee or any other Person, including successors, assigns, subtenants, licensees or the like of the Master Lessee, or its successors or assigns, and any other Person conducting any business upon or from the Premises.

Gross Revenue shall be determined on an accrual basis whether or not actually received. Gross Revenue shall include cash and the fair market value of any other consideration from such business. Except as expressly provided herein, no cost or expense shall be deducted or excluded in computing Gross Revenue. Any deposit not refunded shall be included in Gross Revenue. No deduction shall be made from Gross Revenue by reason of any credit loss sustained or discount or deduction that may be applicable by reason of the acceptance or use of credit cards, other credit arrangements or the like. If a charge for any sale or transaction is not made or collected, including a waiver or reduction in a sale or transaction for a non-profit use or for tax deduction purposes, the fair market value thereof nevertheless shall be included in the term Gross Revenue.

(c) Monthly Accounting. The Master Lessee shall maintain or cause to be maintained adequate accounting systems and controls to insure that all Gross Revenue are recorded on an accrual basis. Within 15 days after the close of each calendar month during the Term, the Master Lessee shall deliver to the Port, in a form reasonably satisfactory to the Port, an accounting for the preceding month of all business transactions that are subject to Variable Rent, setting forth in particular for said month all Gross Revenue. The Master Lessee shall prepare and keep on the Premises, full and accurate books, records and accounts relating to all Master Lessee Operations upon the Premises that shall show all business transactions upon the Premises, including, without limitation, those conducted by any other Person, including successors, assigns, subtenants, licensees or the like of the Master Lessee, or its successors or assigns, and any other Person conducting any business upon or from the Premises. Such books and records shall be maintained in a true and accurate manner, in a form consistent with this Master Lease and in accordance with generally accepted accounting principles and generally accepted auditing standards. Such records may be in the form of electronic media compatible with or convertible to a format compatible with computers utilized by the Port at its offices, or a computer run hard copy.

(d) Additional Rent. The Master Lessee covenants and agrees to pay to the Port or as the Port shall direct from time-to-time, all Additional Rent as and when required under this Master Lease. Any unpaid and overdue amounts payable as Additional Rent may be recovered by the Port in the same manner as recovery for rent in arrears. If no specified time is provided for the payment of Additional Rent, such Additional Rent shall be payable by the Master Lessee to the Port forthwith on demand.

(e) No Setoffs, Deductions, etc. The Master Lessee shall pay to the Port all Rent herein, without any deduction, abatement or set-off whatsoever.

5.3 Delinquency Charge. Any payment required to be made by the Master Lessee under this Master Lease (all such payments are hereby agreed to be rent) that remains due and unpaid under the terms of this Master Lease for a period of 10 days after it becomes due and payable shall be subject to a delinquency charge, for violation of this Master Lease and as liquidated damages, of 1.5% per day of such delinquent payment for each day from the date such payment became due and payable until payment has been received by the Port; provided, however, that said amount shall be adjusted at the same time and by the same percentage amount as Monthly Rent is adjusted pursuant to Article 5 hereof. Unpaid delinquency charges that accrue shall be compounded monthly. The delinquency charges provided by this Section 5.3 are in addition to all other remedies that the Port may have that are provided by this Master Lease or otherwise by law or in equity with respect to any payment that has become due and has not been paid.

5.4 Accord and Satisfaction. No payment by the Master Lessee or receipt by the Port of a lesser amount of any sum due hereunder, shall be deemed to be other than on account of the earliest due rent or payment, nor shall any endorsement or statement on any check or payment, or any letter accompanying any such check or payment, be deemed an accord and satisfaction, and the Port may accept such check or payment and pursue any other remedy available in this Master Lease, at law or in equity. The Port may accept any partial payment from the Master Lessee without invalidation of any contractual notice required to be given herein (to the extent such contractual notice is required) and without invalidation of any notice required to be given pursuant to California Code of Civil Procedure Section 1161, et seq., or of any successor statute thereto.

5.5 Guaranty Funds.

(a) Prior to the Execution Date, and at least 15 Business Days prior to the end of the first Master Lease Year and each successive Master Lease Year, the Master Lessee shall cause to be posted a Letter of Credit as Guaranty Funds for the upcoming Master Lease Year (or, in the case of successive Master Lease Years, at the Master Lessee's option, an amendment to the Letter of Credit posted as Guaranty Funds for the then-expiring Master Lease Year), for the sole benefit of the Port, which shall guaranty the full and faithful performance and observance by the Master Lessee of all the covenants, terms and conditions herein contained to be performed, suffered or observed by the Master Lessee under this Master Lease, including, without limitation, the payment of amounts due to the Port hereunder, reasonable amounts necessary to remedy any default by the Master Lessee for the payment of any Rent or other amounts owed by the Master Lessee hereunder, to repair and clean the Premises at the end of the Term, or to reimburse the Port for the actual costs incurred by the Port in connection with exercising its rights hereunder.

(b) If the Master Lessee fails to post a Letter of Credit as Guaranty Funds for the upcoming Master Lease Year at least 15 Business Days prior to the end of the first Master Lease Year or any successive Master Lease Year (or an amendment to the Letter of Credit posted as Guaranty Funds for the then-expiring Master Lease Year, as applicable), then the Port may draw upon the whole of the posted Guaranty Funds for the then-expiring Master Lease Year, and hold the same for the sole benefit of the Port, as a guaranty for the full and faithful performance and observance by the Master Lessee of all the covenants, terms and conditions herein contained to be performed, suffered or observed by the Master Lessee under this Master Lease, including, without limitation, the payment of amounts due to the Port hereunder. If after the Port so draws upon the Guaranty Funds, the Master Lessee posts a Letter of Credit as Guaranty Funds for the upcoming Master Lease Year (or an amendment to the Letter of Credit posted as Guaranty Funds for the then-expiring or previous Master Lease Year, as applicable), subject to any deductions made by the Port for the payment of any Rent or other amounts owed by the Master Lessee under this Master Lease, or the reimbursement of the actual costs incurred by the Port in connection with exercising its rights under this Master Lease, the Port will refund the Guaranty Funds, if any, together with any interest thereon, to the Master Lessee within 15 calendar days.

(c) If the Master Lessee is in default in respect to any of the covenants, terms and conditions of this Master Lease or owes any amounts due to the Port under this Master Lease, the Port may use, apply and draw upon the whole or any part of Guaranty Funds to the extent required for the payment of any Rent or other amounts owed by the Master Lessee under this Master Lease, or the reimbursement of the actual costs reasonably incurred by the Port in

connection with exercising its rights under this Master Lease. The Master Lessee shall ensure the Letter of Credit posted as Guaranty Funds is in full force and effect during its term. It is agreed that the sums represented by the Guaranty Funds shall be posted for the sole benefit of the Port as an advance guaranty payment of the Rent and other sums due by the Master Lessee hereunder, but does not in any way represent a measure of the Port's damages and in no event shall Master Lessee be entitled to cancel or terminate a Letter of Credit posted as Guaranty Funds, or a refund or particular application of the Guaranty Funds. Neither the application by the Port of all or any portion of the Deposit, nor the Port's demand for or acceptance of money to restore the Guaranty Funds, shall result in any waiver of the Port's right under this Master Lease and applicable Law to declare the Master Lessee in default of this Master Lease or to terminate or declare a forfeiture of this Master Lease. The Master Lessee's payment of the Guaranty Funds shall not limit the Master Lessee's liability to the Port for the payment of amounts due to the Port by the Master Lessee in excess of the amount of the Guaranty Funds. Whenever and as often as the Port draws upon the Guaranty Funds, the Master Lessee shall, within 10 Business Days after the Port's request therefor, make arrangements to restore the Guaranty Funds to the amount immediately prior to such use or application.

(d) Subject to any deductions made by the Port in accordance with this Master Lease (or a good faith estimate of such amounts), the Port shall refund the Guaranty Funds, if any, to the Master Lessee at its last address known to the Port within 60 calendar days of the later of the Termination Date and the Master Lessee's vacation of the Premises.

(e) The Parties agree that the Guaranty Funds can be held and applied against future damages, including, without limitation, future Rent damages, and the Master Lessee waives application of the provisions of California Civil Code §1950.7 for all purposes with respect to this Master Lease, including, without limitation, with respect to the time periods by which the Guaranty Funds must be returned to the Master Lessee.

ARTICLE 6 CONDITION OF THE PREMISES

6.1 The Master Lessee represents and acknowledges that it has made a sufficient investigation of the conditions of the Premises existing immediately prior to the Execution Date and is satisfied that the Premises will safely support the type of improvements to be constructed and maintained by the Master Lessee upon the Premises, that the Premises is otherwise fully fit physically and lawfully for the uses required and permitted by this Master Lease and that the Master Lessee accepts all risks associated therewith, and the Port shall not be obligated to make any improvements or modifications thereto except as set forth in Exhibit F.

6.2 The Master Lessee specifically acknowledges that the Port has made no representations concerning the condition of the Premises or any Improvements and/or the fitness of the Premises or any Improvements for the Master Lessee's intended use, and/or the compliance of the Premises and/or any Improvements with any Federal, State, or local building code or ordinance or with any Laws regarding disabled or handicapped persons, including without limitation the Americans With Disabilities Act of 1990, and the Master Lessee expressly waives any duty which the Port might have to make any such disclosures. The Master Lessee further agrees that, in the event the Master Lessee subleases all or any portion of the Premises or assigns its interest in this Master Lease, the Master Lessee shall indemnify and defend the Port

for, from and against any matters which arise as a result of the Master Lessee's failure to disclose any relevant information about the Premises or Premises to any subtenant or assignee. It is the intention of the Port and the Master Lessee that the immediately preceding sentence shall survive any release of the Master Lessee by the Port upon any assignment of this Master Lease by the Master Lessee.

6.3 The Master Lessee acknowledges that by signing this Master Lease the Master Lessee represents to the Port that, except as otherwise set forth in Exhibit F, the Master Lessee does not know nor have reasonable cause to believe that any release of Toxic Material has come to be located on or beneath the Premises. The Master Lessee agrees that, except as otherwise expressly set forth in Exhibit F, the Master Lessee is solely responsible, without any cost or expense to the Port, to take all actions necessary, off as well as on the Premises to improve and continuously use the Premises as required by this Master Lease and in compliance with all applicable Laws and Environmental Laws.

THE MASTER LESSEE: (A) ACKNOWLEDGES THAT NEITHER THE PORT, NOR ANYONE ACTING FOR OR ON BEHALF OF THE PORT, HAS MADE ANY REPRESENTATION, WARRANTY, PROMISE OR STATEMENT, EXPRESS OR IMPLIED, TO THE MASTER LESSEE, OR TO ANYONE ACTING FOR OR ON BEHALF OF THE MASTER LESSEE, CONCERNING THE CONDITION OR SUITABILITY OF THE PREMISES, AND THE USE OR DEVELOPMENT THEREOF, NOR THE ACCESS TO AND FROM THE PREMISES IN THE PORT AREA; (B) ACKNOWLEDGES THAT IN ENTERING INTO THIS MASTER LEASE, THE MASTER LESSEE HAS NOT RELIED ON ANY REPRESENTATION, WARRANTY, PROMISE OR STATEMENT, EXPRESS OR IMPLIED, OF THE PORT, OR ANYONE ACTING FOR OR ON BEHALF OF THE PORT WITH RESPECT TO THE CONDITION OR SUITABILITY OF THE PREMISES, AND THAT ALL MATTERS CONCERNING THE CONDITION OR SUITABILITY OF THE PREMISES HAVE BEEN OR SHALL BE INDEPENDENTLY VERIFIED BY THE MASTER LESSEE PRIOR TO THE EXECUTION DATE, AND THAT THE MASTER LESSEE SHALL ENTER INTO THIS MASTER LEASE BASED ON THE MASTER LESSEE'S OWN PRIOR DUE DILIGENCE INVESTIGATIONS, INSPECTIONS AND EXAMINATIONS OF THE PREMISES; AND THAT THE MASTER LESSEE ACCEPTS THE PREMISES, INCLUDING, WITHOUT LIMITATION, ALL IMPROVEMENTS THEREON, IN AN "AS-IS" AND "WITH ALL FAULTS" PHYSICAL CONDITION AND IN AN "AS-IS" AND "WITH ALL FAULTS" STATE OF REPAIR; AND (C) DOES HEREBY WAIVE, AND THE MASTER LESSEE HEREBY DISCLAIMS, ALL WARRANTIES OF ANY TYPE OR KIND WHATSOEVER WITH RESPECT TO THE CONDITION OR SUITABILITY OF THE PREMISES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BY WAY OF DESCRIPTION BUT NOT LIMITATION, THOSE OF FITNESS FOR A PARTICULAR PURPOSE AND USE, TENANTABILITY OR HABITABILITY AND THE MASTER LESSEE EXPRESSLY WAIVES ITS RIGHTS GRANTED UNDER CALIFORNIA CIVIL CODE SECTION 1542, THAT PROVIDES "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

The Master Lessee's Initials: _____

ARTICLE 7 IMPROVEMENTS

7.1 Project Improvements by the Master Lessee.

(a) The Master Lessee covenants and agrees and it is an express condition of this Master Lease that the Master Lessee with due diligence, at its own cost and expense, shall as soon as reasonably practicable, and no later than as set forth in the Approved Construction Schedule, or Final Construction Schedule, if applicable, commence to construct upon the Property the Project Improvements in compliance with the requirements in Exhibit F, and shall thereafter diligently prosecute to completion the Project Improvements in compliance with the requirements in Exhibit F and in accordance with the Final Construction Schedule, subject to the conditions set forth in this Article 7. The Master Lessee also shall provide, at the Master Lessee's sole cost and expense, all furniture, fixtures and equipment necessary to operate the Premises in accordance with the Project Uses. Within 90 days of the Execution Date, the Master Lessee shall award a construction contract with a general contractor that will be a Master Lessee Contractor and promptly provide the Port written notice of the same. The Master Lessee's failure to strictly comply with this Section 7.1(a) shall be a material breach of this Master Lease. Notwithstanding anything in this Master Lease to the contrary, any breach of the provisions of this Section 7.1(a) shall constitute a material default and shall cause this Master Lease to terminate immediately at the option of the Port after not less than 15 days' notice to the Master Lessee.

(b) In addition to construction of the Project Improvements, the Master Lessee agrees, subject to the conditions set forth in this Article 7 at its own cost and expense, to perform the following work with respect to the Premises: (1) Make all sewer, gas and water connections between the Project Improvements and main lines with meters for all utility services being located on the Property; (2) Make all electrical service connections from the Improvements to utility lines with meters for all utility services being located on the Property; and (3) Grade the Property in compliance with the requirements in Exhibit F, as necessary, for effective on-site drainage and provide all necessary underground connections or extensions to carry storm water from the Premises.

7.2 Basic Conditions. In connection with the Project Improvements (and any Master Lessee Improvement, as provided in Section 10.2), the following conditions shall apply (collectively, "Basic Conditions"):

(a) the Project Improvements may not detract from the value or the character of the Premises and/or other Project Improvements, or weaken the structural integrity of the Premises and/or other Project Improvements;

(b) the Master Lessee must, prior to constructing, erecting or making any Project Improvement, submit to the Port (collectively, "Submissions") (1) complete copies of any and all architectural plans, drawings and specifications, including engineering, mechanical, structural and electrical working drawings, design calculations of and other documents ("Construction Drawings") pertaining to of the proposed Project Improvements, in form reasonably satisfactory to the Port and consistent with all construction drawings previously delivered to and

approved by the Port under the Option Agreement, (2) complete copies of any and all Authorizations from Governmental Authorities as may be required under applicable Law or Environmental Law, including without limitation, under the Charter of the City of Oakland, the Port Tariff, other the Port regulations, and the requirements under Exhibit F, (3) a complete list (including contact information) of all Master Lessee's Representatives (including contractors, major suppliers, architects, engineers and other consultants) and all subcontractors and major suppliers thereto, that may perform work or services related to the proposed Project Improvements, which must all be licensed and bonded professionals in the State of California, to the extent required under applicable Law ("Master Lessee Contractors"), (4) a final construction schedule, substantially based on the Approved Construction Schedule ("Final Construction Schedule"), and (5) complete copies of the certificates of insurance required under Exhibit I;

(c) the Master Lessee must, prior to constructing, erecting or making any Project Improvement, procure and pay for all necessary permits, and must comply with all applicable Laws, including the conditions under such necessary permits during the construction and installation of the Project Improvements;

(d) the Project Improvements must be of new and first quality materials and all related work shall be in a proper, professional and good and workmanlike manner and conducted with all due diligence;

(e) if any such work related to the Project Improvements involves the replacement of fixtures or parts thereto, all replacement fixtures or parts shall have a value and useful life equal to (1) if the fixtures are being replaced because they are obsolete or worn out, the value and useful life on the Execution Date of the fixtures being replaced, or (2) if the fixtures are being replaced because of damage or the occurrence of a Casualty Event, the value and useful life of the fixtures being replaced immediately prior to the occurrence of the event which required its replacement (assuming such replaced fixtures were then in the condition required by this Master Lease);

(f) all work related to the Project Improvements shall be expeditiously completed in compliance with Exhibit F and with all applicable Laws, including those regarding disabled or handicapped persons, including without limitation the Americans With Disabilities Act of 1990;

(g) the Project Improvements shall strictly conform to the Construction Drawings, the Port's Directives, and Final Construction Schedule;

(h) the Port may require the Master Lessee, at the Master Lessee's sole cost and expense, to furnish bonds or letters of credit in accordance with Sections 8.1 and 8.2 to assure diligent and faithful performance of all work related to the Project Improvements;

(i) if any Project Improvement impacts the structure or mechanical systems of the Premises to an extent greater than de minimis, or if the Master Lessee otherwise has the same prepared, the Master Lessee shall deliver "as-built" plans, including all mechanical systems (prepared using AutoCAD Release 12, or later, or a comparable replacement program prevalent in the industry, conforming to then-current American Institute of Architects layering standards), to the Port upon completion of the Project Improvements;

(j) subject to Section 10.4, the Master Lessee shall promptly discharge, remove or contest all liens filed against the Premises arising out of any Project Improvements;

(k) all Project Improvements shall be subject to this Master Lease and become property of the Port as of the Termination Date unless otherwise agreed upon by the Master Lessee, and the Master Lessee shall execute and deliver to the Port any Document requested by the Port evidencing the assignment to the Port of all estate, right, title and interest (other than the interest created under this Master Lease) of the Master Lessee or any other Person thereto or therein;

(l) the Master Lessee shall be responsible for the repair of any Port or other facilities which are damaged as a result of the Master Lessee Operations in connection with Project Improvements;

(m) the Master Lessee shall coordinate the timing of the Project Improvements with the Port so that the Project Improvements will not in any material respect interfere with or cause a delay in any other construction activities authorized by the Port;

(n) the Master Lessee shall provide to the Port, upon request, financial assurances of the availability of funds (debt and equity), including commitments, with reasonable conditions to closing, necessary to complete such Project Improvements acceptable to the Port in the exercise of its reasonable review;

(o) the Master Lessee shall give the Port at least 7 calendar days' notice prior to the commencement of any Project Improvement so that the Port may post appropriate notices of non-responsibility and agrees that such notices may remain posted until the Project Improvements are complete;

(p) the Master Lessee shall comply with the Port's waste reduction and recycling program under Port Resolution No. 01197, as the same may be amended from time to time;

(q) the Master Lessee shall comply with the Prevailing Wage Requirements, if applicable, and the other provisions under Section 7.5;

(r) the Master Lessee shall pay all applicable fees under the Port Ordinance No. 3859 or other applicable the Port ordinances;

(s) the Master Lessee shall be responsible for the repair of any Port or other facilities which are damaged in connection with the Project Improvements;

(t) the Master Lessee within 30 days of completion of the Project Improvements as evidenced by a notice of completion and issuance of a certificate of occupancy for all or any portion of the Project Improvements shall submit to the Port a statement signed by the Master Lessee's chief financial officer of the total of the Master Lessee's expenditures for the Project Improvements (including the cost of any tenant improvements then in place), equipment, furnishings and trade fixtures; and

(u) the Master Lessee shall comply with any and all mitigation measures and conditions to approval applicable to the Property and the Project.

7.3 No Improvements by the Port. The Port is not obligated to construct or install any improvements on or off of the Property. The Port shall have no obligation on account of any construction or installation of any improvement by the Master Lessee to pay for or reimburse the Master Lessee all or any portion of the costs or expenses arising out of such construction or installation, nor is the Master Lessee permitted any credit, set off or deduction for all or any portion of such costs or expenses against any payment the Master Lessee otherwise owes the Port.

7.4 Right of Entry for Construction and Maintenance. The Port and the Master Lessee each agree that the other shall be permitted to enter upon its property, as may reasonably be necessary in order for the Port or the Master Lessee to make the improvements or do other work required by this Master Lease or in order for the Port to make improvements to adjacent Port property, and to maintain or repair the respective Party's property that is adjacent to the other Party's property. The right of each party to enter the other's Property or the Premises shall extend to such party's lessees, and licensees and contractors. A Party's exercise of its right of entry shall not unreasonably interfere with the other Party's use of its property. Any interference shall be temporary and all work on the entering Party's property shall proceed expeditiously as necessary to avoid or minimize any such interference. A Party intending to exercise the right of entry shall first give to the other Party reasonable notice before commencement of any work on the other Party's property. In the event a Party's entry results in any damage to the other Party's property, the same shall be repaired expeditiously at the entering Party's expense.

In addition, the Port and the Master Lessee each agree to grant to the other and to execute such reciprocal easements, agreements or covenants, conditions and restrictions relating to the Improvements and the improvements to be made by the Port as may be necessary for the proper and efficient functioning thereof, and determined jointly, reasonably and in good faith by the Master Lessee and the Port.

7.5 Prevailing Wage, Living Wage, Maritime and Aviation Project Labor Agreement; Other the Master Lessee Construction Related Requirements.

(a) Prevailing Wage Standards.

(1) *Basic Requirements.* The Master Lessee agrees that, with respect to any construction at or on the Premises, the Master Lessee shall comply with the then-current Public Work Prevailing Wage Requirements and the Private Work Prevailing Wage Requirements, as the same may be amended from time-to-time (collectively, the "Prevailing Wage Requirements"), which currently provide that the Private Work Prevailing Wage Requirements shall not apply to (A) improvements with respect to a particular project that cost less than \$50,000.00 in the aggregate or with respect to which the initial building permit for such work is issued more than 1 year after the certificate of occupancy is approved on the core and shell, and (B) maintenance work; and

(2) *Additional Prevailing Wage Provisions.* The following provisions of this Section 7.5(a)(2) apply only if, and to the extent that, the Prevailing Wage Requirements are applicable:

(A) The Prevailing Wage Requirements shall apply to the employees of any employer including the Master Lessee and any Master Lessee Contractor, including their successors and assignees, but shall not apply to supervisory or managerial personnel or to persons employed in the operation or (in the case of Private Work Prevailing Wage Requirements only) maintenance of the Premises.

(B) The Master Lessee shall cause the provisions of this Section 7.5(a)(2) to be incorporated into each contract and subcontract for each Master Lessee Contractor, and agreement which would be subject to this Section 7.5(a)(2). In the event the provisions are not so incorporated, the Master Lessee shall be liable to the worker in any Action for the difference between the prevailing wage rate required to be paid under the Prevailing Wage Requirements and the amount actually paid to the worker, including costs and attorney fees, as if the Master Lessee were the actual employer.

(C) Nothing in this Master Lease shall prevent the employment of any number of properly registered apprentices, as defined in Chapter 4, Division 3 of the California Labor Code. Every such apprentice shall be paid not less than the standard wage paid to apprentices under the regulations of the crafts or trade at which the apprentice is employed, and shall be employed only at the work of the craft or trade to which the apprentice is registered. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which the apprentice is in training. Good faith efforts shall be made to maintain a ratio of apprentices to journeymen of not less than 20%, if the employer is signatory to an agreement to train, or otherwise bound to train, apprentices.

(D) The Master Lessee shall be responsible for complying with Section 1777.5 of the California Labor Code concerning apprenticeable occupations, with respect to all work covered by that section.

(E) The Master Lessee agrees that to the extent that the Master Lessee is required to comply with the Prevailing Wage Requirements, the Master Lessee shall assure that all workers are paid the prevailing rate of per diem wages, and travel and subsistence payments (defined in applicable collective bargaining agreements filed in accordance with the California Labor Code), in effect at the time the work is performed. Copies of the applicable prevailing rate of per diem wages are on file at the Port's principal office and will be made available to any interested party on request. The Master Lessee agrees to post a copy of the prevailing rate of per diem wages at each job site.

(F) Except where the context otherwise requires, the definitions of terms and phrases contained in the California prevailing wage law, Sections 1720 et seq. of the California Labor Code, and in the implementing administrative regulations, shall apply to the same terms and phrases which are used in the Prevailing Wage Requirements of this Section 7.5(a)(2).

(G) The Master Lessee, as a penalty to the Port, shall forfeit \$25 for each calendar day, or portion thereof (of such other sum as specified from time-to-time by Section 1775 of the California Labor Code), for each worker paid less than the applicable prevailing rates for such work or craft in which such worker is employed. The

difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Master Lessee.

(H) The prevailing wage requirements of this Section 7.5(a)(2) will be monitored and enforced by the Port. In addition to any other rights provided by California law to recover compensation, a worker that has been paid less than the prevailing wage rates shall have a right to commence an action or proceeding against the employer of the worker for the difference between the prevailing wage rates and the amount paid to such worker for each calendar day or portion thereof for which the worker was paid less than the compensation required to be paid under the provisions of this subsection. No issue other than that of the liability of the employer for the amount of unpaid wages allegedly due shall be determined in such action or proceeding, and the burden shall be on the employer to establish that the amounts demanded are not due. A worker recovering any or all of the wages claimed to be due shall recover his costs and attorney fees in securing such recovery. Nothing in this Section shall preclude its enforcement by the California Division of Labor Standards Enforcement.

(b) Living Wage and Labor Standards. The Master Lessee shall comply with Section 728 to the Charter of the City of Oakland, titled as the “Living Wage and Labor Standards at the Port-assisted Businesses,” which was passed as Measure I by the voters in the City on March 5, 2002, as the same may be amended from time-to-time. Section 728 requires the Port Aviation and Maritime businesses that meet specified minimum threshold requirements to pay all non-exempt employees a “Living Wage” rate established by City Ordinance and adjusted annually based on the Consumer Price Index for the San Francisco, Oakland and San Jose area. The current Living Wage rate as of July 1, 2008 is at least \$10.83 with credit given to the employer for the provision to covered employees of health benefits, and \$12.45 without credit for the provision of health benefits. Specifically, Section 728 applies to the Port’s contractors and financial assistance recipients with the Aviation or Maritime divisions that have contracts worth more than \$50,000 and that employ more than 20 employees who spend more than 25% of their time on the Port-related work. Section 728 also provides covered employers with incentives to provide health benefits to employees, establishes a worker retention policy, requires covered employers to submit quarterly payroll reports, requires covered employers to allow the Port’s Representatives access to payroll records in order to monitor compliance and labor organization representative’s access to workforces during non-work time and on non-work sites and requires covered employers to provide employment to certain displaced employees.

(c) Maritime and Aviation Project Labor Agreement. Construction undertaken by the Master Lessee pursuant to this Master Lease for which the Port approves a permit and that exceeds \$50,000 when considered together with the value of all construction on the Premises for which the Port has approved a permit for construction within a twelve-month period is subject to coverage under the terms of the Port’s Maritime and Aviation Project Labor Agreement, as the same may be amended from time-to-time (“MAPLA”), which currently provides that the terms of MAPLA shall not apply to maintenance work unless the maintenance work requires a Port permit or the maintenance work is included in a contract which includes any activities that require a Port permit. For purposes of determining whether the \$50,000 threshold has been reached, the value of the construction shall be the aggregate value of each contract entered into for the construction and for which all or any portion of the construction activity requires a Port building permit under the Charter of the City of Oakland, except that there shall not be included in the value

of construction any value of removable furniture, fixtures and equipment which are manufactured or assembled off of the Premises and brought on to the Premises for the Master Lessee's use in connection with the completed construction. Failure to utilize MAPLA could lead to grievance and arbitration and the potential for damages, attorneys' fees and costs should the Building & Construction Trades Council of Alameda County, AFL-CIO ("Unions") prevail in arbitration. With respect to any construction which is subject to coverage of the terms of the MAPLA in accordance with the foregoing:

(1) Each Master Lessee Contractor shall assure that each Master Lessee Contractor, before beginning its respective construction work, signs a "Letter of Assent" to the MAPLA;

(2) The Master Lessee shall require by contract that each Master Lessee Contractor require that each subcontractor on the construction, regardless of tier, signs a Letter of Assent to the MAPLA;

(3) The Unions which are signatory to the MAPLA are third party beneficiaries of the Master Lessee's obligations under this Section 7.5(c) and are entitled to proceed with grievance and arbitration against the Master Lessee under the MAPLA for the Master Lessee's breach of such obligations; and

(4) The Master Lessee may not assert that the Unions do not have standing to proceed with any such grievance or arbitration proceeding described above or to recover from the Master Lessee damages, attorneys' fees and costs if the Master Lessee breaches any such obligations.

In the event the Port agrees to any revisions to MAPLA, or enters into a new MAPLA, the Port shall notify the Master Lessee in writing of such revised or new MAPLA requirements and after such written notice, such revised or new MAPLA requirements shall become part of this Section 7.5(c) and shall supersede any conflicting requirements of this Section 7.5(c), and the Master Lessee shall be obligated to comply with such revised or new MAPLA requirements as if they were set forth herein.

(d) Additional Provisions.

(1) Except as otherwise provided in Exhibit F, at least two weeks before the last date the Master Lessee accepts initial bids for any construction, the Master Lessee shall file with the Port a written list of the name of all contractors to whom the Master Lessee has submitted a request for bids. In addition, the Master Lessee shall file with the Port the name of each contractor with whom it proposes to contract, together with the name of the subcontractors of all tiers, at least 5 working days before entering into the contract.

(2) The Master Lessee agrees to keep or cause to be kept by each contractor and subcontractor an accurate payroll record for each worker employed on work covered by this Section showing all of the information specified in subsection (a) of Section 1776 of the California Labor Code. All such payroll records shall be certified, available for inspection and filed in accordance with the procedures specified in subsections (b)-(e) inclusive of Section 1776 of the California Labor Code. In addition, copies of such certified payroll

records shall be filed with the Port within a reasonable time not to exceed 15 days from close of payroll by the respective employer.

(3) It is understood and agreed that all documents that the Master Lessee is required to submit to or file with the Port under this Section shall constitute public records that shall be available to any member of the public for review or copying in accordance with the California Public Records Act.

(4) In the event of repetitive breach of the requirements of this Section by the Master Lessee, the Port shall be entitled, in addition to all other remedies hereunder for breach of this Master Lease, to appoint at the Master Lessee's expense a special monitor to oversee the Master Lessee's compliance. Fees for said special monitor shall be billed to the Master Lessee, which fees the Master Lessee agrees to pay as Additional Rent within 10 days after the Master Lessee's receipt of such bill. In the event of noncompliance with the foregoing requirements concerning payroll records which continues for more than ten 10 days after the Port gives to the Master Lessee written notice specifying in what respects the Master Lessee must comply, the Master Lessee shall forfeit as a penalty to the Port for each worker twenty-five dollars (\$25) for each calendar day, or portion thereof, until strict compliance is effectuated.

ARTICLE 8 SECURITY CONCERNING IMPROVEMENTS.

Before the commencement of any construction work hereunder, the Port may require that the Master Lessee, or its contractors, at no cost or expense to the Port, furnish to the Port the following security concerning Improvements to be constructed by or on behalf of the Master Lessee and covering any obligation of the Master Lessee under the Prevailing Wage Requirements provisions of this Lease:

8.1 Performance and Labor and Material Bonds. The Port may, in the Port's sole discretion, require that the Master Lessee, or its contractor(s), at its or their own cost and expense, furnish to the Port bonds, as follows:

(a) Performance Bond. A bond in cash, or securities satisfactory to the Port in its sole discretion, or issued by a surety company licensed to transact business in the State of California and satisfactory to the Port, in a sum of not less than 100% of the total estimated cost of the proposed Improvements other than with respect to the Project Improvements, in which case, such bond in case or securities shall be in a sum of not less than 100% of the total estimated cost of the approved Phase 1 of the Project Improvements as such costs are set forth in the Estimated Project Completion Costs, payable to the Port and conditioned upon full, faithful and satisfactory performance by the Master Lessee of the such Improvements within the period of time specified in the Final Construction Schedule. Upon the Master Lessee's full, faithful and satisfactory performance and completion of the such Improvements, said bond shall be cancelled or returned to the Master Lessee, as the case may be; otherwise, such part of the amount of the bond as shall be required to complete such Improvements shall be payable to or retained by the Port, as the case may be. In the event that said bond shall be in cash, the Port shall have the right to invest and reinvest the same as it shall see fit, and any interest earned thereon during the time it is so held by

the Port shall accrue to and belong to the Port, and the Master Lessee shall have no interest in or claim thereto.

(b) Labor and Material Bond. A bond in cash or securities satisfactory to the Port in its sole discretion, or issued by a surety company licensed to transact business in the State of California and satisfactory to the Port with the Master Lessee's Contractor(s), as principal(s), in a sum not less than 100% of the total estimated cost of the contract(s) for the proposed Improvements other than with respect to the Project Improvements, in which case, such bond in case or securities shall be in a sum of not less than 100% of the total estimated cost of the approved Phase 1 of the Project Improvements as such costs are set forth in the Estimated Project Completion Costs, guaranteeing the payment for all materials, provisions, provender, supplies and equipment used in, upon, for or about the performance of said work or labor done thereon of any kind whatsoever and protecting the Port from any liability, losses or damages arising therefrom.

(c) General. In the event and to the extent that the Master Lessee obtains from the Master Lessee's Contractor(s) the bonds required hereunder which are satisfactory to the Port, the Port, upon application by the Master Lessee and upon naming the Port as an additional obligee of the Master Lessee's principal and surety under such bond or bonds, shall release the Master Lessee from and consent to the cancellation of the bond or bonds originally furnished by the Master Lessee. It is understood and agreed that any bond which, as to the Port as obligee, is conditioned upon the Master Lessee making all necessary payments to the contractor shall not be satisfactory to the Port. A combination performance and labor and material bond shall satisfy the foregoing requirements of this Section.

8.2 Letter of Credit in Lieu of Performance and Labor and Material Bonds. In lieu of the performance bond and the labor and material bond required hereunder, the Master Lessee may provide to the Port one or more Letters of Credit. The Port agrees that the Letters of Credit may provide, in language acceptable to the Port Attorney, that the total sum thereof may be reduced by a sum equal to 80% of the amount that the Master Lessee's construction lender certifies has been disbursed from the construction loan fund for construction of the proposed Improvements, but in no event to less than a sum equal to 20% of the total sum of the security required upon commencement of construction of the proposed Improvements. The Letters of Credit, or any sums remaining after the Port's negotiation thereof in accordance with this Section, will be returned to the Master Lessee upon the full, faithful and satisfactory performance by the Master Lessee of the proposed Improvements, and upon the Port's receipt of satisfactory documentation that the Master Lessee has paid in full all labor, materials, provisions, provender, supplies and equipment used in, upon, for or about the performance of the proposed Improvements.

The Port shall be entitled to receive payment under such Letter of Credit, upon any one of the following conditions:

(a) The Port receives notice from the issuer of the Letter of Credit that the issuer will not renew the Letter of Credit and at least 15 business days before expiration of the Letter of Credit the Master Lessee has not provided the Port with a replacement Letter of Credit. The Master Lessee agrees in good faith to use its best efforts to include a provision in such Letter of Credit providing for automatic extension of such Letter of Credit. If despite the Master Lessee's good faith best efforts the Master Lessee is unable to secure such a provision, the Port will accept a Letter of Credit without such provision, but in that case unless the Port receives a written extension

of the Letter of Credit at least 30 days before the end of the term of such Letter of Credit, the Port without notice to the Master Lessee may negotiate the Letter of Credit and retain all proceeds as security pursuant to this Section.

(b) The Port declares this Master Lease forfeited for the Master Lessee's default in accordance with the default provisions of this Master Lease.

(c) The Port in accordance with this Master Lease exercises its option to pay or otherwise discharge a judgment or lien for labor and material furnished for construction of the Improvements.

In the event of payment to the Port under condition (1) above, the Port will retain the cash payment as guaranty in lieu of the Letter of Credit, and shall transfer all or such portion of the payment, without interest, to the Master Lessee as may be appropriate upon receipt of a replacement Letter of Credit.

In the event of payment to the Port under condition (3) above, immediately upon written notice from the Port that the Port has applied all or portions of the payment to pay or discharge a judgment or lien, the Master Lessee shall submit to the Port additional Letters of Credit or cash so that the total sum in the form of Letters of Credit and cash in the hands of the Port is equal to the total sum required to be maintained in Letters of Credit in accordance with this Section.

The Master Lessee hereby assigns and transfers to the Port, as part of the security for the lien-free completion of construction of the Improvements, all of the Master Lessee's right, title and interest (existing on the Execution Date of this Master Lease or existing any time thereafter) in all Construction Drawings pertaining to the proposed Improvements; provided, however, that (a) unless and until there is a termination of this Master Lease under condition (2) above, the Master Lessee shall have sole right to possession and use of the Construction Drawings pertaining to the proposed Improvements and the Port may not interfere with such possession or use of the Construction Drawings and (b) immediately upon the occurrence of the events above described which permits the Master Lessee to withdraw all remaining Letters of Credit, the Port shall be deemed to have assigned and transferred to the Master Lessee all of the Port's right, title and interest in the Construction Drawings pertaining to the proposed Improvements. The Master Lessee agrees that immediately upon a termination of this Master Lease under condition (2) above, the Master Lessee shall deliver to the Port all Construction Drawings pertaining to the proposed Improvements and the Master Lessee shall make no further use of such Construction Drawings pertaining to the proposed Improvements; provided, however, that this Subsection is not intended to and shall not be interpreted to make any other person or entity a third party beneficiary thereof. Each Party agrees upon the reasonable request of the other Party to execute and provide to the requesting Party additional documents which confirm the assignment and transfer made pursuant to the foregoing provisions of this Subsection.

The Port shall not be required to pay to or credit the Master Lessee with any interest on any payment received upon the Port's negotiation of any Letter of Credit.

ARTICLE 9 TITLE TO IMPROVEMENTS

9.1 Title to Realty Improvements. The Master Lessee shall have title only to those Improvements constructed on the Property by the Master Lessee under this Master Lease and such title shall remain in the Master Lessee during the Term and upon the Termination Date (or earlier termination or expiration of this Master Lease in the case of a holdover by the Master Lessee), title thereto automatically shall pass to and vest in the Port. All Improvements shall remain upon and be surrendered with the Premises as part thereof upon the termination or expiration of this Master Lease. Title to all equipment, furniture, furnishings and trade fixtures placed by the Master Lessee upon the Premises shall remain in the Master Lessee, and replacements, substitutions and modifications thereof may be made by the Master Lessee throughout the Term, and the Master Lessee shall remove the same before termination or earlier expiration of this Master Lease if the Master Lessee is not then in default under this Master Lease (unless the Port directs the Master Lessee to so remove the same notwithstanding such default); provided that before termination or expiration of this Master Lease, the Master Lessee shall repair to the satisfaction of the Port any damage to the Premises caused by such removal and, provided further, that usual and customary lighting, plumbing, flooring cover, window coverings, air conditioning and heating fixtures shall remain upon the Premises and be surrendered therewith upon termination or expiration of this Master Lease at which time title thereto shall pass to the Port.

9.2 Equipment; Equipment Leasing; Tax Treatment.

(a) Equipment. The Master Lessee shall not bring onto or install in the Premises any heavy machinery, equipment or articles without prior notice to the Port. The Master Lessee shall repair any damage caused by any such heavy machinery, equipment or articles.

(b) Equipment Leasing. Some of the equipment, fixtures and furniture now or hereafter installed and used by the Master Lessee on the Premises that is not required under Section 9.1 to remain upon the Premises and be surrendered therewith upon termination or expiration of this Master Lease (collectively designated herein as "Trade Equipment") may be directly financed by a third-party lender or otherwise subjected to a security interest or owned by an equipment rental company or vendor (such third-party lender, equipment rental company or vendor, "Equipment Lessor") and leased to the Master Lessee either directly from the Equipment Lessor or by way of equipment sublease or assignment of equipment lease from an equipment sublessor ("Equipment Sub-Lessor"). Provided that an Equipment Lessor or Equipment Sub-Lessor (or assignee thereof) gives the Port written notice identifying the Trade Equipment prior to its installation on the Premises, the Port hereby agrees to recognize the rights therein of any such Equipment Lessor or Equipment Sub-Lessor (or assignee thereof), and that all such items of financed or leased Trade Equipment installed on the Premises shall be and remain personal property and not real property, notwithstanding the fact that the same may be nailed or screwed or otherwise attached or affixed to the Premises. The Master Lessee shall have the right at any time, provided the Master Lessee is not in default hereunder, to remove or replace any or all Trade Equipment, whether or not financed or leased, regardless of whether attached or affixed to the Premises. The Master Lessee shall ensure that any damage to the Premises caused by such a removal shall be repaired promptly by and at its expense or at the expense of any other party causing such removal.

9.3 Tax Treatment. The Master Lessee agrees and hereby makes the irrevocable and binding election not to take for Federal income tax purposes investment tax credits or depreciation on assets financed with the proceeds of tax exempt the Port bonds or notes, unless the Port otherwise expressly agrees in advance in writing signed by the Port. The Master Lessee also agrees at the Port's request from time to time to execute such additional documents reasonably requested by the Port or its bond counsel to effectuate and/or evidence said agreement and election. This agreement and election, and the obligation to execute said documents relative thereto is binding on each successor or assignee of the Master Lessee.

ARTICLE 10
MAINTENANCE; MASTER LESSEE IMPROVEMENTS; NO
ENCUMBRANCES; PERMITTED CONTESTS OF ENCUMBRANCES

10.1 Maintenance of Premises.

(a) The Master Lessee agrees that during the entire Term, at its own cost and expense, it shall keep and maintain, in good working order and condition, the Premises (including without limitation, all portions of the storm water collection system that are on, in, or under the Premises and only collect and drain storm water from the Premises), and perform repair work or replacement work related thereto, whether required by structural failure or deterioration or by operations of the Master Lessee, by actions of others or otherwise, to ensure that all necessary repairs, improvements, replacements of the facilities at the Premises shall be made, subject to all lawful orders of any Governmental Authority having jurisdiction and applicable Laws. The Master Lessee shall, as of the Execution Date and at all times during this Master Lease, at its sole cost and expense, keep the Premises in a tidy, clean and sanitary condition and shall observe all applicable Laws. The Master Lessee shall, as of the Execution Date and at all times during this Master Lease, carry out regular safety inspections on the Premises as are required by applicable Laws. Except to the extent expressly provided in Exhibit F, the Port shall not have any responsibility to maintain, replace or repair any portion of the Premises, or pay for the costs thereof, at any time, including prior to the Execution Date and at any time during the Term.

(b) If the Master Lessee fails to repair and maintain the Premises in accordance with this Master Lease, including the Master Lessee Improvements, after 30 calendar days' written notice to the Master Lessee and an opportunity to cure such failure as provided in Section 20.1(a) (except in the case of risk to life or property, in which case no notice shall be required), the Port may enter the Premises at any time and make the required repairs or do the required maintenance and recover from the Master Lessee as Additional Rent, the cost thereof (including the cost of repairs and cleaning) plus the Port's actual overhead and administration costs, based on the Port's customary practices, incurred in connection with performing such work. In making such repairs or doing such maintenance or cleaning, the Port may bring and leave upon the Premises all necessary materials, tools and equipment, and the Port shall not be liable, except for the gross negligence or willful misconduct of the Port or its Representatives, to the Master Lessee for any inconvenience, annoyance, loss of business, or any injury suffered by the Master Lessee by reason of the Port effecting such repairs, maintenance or cleaning. The making of such repairs or performance of maintenance by the Port shall in no event be construed as a waiver of the duty of the Master Lessee to make repairs or perform maintenance as herein provided. Notwithstanding anything herein to the contrary, the Port shall also have the rights to enter the Premises and undertake activities on the Premises as set forth in Exhibit F.

(c) The Master Lessee hereby expressly waives all rights to make repairs at the expense of Lessor, or in lieu thereof to vacate the Premises, and all of the other benefits contained in Sections 1941 and 1942 of the Civil Code of the State of California or any successor statute thereto and any other similar law now or hereafter in effect.

10.2 The Master Lessee Improvements.

(a) General. Subject to the terms and conditions of this Article and Article 7, including the Basic Conditions, the Master Lessee, at its sole cost and expense, may construct, erect or make the Master Lessee Improvements upon at least 30 calendar days' written notice, compliance with the Basic Conditions with respect to such proposed Master Lessee Improvements and submission of all the Submissions to the Port; provided that the Master Lessee Improvements that are part of the same project, are substantially related to or dependent on one another or are to be constructed, erected or made at or around the same time with an estimated aggregate cost of \$100,000 or more ("Improvements Requiring Consent") shall require the Port's prior written approval, which approval may be subject to such terms and conditions as the Port may stipulate in its reasonable discretion but subject to Section 44.2 ("Port's Directives"). Notwithstanding the foregoing, the Master Lessee Improvements, which are non-structural, have minimal external impact and are either in the ordinary course of business or part of an ongoing maintenance or service program of the Premises and the Project Improvements, shall not require the Port's approval under this Section unless the estimated aggregate cost is \$_____ or more.

(b) Improvements Requiring Consent Process.

(1) The Master Lessee shall request and first obtain the Port's written approval for any proposed Improvements Requiring Consent. The Port shall not be required to consider any proposed Improvements Requiring Consent until after the Master Lessee has (A) submitted the Submissions to the Port, (B) submitted to the Port any other information and Documents reasonably required by the Port from the Master Lessee, which request shall be promptly made, in order for the Port to have before it all the matters required by Law to be considered by the Port before the Port takes action on the proposed Master Lessee Improvements, and (C) certified in writing to the Port that the proposed Improvements Requiring Consent comply and shall continue to comply with, and the Master Lessee agrees to and has and shall continue to act in compliance with, the Basic Conditions. After the Port has received said items, the Port shall promptly notify the Master Lessee of the same and thereafter shall have 30 calendar days to reasonably review the Master Lessee's request, considering the character, nature, size and location of the proposed Improvements Requiring Consent. It is understood and agreed that any proposed Improvements Requiring Consent shall not be approved by the Port unless the Board of the Port makes all necessary findings under the Port Ordinance No. 1606, as amended from time-to-time, authorizing the Master Lessee Improvements to be made by the Master Lessee without competitive bidding.

(2) Notwithstanding Section 44.1(a), if the Port fails to give the Master Lessee any notice with respect to the proposed Improvements Requiring Consent within such 30-calendar day period, then the Master Lessee may provide written notice to the Port in a conspicuously marked package containing in all capital letters on both the outside of the package and within such correspondence with the notation "THE REQUEST FOR CONSENT SHALL BE

DEEMED GRANTED UNLESS RESPONDED TO WITHIN TEN BUSINESS DAYS OF RECEIPT, WHICH TEN-BUSINESS DAY PERIOD SHALL EXPIRE ON _____, _____”, and upon the expiration of such ten-day period, if the Port has continued to fail to give the Master Lessee any notice with respect to the proposed Improvements Requiring Consent, then the Port’s approval shall be deemed given, without further action, subject to the other terms of this Article, including the Basic Conditions. The Port’s approval of the Construction Drawings shall create no responsibility or liability on the part of the Port for their completeness, design sufficiency or compliance with applicable Laws.

(c) Certain Document Retention. The Master Lessee shall maintain during the Term (and promptly deliver the same to the Port upon the Termination Date) originals of all “as-built” drawings, plans, other drawings, specifications and models prepared in connection with any Master Lessee Improvements (including the Project Improvements) and otherwise applicable to the Premises and in the Master Lessee’s possession.

(d) Encroachments and Other Matters. If any Master Lessee Improvement (including the Project Improvements) shall (a) encroach upon any setback or any property, street or right-of-way adjoining the Premises, (b) violate the provisions of any restrictive covenant under any Encumbrance, Utility Easement or Law, (c) hinder or obstruct any easement or right-of-way that exists under an Encumbrance or Utility Easement (except to the extent already hindered or obstructed as of the Execution Date), or the Port’s reserved rights under this Master Lease, or (d) materially impair the rights of others in, to or under any of the foregoing, the Master Lessee shall, promptly after receiving notice or otherwise acquiring knowledge thereof diligently pursue, either (i) obtain from the Port and all necessary parties waivers or settlements of all claims, liabilities and damages resulting from each such encroachment, violation, hindrance, obstruction or impairment, whether the same shall affect the Port, the Master Lessee or both, (ii) take such action as shall be reasonably required to remove all such encroachments, hindrances or obstructions and to end all such violations or impairments, including, if necessary, making additional the Master Lessee Improvements, subject to this Article, or (iii) secure such easements rights of way or other legal device as necessary to remedy the same as the Port shall approve in its sole discretion. Any relocation of Utilities required in connection with the Master Lessee Improvements shall be at the Master Lessee’s sole cost and expense.

(e) The Master Lessee’s Risk. All structures, alterations, installations, materials, supplies and articles at any time erected, brought, placed or being on the Premises by the Master Lessee, including all activities related to the Master Lessee Improvements (including the Project Improvements), shall be entirely at the risk of the Master Lessee concerning loss, damage, destruction or accident from any cause whatsoever, except to the extent of the gross negligence or willful misconduct of the Port, or the Port’s Representatives, causing such loss, damage, destruction or accident, and subject to Section 29.3.

10.3 No Encumbrances. Subject to Section 10.4 and except for Leasehold Mortgages entered into in accordance with Article 17 and Encumbrances created or suffered by the Port, the Master Lessee shall not, directly or indirectly, create or permit to be created or to remain and shall promptly discharge or remove any Encumbrance upon any interest in the Premises (including, without limitation, the Port’s fee or other interests in the Premises and the Master Lessee’s leasehold interest in the Premises) or on any Rent or any other sums payable by the Master Lessee under this Master Lease incurred by, or on behalf of the Master Lessee. Subject to

Section 10.4 and except for Leasehold Mortgages entered into in accordance with Article 17, in the event of the registration, filing or attaching of any such Encumbrance, the Master Lessee shall, at its sole cost and expense, immediately cause the same to be discharged. NOTICE IS HEREBY GIVEN THAT THE PORT SHALL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO THE MASTER LESSEE OR TO ANYONE HOLDING OR OCCUPYING THE PREMISES THROUGH OR UNDER THE MASTER LESSEE, AND THAT NO MECHANICS' OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF THE PORT IN AND TO THE PREMISES. TO THE EXTENT REQUIRED BY LAW, THE PORT MAY AT ANY TIME POST ANY NOTICES ON THE PREMISES REGARDING SUCH NON-LIABILITY OF THE PORT.

10.4 Permitted Contests of Encumbrances. Notwithstanding any other provision of this Master Lease, the Master Lessee shall not be required to discharge or remove any Encumbrance on the Master Lessee Interest incurred by, or on behalf of the Master Lessee and may dispute or contest the same ("Contest"), so long as (collectively, "Protest Conditions") (a) the Master Lessee shall promptly notify the Port of such non-compliance, (b) at the time of such non-compliance and during all periods of Contest, no Master Lessee Default shall exist, (c) the Master Lessee shall contest, in good faith, the existence, amount or validity thereof, the amount of the damages caused thereby, or the extent of its or the Port's liability therefor by appropriate proceedings which shall operate during the pendency thereof to prevent or stay (i) the collection of, or other realization upon such Encumbrance so contested, (ii) the sale, forfeiture or loss of the Premises or any Rent to satisfy or to pay any damages caused by such Encumbrance, (iii) any interference with the use or occupancy of Premises, (iv) any interference with the payment of any Rent, or (v) the cancellation or increase in the rate of any applicable insurance policy or a statement by the carrier that coverage will be denied, (d) the Master Lessee shall promptly and diligently prosecute any such Contest to a final conclusion, except that the Master Lessee, so long as the other Protest Conditions are at all times complied with, has the right to attempt to settle or compromise such Contest through negotiations, and (e) immediately upon the commencement and at all times during the pendency of such Contest, the Master Lessee shall provide the Port security in its name, in the amount of the applicable Encumbrance and in form reasonably satisfactory to the Port, to assure that such Encumbrance is corrected, including all costs, interest and penalties that may be incurred or become due in connection therewith. The Master Lessee shall pay any and all losses, judgments, decrees and costs in connection with any such Contest, and promptly after the final determination of such Contest, fully pay and discharge the Encumbrance, and any amounts which shall be levied, assessed, charged or imposed or be determined to be payable therein or in connection therewith, together with all penalties, fines, interest and costs thereof or in connection therewith, and perform all acts the performance of which shall be ordered or decreed as a result thereof. No such Contest shall subject the Port to the risk of any civil or criminal liability.

ARTICLE 11 FORCE MAJEURE

11.1 Force Majeure Events. In the event that either Party is affected by a Force Majeure Event, the provisions of this Article 11 shall apply unless such Force Majeure Event constitutes a Casualty Event, in which case, the provisions of Article 15 shall apply.

11.2 Notice of the Occurrence of a Force Majeure Event. The Party that is affected by a Force Majeure Event shall give notice as soon as practicable and in no event later than 10 calendar days following the date on which it first became aware of such Force Majeure Event to the other Party (provided that in the case of the same Force Majeure Event being a continuing cause of delay, only one notice shall be necessary), which notice shall include (i) a statement of which Force Majeure Event the claim is based upon, (ii) details of the circumstances from which the delay arises and (iii) an estimate of the delay in the performance of obligations under this Master Lease attributable to such Force Majeure Event and information in support thereof, if known at that time. The Party receiving such notice shall, after receipt thereof, be entitled by notice to require the Party claiming a Force Majeure Event to provide such further supporting information or details as the Party receiving such notice may reasonably consider necessary.

11.3 Notice of the Cessation of a Force Majeure Event. The Party claiming a Force Majeure Event shall notify the other Party as soon as practicable and in no event later than 10 calendar days following the date on which it first became aware that a Force Majeure Event has ceased.

11.4 Consequences of a Force Majeure Event. Subject to the Party claiming a Force Majeure Event giving the notice required in Section 11.2, a Force Majeure Event shall excuse such Party from whatever obligation or covenant such Party, using all commercially reasonable efforts, is not actually capable of performing or observing or causing to be performed or observed as a direct result of the Force Majeure Event being claimed for the Force Majeure Delay Period applicable to such Force Majeure Event; provided, however, that notwithstanding anything herein to the contrary, in no event shall any Force Majeure Event excuse the Master Lessee from performing its obligation to pay Rent to the Port, when and as such becomes due and payable pursuant to this Master Lease throughout the applicable Force Majeure Delay Period. Notwithstanding the occurrence of a Force Majeure Event, (i) this Section 11.4 shall not excuse the Party claiming a Force Majeure Event from the performance and observance under this Master Lease of any obligations and covenants that such Party, using all commercially reasonable efforts, is actually capable of performing or observing, or causing to be performed during the applicable Force Majeure Delay Period, and (ii) during such applicable Force Majeure Delay Period, each Party shall use its commercially reasonable efforts to minimize the effect and duration of the Force Majeure Event. Nothing herein shall permit or excuse noncompliance with a change to applicable Laws.

ARTICLE 12 UTILITIES

The Master Lessee shall be responsible to directly contract for electricity, telecommunications, gas, other fuel, water, sewer, telephone, refuse disposal, and other utility or services consumed on or for the benefit of the Premises, including the delivery of services from the interconnection point with the public utility purveyor to the Premises, and to pay promptly and keep current its payments for all charges for the same. The Port shall have no obligation to provide or secure any utilities for the benefit of the Premises. The Master Lessee shall furnish to the Port, upon request, copies of any receipts for the payments required to be made by the Master Lessee under this Article 12. Any relocation of existing utilities required in connection with any Master Lessee Improvements, including the Project Improvements, shall be at the sole cost of the Master Lessee.

**ARTICLE 13
TAXES AND ASSESSMENTS**

13.1 Payment of Taxes; Disputes.

(a) The Master Lessee shall timely pay all Taxes imposed with respect to the lease and/or operations of the Premises, including, without limitation, any documentary or other transfer or sales Taxes, property or possessory interest taxes, and any City of Oakland business Tax with respect to this Master Lease or the Master Lessee Operations. The Port reserves the right, without being obligated to do so, to pay the amount of any such Taxes not timely paid by the Master Lessee, and the amount so paid by the Port shall be deemed Additional Rent hereunder, due and payable by the Master Lessee immediately upon demand by the Port. If the Master Lessee wishes at any time to dispute the lawfulness, applicability or amount of any Taxes, the Master Lessee shall comply with the Protest Conditions during such dispute with respect to such disputed Taxes. The Port hereby notifies the Master Lessee that the interest transferred to the Master Lessee pursuant to this Master Lease may be subject to property or possessory interest Taxes and the Master Lessee may be subject to the payment of property or possessory interest Taxes levied on the interest.

(b) The Master Lessee agrees timely to submit to appropriate taxing authorities all required reports, documents and notices with respect to its use, occupancy or ownership of the Premises or any goods, merchandise, fixtures, appliances, equipment or other property therein or used in connection with the Premises. The Master Lessee shall concurrently provide to the Port a full and complete copy of all such reports, documents and notices submitted to said taxing authorities, and within 15 days after the request of the Port the Master Lessee shall provide to the Port at no cost to the Port copies of all such reports, documents and notices.

(c) The Master Lessee shall furnish to the Port, upon request, copies of any receipts for the payments required to be made by the Master Lessee under this Section 13.1.

13.2 Payments by the Port. The Master Lessee acknowledges and agrees that if the Port is required under applicable Law to withhold a portion of any payment that the Port is obligated to make to the Master Lessee under this Master Lease, the Port will be deemed to have satisfied such payment obligation to the Master Lessee to the extent of such withholding by the Port.

**ARTICLE 14
INSURANCE**

14.1 Types and Amounts. The Master Lessee covenants and agrees with the Port to obtain, maintain and pay for, or cause to be obtained and maintained during the Term, and during such other time as the Master Lessee occupies, suffers, permits or allows any person to occupy the Premises (except to the extent expressly provided otherwise in this Section 14.1 below), insurance from insurance companies Financially Acceptable to the Port with respect to the Premises and the Master Lessee Operations as required under this Article against all risks as specified in this Article, including the following:

(a) General Liability Insurance. Commercial General Liability Insurance, including coverage for bodily injury and property damage, with such types of coverage and minimum coverage amounts as may be reasonably requested by the Port from time-to-time, but in no event for less than \$20,000,000 limit per occurrence, \$20,000,000 Annual General Aggregate, and \$20,000,000 Products and Completed Operations Aggregate, and in no event with less than the following coverages:

- (1) Premises and Operations Liability
- (2) Products and Completed Operations Liability
- (3) Blanket Contractual Liability
- (4) Personal and Advertising Injury Liability
- (5) Broad Form Property Damage Liability, including completed operations
- (6) Fire Legal Liability (\$1,000,000.00 sublimit)
- (7) Independent Contractors Liability

Such required insurance may be provided by a combination of primary and umbrella / excess liability insurance as long as such umbrella / excess insurance is following form to the underlying insurance.

(b) Employer's Liability Insurance. Employers Liability Insurance in respect of all the Master Lessee's employees, workers and servants engaged in any work in or upon the Premises in the amount of not less than \$1,000,000.00 each accident, each employee and policy limit for injury and disease.

(c) Workers' Compensation Coverage. Workers' Compensation Coverage in respect of all Master Lessee's employees, workers and servants engaged in any work in or upon the Premises in compliance with Law, including The Merchant Marine Act (Jones Act) and the U.S. Longshoreman and Harborworkers Act. Such policy or policies shall contain a waiver of subrogation in favor of the Port and the City.

(d) Terrorism. Subject to Section 14.12, terrorism insurance covering property and liability in respect of the Premises in the amount not less than \$20,000,000 for uncertified and certified (as specified under the Terrorism Risk Insurance Program Reauthorization Act) acts of terrorism.

(e) Property Insurance. Property insurance on an "all risk" or Special Form basis including flood coverage covering all buildings, contents, fixtures, Improvements and equipment (excluding only paving, pilings, parking lot curbs and landscaping and foundations below the lowest surface of the ground) on the Premises on a replacement cost basis with limits of 100% of the full replacement cost of such property, subject to market-based deductibles and sub-limits for catastrophic risks.

(f) Business Interruption Insurance. Business Interruption Insurance on an “all risk” or Special Form basis, which names the Port as loss payee with respect to (no less than 12 months) Rent payable to or for the benefit of the Port under this Master Lease.

(g) Business Automobile Insurance. Covering all owned, non-owned, hired and leased automobiles with limits of at least \$5,000,000 per occurrence.

(h) Insurance Required In Connection With the Master Lessee Improvements. During all periods that the Master Lessee Improvements are being constructed, such insurance types and amounts set forth on Exhibit I.

(i) Other Forms and Amounts of Insurance. Subject to Section 14.5, additional insurance and/or increased coverage minimums, if deemed necessary by the Port, shall be provided by the Master Lessee, at the sole cost of the Master Lessee. If requested by the Master Lessee, the Port shall provide an explanation as to the reasons for such additional insurance.

At the Port’s request, the Master Lessee agrees promptly to provide the Port a full and complete copy of each policy required to be maintained under this Master Lease. Each policy shall be subject to the approval of the Port, which approval shall not unreasonably be withheld. The Master Lessee’s obligations under this Article 14 are in addition to the Master Lessee’s obligations regarding insurance under Exhibit F.

14.2 The Master Lessee’s Failure to Carry Insurance. All insurance shall be in form and amounts specified in this Article 14 and Exhibit I. If the Master Lessee fails to obtain, maintain, or pay for any insurance as required herein, the Port may do so after notifying the Master Lessee of the Port’s intent to do so, and the Master Lessee shall, upon demand, reimburse the Port for any premiums incurred as a result thereof; such premiums incurred by the Port shall constitute, for purposes of this Master Lease, Additional Rent due from the Master Lessee and in arrears.

14.3 Terms and Conditions. The insurance policies obtained and maintained by the Master Lessee pursuant to this Article 14 and Exhibit I shall be in a form and with insurers reasonably acceptable to the Port, and, in addition to and not in substitution of the other terms and conditions required under this Article 14, contain the following terms and conditions:

(a) Property Insurance Endorsements. All property insurance policies shall contain an endorsement that the proceeds of any loss, damage, or destruction shall be paid pursuant to Article 15. All such insurance proceeds shall be applied in the restoration, reconstruction or replacement of the loss or damaged property for which such insurance moneys are payable hereunder in accordance with the applicable provisions of this Master Lease;

(b) Primary Policies. All insurance policies shall provide that they are primary and shall not call upon any contribution by any insurance (including self insurance) carried by the Port or the City;

(c) Additional Insureds. The Board and each of its Commissioners, officers, and employees shall be named by endorsement as additional insureds under the policies described in Sections 14.1(a), 14.1(d), and 14.1(e) and as insured under the policies described in Sections 14.1(f) and 14.1(g);

(d) No Cancellation, Modification or Reduction Without Notice. Each insurance policy required under this Article and Exhibit I shall contain a provision that the insurer shall provide the Port with 30 calendar days prior written notice of any cancellation or reduction of or material change to the policy;

(e) Waiver of Subrogation. Each property insurance policy, each Workers' Compensation policy, and each Employees Liability policy required under this Article and Exhibit I shall include a waiver of subrogation provision in favor of the Port and City; and

(f) Severability of Interest/Cross Liability Endorsement. Each liability insurance policy required under this Article and Exhibit I shall include a severability of interest or cross liability endorsement, reading generally as follows:

“Cross Liability: In the event of one of the assureds incurring liability to any other of the assureds, this policy shall cover the assured against whom claim is or may be made in the same manner as if separate policies had been issued to each assured. Nothing contained herein shall operate to increase underwriters' limit of liability.”

14.4 Deductibles, Co-Insurance and Self-Insured Retentions. Deductibles, co-insurance and self-insured retentions shall be in accordance with prevailing market conditions and practices from time-to-time, and subject to approval by the Port, which approval shall not be unreasonably withheld, delayed or conditioned; provided, however, that the Master Lessee agrees that it shall be reasonable in all cases for the Port to condition its approval of any deductible or self-insured retention in excess of \$100,000 (“unsecured amount”) on the Master Lessee's first depositing with the Port, for the sole benefit of the Port, a cash sum determined by the Port up to the amount of the deductible or self-insured retention in the Port's reasonable discretion, or posting a Letter of Credit in such amount, provided such Letter of Credit contains an automatic renewal provision, which shall guaranty the payment of any such deductible, co-insurance or self-insurance. The Port from time to time, but no more frequently than once a year, may adjust the unsecured amount by the percentage change between the last CPI Index published before the Execution Date and the last CPI Index published before such adjustment. The Master Lessee agrees that for any such deductible, co-insurance or self-insured retention amount, the Master Lessee shall provide to the Port defense and indemnification at least equal to the defense and indemnification to which the Port would be entitled as an additional insured had the Master Lessee provided the above specified coverages respectively, including under Insurance Services Office form number GL 0001, and Insurance Services Office form number CA 0001. It is understood that the Master Lessee's agreement to provide such defense and indemnification to the Port includes cases where such defense and indemnification would be required under said insurance policy forms for claimed loss, damage, injury or death which was caused solely by the active or passive negligence or other willful misconduct of the Port.

14.5 The Port's Right to Modify. The Port shall have the right to modify, delete, alter or change insurance coverage requirements set forth in this Article 14 and Exhibit I to reflect known material changes in insurance coverages for comparable maritime ports or operations comparable to the Master Lessee Operations or known material changes in insurance exposures associated with the Port, provided that the Master Lessee shall not have any obligation to procure or maintain at its cost any additional insurance unless an independent insurance consultant shall have delivered to the Master Lessee its opinion to the effect that the additional coverages are

required pursuant to the above-stated criteria and such additional coverages are commercially available at reasonable rates.

14.6 The Master Lessee Waives Right to Benefit from the Port's Insurance.

Except as otherwise expressly provided in Exhibit F and except with respect to insurance (if any) that the Port obtains on behalf of the Master Lessee, the costs for which the Master Lessee reimburses the Port, in the event the Port carries insurance concerning any property owned by the Port, either real or personal, permitted to be used by the Master Lessee under the terms of this Master Lease, the Master Lessee acknowledges and agrees that the Master Lessee shall not have the benefit of any such insurance and explicitly waives the right to any such benefit.

14.7 Evidence, Renewal, Acceptance and Valuation.

The Master Lessee shall deliver, prior to the Execution Date, evidence of all insurance policies described herein to the reasonable satisfaction of the Port, including certificates of insurance with declarations, schedule pages and all endorsements evidencing coverage and specifically including all required additional insured endorsements and a listing of policy exclusions. The Master Lessee shall provide to the Port at least 30 calendar days prior to the expiration of any such policy an endorsement showing that such insurance coverage has been renewed or replaced. Acceptance by the Port of such evidence of insurance shall not constitute agreement by the Port that the policy or policies are in compliance with the provisions of this Master Lease. At the Port's request, the Master Lessee shall promptly provide to the Port a full, true and complete copy of each policy required to be maintained hereunder. The Master Lessee shall further deliver to the Port copies of all valuations of new the Master Lessee Improvements and shall obtain increased coverage under all applicable insurance policies required hereunder for the new Master Lessee Improvements.

14.8 Preservation of Insurability.

The Master Lessee covenants and agrees that nothing will be done or omitted to be done by the Master Lessee or any party for whom it is responsible in Law as a result of which the Premises and/or the Master Lessee Improvements are rendered uninsurable.

14.9 Liability.

In the event that the Master Lessee fails to maintain insurance as required hereunder, or if the Master Lessee's insurance policy or policies prove to be defective in any form, the Master Lessee shall be held liable to the Port to the same extent as if it were the underwriter of such insurance policy or policies.

14.10 No Limitation on Indemnities by the Master Lessee.

The limits of insurance required to be carried by the Master Lessee hereunder, or actually carried by the Master Lessee, shall not define or limit the indemnity or other obligations of the Master Lessee under this Master Lease.

14.11 Inflation Adjustment.

The amounts of coverage required under this Article 14 shall be reviewed, and, if necessary, adjusted, each succeeding fifth anniversary of the Execution Date in accordance with then-prevailing market conditions.

14.12 Review of Commercial Availability.

At the Master Lessee's request, the Port shall review and determine, in its reasonable discretion, whether any required insurance under this Article 14 should be amended or waived because it is not available on commercially reasonable terms.

ARTICLE 15 DAMAGE OR DESTRUCTION

15.1 Obligations of the Master Lessee. If all or any part of any of the Premises shall be destroyed or damaged during the Term in whole or in part by fire or other casualty of any kind or nature (including any casualty for which insurance was not obtained or obtainable), ordinary or extraordinary, foreseen or unforeseen other than as a result of an earthquake (a “Casualty Event”), the Master Lessee shall: (a) give the Port written notice thereof promptly after the Master Lessee receives actual notice of such casualty; (b) at its sole cost and expense, whether or not insurance proceeds, if any, shall be available to pay for the estimated or actual cost of repairs, alterations, restorations, replacement and rebuilding (the “Casualty Cost”), proceed diligently to Restore the same (provided that the Master Lessee shall not be required to pay Casualty Costs outside of insurance proceeds to the extent directly related to a Casualty Event directly caused by the gross negligence or willful misconduct of the Port, or the Port’s Representatives, during the Term) in accordance with Article 10 provided that the Master Lessee shall not be required to comply with clauses (a), (h) and (n) of the Basic Conditions set forth in Section 7.2; and (c) deposit all insurance proceeds received by the Master Lessee in connection with a Casualty Event with a Depository to Restore the Premises; provided, however, that if at any time the Casualty Cost exceeds the net insurance proceeds actually deposited with the Depository, then the Master Lessee shall either (i) also deposit with the Depository such cash as is sufficient to cover the difference between the Casualty Cost and the net insurance proceeds (“Additional Casualty Cash”), or (ii) obtain payment or performance bonds in the full amount of the Additional Casualty Cash to cover the payment and performance of the Restoration and naming the Port, the Master Lessee and the Lender, as their interests may appear, as additional obligees and in form reasonably satisfactory to the Port (such bonds, together with such net insurance proceeds and any interest earned thereon, and the Additional Casualty Cash, the “Casualty Restoration Funds”).

The Port and the Master Lessee hereby waive the provisions of California Civil Code Sections 1932 and 1933, and of any other statutes which relate to termination of a lease when leased property is destroyed and agree that any Casualty Event shall be governed by the terms of this Master Lease.

15.2 Rights of the Port. In addition to the other remedies available to the Port that are set forth elsewhere in this Master Lease, the following remedies shall be available to the Port in the event of a Casualty Event:

(a) Expiration or Termination of Master Lease Prior to Completion of Any Restoration. In any case where this Master Lease shall expire or be terminated prior to the completion of the Restoration, the Master Lessee shall (i) promptly account to the Port for all amounts spent in connection with any Restoration which was undertaken, (ii) immediately pay over or cause the Depository to pay over to the Port the remainder, if any, of the Casualty Restoration Funds received by the Master Lessee or held by the Depository prior to such termination or cancellation, (iii) pay over or cause the Depository to pay over to the Port, within 5 Business Days after receipt thereof, any Casualty Restoration Funds received by the Master Lessee or the Depository subsequent to such termination or cancellation, and (iv) immediately pay over to the Port any outstanding Additional Casualty Cash that the Master Lessee should have deposited with the Depository prior to such termination or cancellation. Upon completion of and payment for the

Restoration, the Port shall return to the Master Lessee any unused portion of the Casualty Restoration Funds.

(b) Failure to Restore Following a Casualty Event.

(1) If, in the event of a Casualty Event, (A) the Master Lessee fails or neglects to commence the diligent Restoration of the Premises or the portion thereof so damaged or destroyed, or (B) having so commenced such Restoration, the Master Lessee fails to diligently complete the same in accordance with the terms of this Master Lease, then the Port may, by giving 60 calendar days' prior notice to the Master Lessee, subject to the rights of the Lender pursuant to Article 17 and the provisions set forth in Articles 22 and 26, terminate this Master Lease. Upon such termination, this Master Lease shall cease, the Term shall immediately become forfeited and void, and the provisions under Section 20.3 shall apply

(2) If, in the event of a Casualty Event, (A) the Master Lessee fails or neglects to commence the diligent Restoration of the Premises or the portion thereof so damaged or destroyed, (B) having so commenced such Restoration, the Master Lessee fails to diligently complete the same in accordance with the terms of this Master Lease, or (C) prior to the completion of any such Restoration by the Master Lessee, this Master Lease shall expire or be terminated in accordance with the terms of this Master Lease, then the Port may, but shall not be required to, complete such Restoration at the Master Lessee's expense and shall be entitled to be paid out of the Casualty Restoration Funds for the relevant Restoration costs incurred by the Port. Upon completion of and payment for the Restoration, the Port shall return to the Master Lessee any unused portion of the Casualty Restoration Funds.

The Master Lessee's obligations under this Section 15.2 shall survive the expiration or termination of this Master Lease.

15.3 Payment of Casualty Restoration Funds to the Master Lessee. Subject to the satisfaction by the Master Lessee of all of the terms and conditions of this Article 15, the Depository shall pay to the Master Lessee from time-to-time any Casualty Restoration Funds it holds, but not more than the amount actually collected by the Depository upon the loss, together with any interest earned thereon, after reimbursing itself therefrom, as well as the Port, to the extent, if any, of the reasonable expenses paid or incurred by the Depository and the Port in the collection of such monies, to be utilized by the Master Lessee solely for the Restoration, such payments to be made as follows:

(a) prior to commencing any Restoration, the Master Lessee shall furnish to the Port for its approval the estimated cost, estimated schedule and detailed construction and design plan for the completion of the Restoration, each prepared by an architect, engineer and general contractor;

(b) the Casualty Restoration Funds held by the Depository shall be paid to the Master Lessee in installments as the Restoration progresses, subject to Section 15.3(c), based upon requisitions to be submitted by the Master Lessee to the Depository and the Port in compliance with Section 15.4, showing the cost of labor and materials purchased for incorporation in the Restoration, or incorporated therein since the previous requisition, and due and payable or paid by the Master Lessee; provided, however, that if any Encumbrance is filed against the

Premises or any part thereof in connection with the Restoration, the Master Lessee shall not be entitled to receive any further installment until such Encumbrance is satisfied or discharged in accordance with Section 10.3 or contested by the Master Lessee in accordance with Section 10.4; provided further that notwithstanding the foregoing, but subject to the provisions of Section 15.3(c), the existence of any such Encumbrance shall not preclude the Master Lessee from receiving any installment of Casualty Restoration Funds held by the Depository so long as (i) such Encumbrance will be discharged with funds from such installment and at the time the Master Lessee receives such installment the Master Lessee delivers to the Port and the Depository a release of such Encumbrance executed by the lienor and in recordable form, or (ii) the Master Lessee in good faith contests the Encumbrance in accordance with Section 10.4 and has provided the security described in Section 10.4(e);

(c) the amount of each installment to be paid to the Master Lessee shall be the aggregate amount of Casualty Costs theretofor incurred by the Master Lessee minus the aggregate amount of Casualty Restoration Funds theretofor paid to the Master Lessee in connection therewith; provided, however, that all disbursements to the Master Lessee shall be made based upon an architect's or engineer's certificate for payment in accordance with industry standards, and disbursements may be made for advance deposits for material and contractors to the extent that such disbursements are customary in the industry and provided that the unapplied portion of the funds held by the Depository is sufficient to complete the Restoration; and

(d) except as provided in Section 15.2, upon completion of and payment for the Restoration by the Master Lessee, subject to the rights of any Lender, the Depository shall pay the balance of the Casualty Restoration Funds it holds, if any, to the Master Lessee; provided, however, that if the insurance proceeds are insufficient to pay for the Restoration (or if there shall be no insurance proceeds), the Master Lessee shall nevertheless be required to make the Restoration and provide the deficiency in funds necessary to complete the Restoration as provided in Section 15.1(c).

15.4 Conditions of Payment. The following shall be conditions precedent to each payment made to the Master Lessee as provided in Section 15.3:

(a) the Master Lessee shall have furnished the Port with estimates of costs and schedule and a detailed construction plan for the completion of the Restoration, as provided for in Section 15.3(a);

(b) at the time of making such payment, no Master Lessee Default exists;
and

(c) the Restoration shall be carried out in accordance with Article 10 provided that the Master Lessee shall not be required to comply with clauses (a), (h) and (n) of the Basic Conditions set forth in Section 7.2, and there shall be submitted to the Depository and the Port the certificate of the applicable architect or engineer stating that (i) the materials and other items which are the subject of the requisition have been delivered to the Premises (except with respect to requisitions for advance deposits permitted under Section 15.3(c)), free and clear of all Encumbrances, and no unsatisfied or unbonded mechanic's lien or other Encumbrances have been claimed, except for any mechanic's lien for claims that (A) will be discharged, by bonding or otherwise, with funds to be received pursuant to such requisition (provided that a release of such

Encumbrance is delivered to the Depository in accordance with Section 15.3(b), or (B) the Master Lessee in good faith contests the Encumbrance in accordance with Section 10.4 and has provided the security described in Section 10.4(e), (ii) the sum then requested to be withdrawn either has been paid by the Master Lessee or is due and payable to contractors, engineers, architects or other Persons (whose names and addresses shall be stated), who have rendered or furnished services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of such Persons in respect thereof, and stating in reasonable detail the progress of the work up to the date of such certificate, (iii) no part of such expenditures has been made the basis, in any previous requisition (whether paid or pending), for the withdrawal of Casualty Restoration Funds or has been made out of the Casualty Restoration Funds received by the Master Lessee, (iv) the sum then requested does not exceed the value of the services and materials described in the certificate, (v) the work relating to such requisition has been performed in accordance with this Master Lease, (vi) the balance of the Casualty Restoration Funds held by the Depository or available from other sources will be sufficient upon completion of the Restoration to pay for the same in full, and stating in reasonable detail an estimate of the cost of such completion, and (vii) in the case of the final payment to the Master Lessee, the Restoration has been completed in accordance with this Master Lease.

15.5 Payment and Performance Bonds. If the Master Lessee obtains payment or performance bonds related to a Restoration (which the Master Lessee may or may not obtain in its discretion), the Master Lessee shall name the Port, the Master Lessee and the Lender, as their interests may appear, as additional obligees, and shall deliver copies of any such bonds to the Port promptly upon obtaining them.

15.6 Benefit of the Port. The requirements of this Article 15 are for the benefit only of the Port, and no other Person shall have or acquire any claim against the Port as a result of any failure of the Port actually to undertake or complete any Restoration as provided in this Article 15 or to obtain the evidence, certifications and other documentation provided for herein.

15.7 Investment of Casualty Restoration Funds. Casualty Restoration Funds deposited with a Depository shall be invested and reinvested in Eligible Investments at the direction of the Master Lessee, and all interest earned on such investments shall be added to the Casualty Restoration Funds.

15.8 The Master Lessee's Right to Extend Term. If a Casualty Event has the effect of rendering the Premises substantially unavailable to the Master Lessee for a period in excess of 60 consecutive calendar days, then, so long as the Master Lessee is diligently proceeding to Restore the Premises as required under this Article 15, the Master Lessee shall have the right to extend the Term by such number of days that the Casualty Event continues beyond such 60 calendar days for the same number of days as the Premises are substantially unavailable thereafter, but in no event longer than 5 years and in no event shall such extension result in the Term being longer than 66 years, and subject to the Charter of the City of Oakland and other applicable Law ("Casualty Extension"). If the Master Lessee elects to exercise the right to the Casualty Extension, the Master Lessee shall give notice (the "Casualty Extension Notice") to the Port within 30 calendar days following the date on which the Master Lessee first became aware of its right to the Casualty Extension occurring setting forth the details of the

Casualty Event that results in the Premises being substantially unavailable. The Port shall, after receipt of the Casualty Extension Notice, be entitled by notice to require the Master Lessee to provide such further supporting documentation as the Port may reasonably consider necessary.

15.9 Cooperation. The Port shall cooperate with the Master Lessee and act in a reasonable and expedited manner in connection with any Restoration by the Master Lessee in connection with a Casualty Event, including, without limitation, an expedited review and response to all Documents and requests submitted by the Master Lessee in connection with the Restoration. The Parties agree to cooperate and coordinate so as to minimize any interference or delay with respect to the Master Lessee's Restoration and any restoration that may be occurring in other Port Areas.

ARTICLE 16 EMINENT DOMAIN

16.1 Obligations of the Master Lessee. If all or any part of any of the Premises shall be taken by any Governmental Authority, other than the Port, under the power or threat of eminent domain for any public use or purported public use during the Term (a "Taking Event"): (a) each Party shall give the other Party notice thereof promptly after such Party receives actual notice of such Taking Event; (b) the Master Lessee shall, at its sole cost and expense, whether or not condemnation or other similar proceeds, if any, shall be available to pay for the estimated or actual cost of repairs, alterations, restorations, replacement and rebuilding (the "Taking Cost"), proceed diligently to Restore the portions of the Premises that were not subject to the Taking Event in accordance with Article 10 provided that the Master Lessee shall not be required to comply with clauses (a), (h) and (n) of the Basic Conditions set forth in Section 7.2; and (c) the Master Lessee shall deposit with a Depository such portion of the condemnation or other similar proceeds received by the Master Lessee in connection with such Taking Event necessary to Restore the Premises as the Parties reasonably agree (the "Taking Restoration Funds"). The Master Lessee shall be entitled to claim, prove and receive in any condemnation proceedings such awards or other compensation for any loss or diminution in or of the Master Lessee Interest and the Master Lessee's trade fixtures and equipment located on the Premises, as may be allowed by the Governmental Authority effectuating such Taking Event; provided, however, that if the Governmental Authority effectuating a Taking Event is not the Port, then the Master Lessee's claim may not frustrate or adversely impact the Port's separate claims for compensation in connection with such Taking Event. If multiple claims with respect to such Taking Event are barred under applicable Law, the Parties shall reasonably cooperate in consolidating their separate claims.

16.2 Effect of a Taking Event on This Master Lease. In the event that the entire Premises are taken or so transferred, this Master Lease and all of the Master Lessee's right, title and interest thereunder shall cease on the date title to such property so taken or transferred vests in the Governmental Authority effectuating the Taking Event. In the event of a Taking Event where only a portion of the Premises is taken or so transferred, on the earlier of the date title to the portion of the Premises vests in such Governmental Authority, or the date on which such Governmental Authority takes possession of the portion of the Premises, (a) this Master Lease shall terminate with respect to the Port's and the Master Lessee's future obligations hereunder with respect to the portion of the Premises so taken, and (b) the Monthly Rent due hereunder from the Master Lessee to the Port for the remainder of the Term shall be equitably

reduced from and after such Taking Event to the extent the Master Lessee does not have full use of the Premises as a result of such Taking Event. If the Parties are unable to agree on the amount of the reductions within 60 calendar days after such Taking Event, the amount of the reductions shall be determined in accordance with the Dispute Resolution Procedure. Notwithstanding anything to the contrary herein, unless the Port is the Governmental Authority effectuating a Taking Event, the Port shall have no responsibility to pay to the Master Lessee, and shall not be liable for, any condemnation or other similar proceeds claimed or sought by the Master Lessee in connection with any Taking Event.

16.3 Rights of the Port. In addition to the other remedies available to the Port that are set forth elsewhere in this Master Lease, the following remedies shall be available to the Port in the event of a Taking Event, unless the Port is the Governmental Authority effectuating a Taking Event:

(a) Expiration or Termination of Master Lease Prior to Completion of Any Restoration. In any case where this Master Lease shall expire or be terminated prior to the completion of the Restoration, the Master Lessee shall (i) promptly account to the Port for all amounts spent in connection with any Restoration which was undertaken, (ii) immediately pay over or cause the Depository to pay over to the Port the remainder, if any, of the Taking Restoration Funds received by the Master Lessee or held by the Depository prior to such termination or cancellation, and (iii) pay over or cause the Depository to pay over to the Port, within 5 Business Days after receipt thereof, any Taking Restoration Funds received by the Master Lessee or the Depository subsequent to such termination or cancellation; and

(b) Material Taking Event. In the event of a Material Taking Event, the Port may, by giving 60 calendar days' prior notice to the Master Lessee, subject to the rights of the Lender pursuant to Article 17 and the provisions set forth in Articles 22 and 26, terminate this Master Lease. Upon such termination, this Master Lease shall cease, the Term shall immediately become forfeited and void, and the provisions under Section 20.3 shall apply.

The Port's rights under this Section 16.3 shall survive the expiration or termination of this Master Lease.

16.4 Rights of the Master Lessee. In addition to the other remedies available to the Master Lessee that are set forth elsewhere in this Master Lease, the following remedies shall be available to the Master Lessee in the event of a Taking Event:

(a) Taking Event Adversely Affecting the Premises. In the event of a Taking Event affecting only a portion of the Premises, leaving the remainder of the Premises in such location or in such form, shape or reduced size so as not to be effectively and practicably usable for its intended purpose in the good faith opinion of a Third Party expert reasonably satisfactory to the Port and the Master Lessee, the Master Lessee may, by giving notice to the Port within 60 calendar days after the occurrence of such Taking Event, subject to the rights of the Lender pursuant to Article 17 and the provisions set forth in Articles 22 and 26, terminate this Master Lease. Upon such termination, this Master Lease shall cease, the Term shall immediately become forfeited and void, and the provisions under Section 20.3 shall apply;

(b) Material Taking Event. In the event of a Material Taking Event, the Master Lessee may, by giving 60 calendar days' prior notice to the Port, subject to the rights of the Lender pursuant to Article 17 and the provisions set forth in Articles 22 and 26, terminate this Master Lease. Upon such termination, this Master Lease shall cease, the Term shall immediately become forfeited and void, and the provisions under Section 20.3 shall apply.

The Port's rights under this Section 16.4 shall survive the expiration or termination of this Master Lease.

16.5 Payment of Taking Restoration Funds to the Master Lessee. Subject to the satisfaction by the Master Lessee of all of the terms and conditions of this Article 16, the Depository shall pay to the Master Lessee from time-to-time any Taking Restoration Funds, but not more than the amount actually collected by the Depository upon the Taking Event, together with any interest earned thereon, after reimbursing itself therefrom, as well as the Port, to the extent, if any, of the reasonable expenses paid or incurred by the Depository and the Port in the collection of such monies, to be utilized by the Master Lessee solely for the Restoration, such payments to be made as follows:

(a) prior to commencing any Restoration, the Master Lessee shall furnish to the Port for its approval the estimated cost, estimated schedule and detailed plan for the completion of the Restoration, each prepared by an architect, engineer and contractor;

(b) the Taking Restoration Funds shall be paid to the Master Lessee in installments as the Restoration progresses, subject to Section 16.5(c), based upon requisitions to be submitted by the Master Lessee to the Depository and the Port in compliance with Section 16.6, showing the cost of labor and materials purchased for incorporation in the Restoration, or incorporated therein since the previous requisition, and due and payable or paid by the Master Lessee; provided, however, that if any Encumbrance is filed against the Premises or any part thereof in connection with the Restoration, the Master Lessee shall not be entitled to receive any further installment until such Encumbrance is satisfied or discharged in accordance with Section 10.3 or contested by the Master Lessee in accordance with Section 10.4; provided further that notwithstanding the foregoing, but subject to the provisions of Section 16.5(c), the existence of any such Encumbrance shall not preclude the Master Lessee from receiving any installment of Taking Restoration Funds so long as (i) such Encumbrance will be discharged with funds from such installment and at the time the Master Lessee receives such installment the Master Lessee delivers to the Port and the Depository a release of such Encumbrance executed by the lienor and in recordable form, or (ii) the Master Lessee in good faith contests the Encumbrance in accordance with Section 10.4 and has provided the security described in Section 10.4(e);

(c) the amount of each installment to be paid to the Master Lessee shall be the aggregate amount of Taking Costs theretofor incurred by the Master Lessee minus the aggregate amount of Taking Restoration Funds theretofor paid to the Master Lessee in connection therewith; provided, however, that all disbursements to the Master Lessee shall be made based upon an architect's or engineer's certificate for payment in accordance with industry standards, and disbursements may be made for advance deposits for material and contractors to the extent that such disbursements are customary in the industry and provided that the unapplied portion of the funds held by the Depository is sufficient to complete the Restoration; and

(d) except as provided in Section 16.3, upon completion of and payment for the Restoration by the Master Lessee, subject to the rights of any Lender, the Depositary shall pay the balance of the Taking Restoration Funds, if any, to the Master Lessee; provided, however, that if the condemnation or other similar proceeds are insufficient to pay for the Restoration (or if there shall be no insurance proceeds), the Master Lessee shall nevertheless be required to make the Restoration and provide the deficiency in funds necessary to complete the Restoration as provided in Section 16.1(c).

16.6 Conditions of Payment. The following shall be conditions precedent to each payment made to the Master Lessee as provided in Section 16.5:

(a) the Master Lessee shall have furnished the Port with estimates of costs and schedule and a detailed plan for the completion of the Restoration, as provided for in Section 16.5(a);

(b) at the time of making such payment, no Master Lessee Default exists;
and

(c) the Restoration shall be carried out in accordance with Article 10 provided that the Master Lessee shall not be required to comply with clauses (a), (h) and (n) of the Basic Conditions set forth in Section 7.2, and there shall be submitted to the Depositary and the Port the certificate of the applicable architect or engineer stating that (i) the materials and other items which are the subject of the requisition have been delivered to the Premises (except with respect to requisitions for advance deposits permitted under Section 16.5(c)), free and clear of all Encumbrances, and no unsatisfied or unbonded mechanic's lien or other Encumbrances have been claimed, except for any mechanic's lien for claims that (A) will be discharged, by bonding or otherwise, with funds to be received pursuant to such requisition (provided that a release of such Encumbrance is delivered to the Depositary in accordance with Section 16.5(b)), or (B) the Master Lessee in good faith contests the Encumbrance in accordance with Section 10.4 and has provided the security described in Section 10.4(e), (ii) the sum then requested to be withdrawn either has been paid by the Master Lessee or is due and payable to contractors, engineers, architects or other Persons (whose names and addresses shall be stated), who have rendered or furnished services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of such Persons in respect thereof, and stating in reasonable detail the progress of the work up to the date of such certificate, (iii) no part of such expenditures has been made the basis, in any previous requisition (whether paid or pending), for the withdrawal of Taking Restoration Funds or has been made out of the Taking Restoration Funds received by the Master Lessee, (iv) the sum then requested does not exceed the value of the services and materials described in the certificate, (v) the work relating to such requisition has been performed in accordance with this Master Lease, (vi) the balance of the Taking Restoration Funds held by the Depositary or available from other sources will be sufficient upon completion of the Restoration to pay for the same in full, and stating in reasonable detail an estimate of the cost of such completion, and (vii) in the case of the final payment to the Master Lessee, the Restoration has been completed in accordance with this Master Lease.

16.7 Payment and Performance Bonds. If the Master Lessee obtains payment or performance bonds related to a Restoration (which the Master Lessee may or may not

obtain in its discretion), the Master Lessee shall name the Port, the Master Lessee and the Lender, as their interests may appear, as additional obligees, and shall deliver copies of any such bonds to the Port promptly upon obtaining them.

16.8 Benefit of the Port. The requirements of this Article 16 are for the benefit only of the Port, and no other Person shall have or acquire any claim against the Port as a result of any failure of the Port actually to undertake or complete any Restoration as provided in this Article 16 or to obtain the evidence, certifications and other documentation provided for herein.

16.9 Investment of Taking Restoration Funds. Taking Restoration Funds deposited with a Depositary shall be invested and reinvested in Eligible Investments at the direction of the Master Lessee, and all interest earned on such investments shall be added to the Taking Restoration Funds.

16.10 Cooperation. The Port shall cooperate with the Master Lessee and act in a reasonable and expedited manner in connection with any Restoration by the Master Lessee in connection with a Taking Event, including, without limitation, an expedited review and response to all Documents and requests submitted by the Master Lessee in connection with the Restoration. The Parties agree to cooperate and coordinate so as to minimize any interference or delay with respect to the Master Lessee's Restoration and any restoration that may be occurring in other Port areas.

16.11 The Port's Reservation of Power of Eminent Domain. The Master Lessee acknowledges the Port's reserved power upon payment of just compensation to exercise its power of eminent domain as to the leasehold estate created hereunder; provided, however, that the foregoing acknowledgment shall not be deemed or construed to prejudice or waive any rights of the Master Lessee to challenge or object to any attempt by the Port so to exercise such power.

ARTICLE 17 MORTGAGE OF LEASEHOLD AND PROTECTION OF LENDER

17.1 Leasehold Mortgages. The Master Lessee shall have the right, at its sole cost and expense, to grant one or more (subject to Section 17.5) Leasehold Mortgages, if at the time any such Leasehold Mortgage is executed and delivered to the Lender, no Master Lessee Default exists, and upon and subject to the following terms and conditions:

(a) the Master Lessee has received the prior written approval from the Port that each such Leasehold Mortgage is in compliance with this Section 17.1;

(b) a Leasehold Mortgage may not cover any property of, or secure any debt issued or guaranteed by, any Person other than the Master Lessee for a Permitted Leasehold Mortgage Purpose;

(c) no Person other than an Institutional Lender shall be entitled to the benefits and protections accorded to a Lender in this Master Lease;

(d) no Leasehold Mortgage or other instrument purporting to mortgage, pledge, encumber or create an Encumbrance on or against any or all of the Master Lessee Interest shall extend to or affect the fee simple interest in the Premises, the Port's interest hereunder or its

reversionary interest and estate in and to the Premises or any part thereof, or adversely affect the rights or increase the liabilities or obligations of the Port except to the extent set forth in this Master Lease;

(e) the Port shall have no liability whatsoever for payment of the principal sum secured by any Leasehold Mortgage, or any interest accrued thereon or any other sum secured thereby or accruing thereunder;

(f) the Port shall have no obligation to any Lender except as expressly as set forth in this Master Lease and only with respect to such Lender that has provided the Port with notice of its Leasehold Mortgage in accordance with the Lender Notice Requirements;

(g) each Leasehold Mortgage shall provide that if an event of default under the Leasehold Mortgage has occurred and is continuing and the Lender gives notice of such event of default to the Master Lessee, then the Lender shall give concurrent notice of such default to the Port;

(h) subject to the terms of this Master Lease and except as specified herein, all rights acquired by a Lender under any Leasehold Mortgage shall be subject and subordinate to all of the provisions of this Master Lease and to all of the rights of the Port hereunder;

(i) notwithstanding any enforcement of the security of any Leasehold Mortgage, the Master Lessee shall remain liable to the Port for the payment of all sums owing to the Port under this Master Lease and the performance and observance of all of the Master Lessee's covenants and obligations under this Master Lease;

(j) a Lender shall not, by virtue of its Leasehold Mortgage, acquire any greater rights or interest in the Premises than the Master Lessee has at any applicable time under this Master Lease, other than such rights or interest as may be granted or acquired in accordance with Sections 17.1, 17.2, 17.3, or 17.4; and

(k) prior to the effective date of a Leasehold Mortgage, each Lender, the Port and the Master Lessee shall enter into a consent agreement in a form acceptable to all parties whereby all parties consent to the assignment of the Leasehold Mortgage to an agent in connection with the financing of the Leasehold Mortgage; provided that such consent agreement shall be in a customary form, include the exact rights and protections provided to the Lender in this Master Lease, acknowledge that the Master Lessee shall remain liable to the Port for the payment of all sums owing to the Port under this Master Lease and the performance and observance of all of the Master Lessee's covenants and obligations under this Master Lease and provide that the Lender shall promptly cause to be recorded in the County Recorder's Office of Alameda County a reconveyance and release of the Leasehold Mortgage upon the end of its term.

The Master Lessee shall promptly provide the Port with a fully executed complete copy of each Leasehold Mortgage and any and all amendments thereto.

17.2 Lender's Right to Cure. The Lender shall have a period of 60 calendar days with respect to any Master Lessee Default other than monetary defaults, and 30 calendar days

with respect to any monetary default, beyond any cure period expressly provided to the Master Lessee under Section 20.1(a), in which to cure or cause to be cured any such Master Lessee Default; provided, however, that such 60-day period shall be extended if the Master Lessee Default is non-monetary (and there be no monetary the Master Lessee Default), is not a Master Lessee Default described in Section 20.1(c) or (d) and may be cured but cannot reasonably be cured within such period of 60 calendar days, and the Lender begins to cure such default within such 60-calendar day period (or if possession is necessary in order to effect such cure, the Lender, within such 60-calendar day period, files the appropriate legal action to commence foreclosure on the liens of the Leasehold Mortgage or take other appropriate action to commence a transfer of title to the relevant property) and thereafter proceeds with all due diligence to cure such Master Lessee Default (including by proceeding with all due diligence to effect such foreclosure and during such foreclosure action (to the extent practicable) and thereafter to effect such a cure) within a reasonable period acceptable to the Port, acting reasonably, but in no event longer than 90 additional calendar days. If a Lender is acting to cure a Master Lessee Default in accordance with this Section 17.2 then the Port shall refrain from exercising its right to terminate this Master Lease by reason of such Master Lessee Default; provided, however, that the Port may exercise any of its other rights and remedies provided for hereunder at law or in equity so long as the exercise of such rights does not interfere with the Lender's rights hereunder. In furtherance of the foregoing, the Port shall permit the Lender and its Representatives the same access to the Premises as is permitted to the Master Lessee hereunder; provided that any actions taken by a Lender or its Representatives pursuant to this Section 17.2 shall be undertaken in accordance with and conditioned upon satisfaction of the provisions of this Master Lease that would be applicable to the Master Lessee were it taking such actions (including, without limitation, indemnities and insurance in favor of the Port). The Port shall accept any such performance by a Lender or its nominee as though the same had been done or performed by the Master Lessee. Any payment to be made or action to be taken by a Lender hereunder as a prerequisite to keeping this Master Lease in effect shall be deemed properly to have been made or taken by the Lender if such payment is made or action is taken by a nominee, agent or assignee of the rights of such Lender. Any exercise of the Lender's rights to cure hereunder shall not result in the assumption by such Lender of the Master Lessee's obligations hereunder. To the extent that the Leasehold Mortgage grants to the Lender rights and privileges less favorable than those specified above, the Lender shall be limited to the less favorable rights and privileges granted under such Leasehold Mortgage.

17.3 Rights of the Lender.

(a) Subject to the provisions of this Master Lease and any Leasehold Mortgage, a Lender may (i) enforce any Leasehold Mortgage in any lawful way, (ii) acquire the Master Lessee Interest in any lawful way, or (iii) take possession of in any lawful way and manage the Premises. Upon foreclosure of the Leasehold Mortgage (or without foreclosure upon exercise of any contractual or statutory power of sale under such Leasehold Mortgage or an assignment in lieu) and subject to the provisions of Article 18 (applied to the Lender as if it were the Master Lessee), a Lender may transfer or assign the Master Lessee Interest; provided, however, that no transfer or assignment by a Lender shall be effective unless the transfer or assignment is made in accordance with Article 18. Any Person to whom the Lender transfers or assigns the Master Lessee Interest (including such Lender) shall take the Master Lessee Interest subject to any of the Master Lessee's obligations under this Master Lease (including the obligations to (A) comply with all applicable Laws with respect to the Premises and (B) maintain in full force and effect all

Authorizations necessary to carry on its business pertaining to the Premises). The Lender is not permitted in connection with its enforcement of its lien to do anything that would materially and adversely affect the Premises or the Master Lessee Operations.

(b) Except as provided in Section 17.2, unless and until a Lender (other than a Lessor, so long as the Master Lessee, as the lessee of the Lessor, remains responsible for all of the obligations of the Master Lessee under this Master Lease as its lessee) (i) forecloses or has otherwise taken ownership of the Master Lessee Interest or (ii) has taken possession or control of the Master Lessee Interest, whether directly or by an agent as a mortgagee in possession or a receiver or receiver and manager has taken possession or control of the Master Lessee Interest by reference to the Leasehold Mortgage, the Lender shall not be liable for any of the Master Lessee's obligations under this Master Lease or be entitled to any of the Master Lessee's rights and benefits contained in this Master Lease, except by way of security under the Leasehold Mortgage. During any period in which the Lender itself or by an agent or a receiver or a receiver and manager is the owner, or is in control or possession, of the Master Lessee Interest, it shall be bound by all liabilities and obligations of the Master Lessee accruing under this Master Lease during such period. Once the Lender goes out of possession or control of the Master Lessee Interest or transfers or assigns the Master Lessee Interest to another Person in accordance with the provisions of this Master Lease, the Lender shall cease to be liable for any of the Master Lessee's obligations under this Master Lease accruing thereafter, and to the extent assumed by any transferee, assignee or any other Person acceptable to the Port, for any of the Master Lessee's obligations under this Master Lease accrued during the period in which the Lender itself or by an agent or a receiver and manager was the owner, or was in control or possession, of the Master Lessee Interest, and shall cease to be entitled to any of the Master Lessee's rights and benefits contained in this Master Lease, except, if the Leasehold Mortgage remains outstanding, by way of security.

17.4 The Port's Termination of this Master Lease; New Master Lease.

(a) Without prejudice to the rights of a Lender under Section 17.2, if this Master Lease is terminated pursuant to Section 20.2(a) due to a Master Lessee Default (in which case the Port shall notify the Lender of such termination and deliver to the Lender, together with such notice, a Statement of Estimated Liabilities) or if this Master Lease is rejected or disaffirmed pursuant to any bankruptcy Law or proceeding or other similar Law or proceedings affecting creditors' rights generally with respect to a bankruptcy proceeding relating to the Master Lessee or otherwise, the Port agrees, if there are outstanding obligations to a Lender, to enter into a new master lease agreement of the Premises (the "New Master Lease") with the Lender (or its designee or nominee; provided that such designee or nominee either is controlled by the Lender or is approved by the Port under and otherwise complies with Article 18) for the remainder of the Term upon all of the covenants, agreements, terms, provisions and limitations of this Master Lease, effective as of the Termination Date. The Port's obligation to enter into a New Master Lease pursuant to the preceding sentence is subject to the satisfaction of all of the following requirements and conditions: (i) such Lender commits in writing to the Port, in a notice delivered to the Port, within 30 calendar days after the Port delivers the termination notice and Statement of Estimated Liabilities to the Lender (or, if later, upon the termination of any cure period granted to the Lender pursuant to Section 17.2) or within 10 calendar days after the effective date of such rejection or disaffirmance, as the case may be, that the Lender (or its designee or nominee) will enter into the New Master Lease, which notice is accompanied by a copy of such New Master Lease, duly executed and acknowledged by the Lender (or its designee or nominee); (ii) reasonably in advance

of the execution of the New Master Lease, the Lender (or its designee or nominee) pays or causes to be paid to the Port, at the time of the execution and delivery of such New Master Lease, (A) all amounts set forth in the Statement of Estimated Liabilities which, at the time of the execution and delivery thereof, would have been past-due or due and payable in accordance with the provisions of this Master Lease but for such termination and (B) all reasonable costs and expenses (including legal fees), Taxes, fees, charges and disbursements set forth in the Statement of Estimated Liabilities paid or incurred by the Port in connection with such defaults and termination, the recovery of possession from the Master Lessee, and the preparation, execution and delivery of the New Master Lease and related agreements; and (iii) such Lender (or its designee or nominee), at the time of such written request, cures all Master Lessee Defaults under this Master Lease (curable by the payment of money) that are existing immediately prior to the Termination Date set forth in the Statement of Estimated Liabilities, or, if such defaults cannot be cured by the payment of money, such Lender (or its designee or nominee) commits to the Port in the New Master Lease to proceed both promptly and diligently, upon the execution of the New Master Lease, to cure all such other Master Lessee Defaults (to the extent curable) set forth in the Statement of Estimated Liabilities and, if possession is necessary in order to cure such other Master Lessee Defaults, to proceed both promptly and diligently to obtain the possession required to cure any such other defaults to the extent curable (and such cure shall be a covenant in the New Master Lease). The omission from a Statement of Estimated Liabilities of (1) any amounts payable to the Port under this Master Lease, (2) any unperformed obligations of the Master Lessee hereunder or (3) any other costs of the Port shall not excuse the payment of such amounts or costs or the performance of such unperformed obligations.

(b) Nothing contained in this Section 17.4 shall be deemed to limit or affect the Port's interest in and to the Premises upon the Termination Date of the New Master Lease. The provisions of this Section 17.4 shall survive the termination of this Master Lease and shall continue in full force and effect thereafter to the same extent as if this Section 17.4 were a separate and independent contract made by the Port, the Master Lessee and the Lender and, if the Lender satisfies the conditions to a New Master Lease from the Termination Date of this Master Lease to the date of execution and delivery of the New Master Lease, the Lender may use and enjoy the leasehold estate created by this Master Lease (and all other rights and benefits provided to the Master Lessee hereunder) without hindrance by the Port, but only on and subject to the terms and provisions of this Master Lease.

17.5 Recognition by the Port of Lender. Notwithstanding anything in this Master Lease to the contrary, if there is more than one Lender, only that Lender, to the exclusion of all other Lenders, whose notice was earliest received by the Port pursuant to the Lender Notice Requirements, shall have the rights as a Lender under this Article 17, or otherwise under this Master Lease, unless such Lender has designated in writing another Lender to exercise such rights; provided, however, that such notice may name more than one Lender and the rights referred to in this Section 17.5 may extend to all Lenders named therein if such notice is submitted by a representative of all such Lenders (which representative may itself be a Lender).

17.6 The Port's Right to Purchase Leasehold Mortgage.

(a) If (i) any event of default by the Master Lessee has occurred under a Leasehold Mortgage and is continuing and (ii) the Lender recognized by the Port pursuant to Section 17.5 is entitled, pursuant to the intercreditor arrangements then in force and effect, to

declare all or part of the indebtedness secured by a Leasehold Mortgage to be immediately due and payable (or, in the case of a Leasehold Mortgage that is a lease, to terminate the lease), then the Port shall have 30 calendar days commencing on the date that 10 calendar days after the date on which such Lender shall serve notice upon the Port in writing (“Lender’s Notice”) with a copy to all other Lenders that such Lender intends and is entitled to, pursuant to the intercreditor arrangements then in force and effect, to commence proceedings to foreclose the Leasehold Mortgage or, in the case of a Lender that is a Lessor to terminate the lease (stating the calculation of the purchase price pursuant to Section 17.6 (c)), during which 30-day period the Port shall have the right and option (the “Port’s Option”) to purchase from all Lenders their Leasehold Mortgages, upon the terms and subject to the conditions contained in this Section 17.6.

(b) The Port’s Option shall be exercised by written notice served upon the Master Lessee and all Lenders within such 30-day period. Time shall be of the essence as to the exercise of the Port’s Option. If the Port’s Option is duly and timely exercised, the Port shall purchase all Leasehold Mortgages and all Lenders shall assign their Leasehold Mortgages to the Port (or its designee) on the date which is 60 calendar days after the date on which a Lender’s Notice is served upon the Port. The closing shall take place at a mutually convenient time and place.

(c) The purchase price payable by the Port shall be 100% of the aggregate amounts secured by or due under such Leasehold Mortgages (including principal, interest, fees, premiums, breakage, termination value or similar obligations (with respect to a Leveraged Lease) and other costs and expenses (including attorneys’ fees) and any other amounts secured thereby or due thereunder) as of the closing date of the purchase. The purchase price shall be paid in full in cash at closing by wire transfer or other immediately available funds. The purchase price shall be paid by the Port to each respective Lender, to be applied by the Lender to the amounts secured by the Leasehold Mortgage owed to such Lender, subject to the priorities of lien of such Leasehold Mortgages.

(d) At the closing and upon payment in full of the purchase price specified in Section 17.6 (c), each Lender shall assign its Leasehold Mortgage to the Port, together with any security interest held by it in the Master Lessee’s leasehold interest in the Premises, without recourse, representations, covenants or warranties of any kind, provided that such Leasehold Mortgages and security interests shall be deemed modified to secure the amount of the aggregate purchase price paid by the Port to all Lenders (rather than the indebtedness theretofore secured thereby) payable on demand, with interest and upon the other items referred to in this Section 17.6 (d). Each such assignment shall be in form for recordation or filing, as the case may be. The Port shall be responsible for paying any Taxes payable to any Governmental Authority upon such assignment. Such assignment shall be made subject to such state of title of the Premises as shall exist at the date of exercise of the Port’s Option.

(e) Any Leasehold Mortgage shall contain an agreement of the Lender to be bound by the provisions of this Section 17.6.

(f) The Port shall have the right to receive (and each Leasehold Mortgage shall contain an agreement of the Lender to deliver) all notices of default under any Leasehold Mortgage contemporaneously with the delivery of such notices to the Master Lessee, but

the Port shall not have the right to cure any default under any Leasehold Mortgage, except to the extent provided in this Section 17.6.

ARTICLE 18
ASSIGNMENT, SUBLETTING AND OTHER TRANSFERS

18.1 Assignment, Subletting and Other Transfers.

(a) General.

(1) This Master Lease is personal to the Master Lessee. The Master Lessee shall not sell, convey, assign, sublease, license, mortgage, encumber, transfer or otherwise dispose of this Master Lease, any interest herein or the Premises, or otherwise permit any of the same, or suffer any other person or entity to occupy, use or manage (except management by the Master Lessee's employees) the Premises (each, a "Transfer"), without (unless to a Lender as permitted under Article 17), (i) the prior written consent of the Port, as evidenced by resolution of the Board, which consent may be withheld if, in the Port's sole view, consent may result in any adverse financial impact to the Port or if there are otherwise reasonable grounds for withholding consent, and which consent may be reasonably conditioned, including upon satisfaction of those conditions set forth in this Article 18, and (ii) the proposed transferee first entering into an agreement with the Port in form and substance satisfactory to the Port, acting reasonably, wherein (A) such transferee acquires such rights and assumes such obligations of the Master Lessee to be Transferred and agrees to perform and observe all such obligations and covenants of the Master Lessee under this Master Lease to be Transferred; (B), the terms of the Transfer agreement (including, but not limited to, any lease, sublease, license or other agreement governing the Transfer, the "Transfer Agreement") be construed in a fashion consistent with the Master Lease; (C) all parties to the Transfer Agreement acknowledge and agree that such Transfer Agreement is entered into for their benefit and for the express benefit of the Port; (D) the Transfer Agreement may not be modified, altered or amended without the express written consent of the Port; and (E) the Port is entitled to rely upon the Transfer agreement, receive the benefits conferred by the Transfer Agreement, and enforce against any Party thereto any provision of the Transfer Agreement.

(2) Without limiting the foregoing, the following shall be deemed to be a Transfer of this Master Lease subject to this Article: (A) any Change in Control of the Master Lessee; (B) any pledge, mortgage, assignment or other security arrangement of this Master Lease or the direct or indirect ownerships interest in the Master Lessee, other than a Leasehold Mortgage as permitted under Article 17; and (C) any amalgamation, arrangement, reorganization or other business combination agreement between the Master Lessee and any Person, other than an Equity Participant or any parent, subsidiary or Affiliate of the Master Lessee. No modification of a Transfer after the Port's initial consent shall be effective without the prior written approval of the Port.

(3) Neither this Master Lease nor any interest therein or right granted thereby shall be assignable or transferable in proceedings in attachment, garnishment or execution against the Master Lessee, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against the Master Lessee or by any process of Law, and possession of the whole or any part of the Premises shall not be divested from the Master Lessee in

such proceedings or by any process of Law, without the prior written consent of the Port evidenced by resolution of the Board. The Master Lessee hereby expressly agrees that the validity of the Master Lessee's liabilities as a principal hereunder shall not be terminated, affected, diminished or impaired by reason of the assertion or the failure to assert by the Port against any Transferee of any of the rights or remedies reserved to the Port pursuant to the this Master Lease or by relief of any Transferee from any of the Transferee's obligations under this Master Lease or otherwise by (a) the release or discharge of any Transferee in any creditors' proceedings, receivership, bankruptcy or other proceedings, (b) the impairment, limitation or modification of the liability of any Transferee or the estate of any Transferee in bankruptcy, or of any remedy for the enforcement of any assignee's liability under this Master Lease, resulting from the operation of any present or future provision of the National Bankruptcy Act or other statute or from the decision in any court; or (c) the rejection or disaffirmance of this Master Lease in any such proceedings.

(4) Any Transfer made in violation of the foregoing provision shall be null and void ab initio and of no force and effect. Notwithstanding anything herein to the contrary, if a Transfer occurs with or without the Port's consent, the Port may collect from such assignee, subtenant, occupant or reconstituted the Master Lessee, any Rent under this Master Lease and apply the amount collected to the Rent, but such collection by the Port shall not be deemed a waiver of the provisions of this Master Lease, nor an acceptance of such assignee, subtenant, occupant or reconstituted the Master Lessee, as the Master Lessee of the Premises.

(5) Unless specifically approved in writing by the Board, no Transfer, either with or without the Master Lessee's consent, required or otherwise, will relieve or release the Master Lessee from the primary obligation to perform all of the terms, covenants and conditions of, or liabilities under, this Master Lease.

(6) Notwithstanding anything in this Master Lease to the contrary, any breach of the provisions of this Section shall constitute a material default and shall cause this Master Lease to terminate immediately at the option of the Port after not less than 30 calendar days' notice to the Master Lessee.

(7) The Master Lessee agrees that as a condition to the Port's consideration of any request by the Master Lessee for approval of a Transfer that the Master Lessee shall deliver to the Port a nonrefundable processing fee of not less than \$5,000. The Port within 10 days of receipt of said fee may give to the Master Lessee notice that said fee shall be increased by a sum, not to exceed an additional \$5,000 (unless the Port's actual costs for processing such Transfer approval request is greater than \$10,000, then such additional sum may be greater than \$5,000 but in no event greater than \$50,000), that the Port in its discretion determines is necessary to cover the anticipated the Port administrative costs and expenses, including labor, in processing and investigating the Master Lessee's request. The Master Lessee agrees that unless and until said fee, and any request for such additional fee, is delivered to the Port, the Master Lessee shall be deemed to have made no request to the Port to assign or sublease. The minimum and maximum fees shall be adjusted upon the commencement of each successive year of this Master Lease, in the same percentage as the change in last CPI Index published prior to the date of each succeeding 1 year period from the last such index published prior to the commencement of the Term; provided that in no event shall the adjusted fees be less than the theretofore existing fees.

(b) Transferee Information. The Master Lessee agrees to provide the Port with all relevant Documents and information concerning any proposed transferee (“Transferee”) and Transfer that the Port reasonably requests or may be relevant for its consideration in determining whether to grant its consent to such proposed Transfer, including:

- (1) the name of the proposed Transferee;
- (2) the capitalization of the proposed Transferee (which may not have a net worth less than the Master Lessee’s as of the Execution Date);
- (3) the terms of the proposed Transfer, including without limitation the full consideration for such Transfer;
- (4) the nature of proposed Transferee’s business to be carried on in the Premises, and a copy of the proposed Transferee’s business and marketing plan;
- (5) a balance sheet of the proposed Transferee certified by such Transferee’s Chief Financial Officer as of a date within at least 90 days of the request for the Port’s consent;
- (6) statements of income or profit and loss of the proposed Transferee (or the principals thereof, in the case of a newly formed entity) certified by such Transferee’s Chief Financial Officer for the 2 year period preceding the request for the Port’s consent;
- (7) a statement in reasonable detail as to the business experience of the proposed Transferee (or the principals thereof, in the case of a newly formed entity) during the 5 year period preceding the request for the Port’s consent; and
- (8) such other information and Documents relating to the proposed Transferee’s business, experience and finances as the Port may reasonably request.

(c) Delivery of Final Transfer Agreements. It is understood and agreed that the Port’s consent to a requested Transfer, shall be conditioned upon the Port’s receipt of each of the following:

- (1) In the case of a proposed assignment, a full and complete executed copy of all Documents to effectuate the assignment, together with a document in recordable form whereby the proposed assignee shall expressly assume all the covenants and conditions of this Master Lease.
- (2) In the case of a proposed sublease, a full and complete copy of the executed sublease, which sublease shall contain, if requested by the Port, a provision subject to the prior rights of any Lender, satisfactory to the Port, requiring Sub-Lessee at the Port’s option to attorn to the Port if the Master Lessee defaults under this Master Lease and if the Sub-Lessee is notified of the Master Lessee’s default and instructed to make Sub-Lessee’s rental payments to the Port. The Port shall have no obligation to recognize any Sub-Lessee after the Master Lessee’s default unless and until the Port, at the Port’s option, signs a recognition and attornment agreement among the Port, the Master Lessee and the Sub-Lessee. The Master Lessee shall not accept,

directly or indirectly, more than 3 months' prepaid rent from any Sub-Lessee and said copy of the executed sublease shall recite this restriction and Sub-Lessee's acknowledgment of the same. In the case of any other proposed Transfer, a full and complete executed copy of the Transfer Agreement and all Documents to effectuate the Transfer, which Documents shall incorporate directly or by reference all of the provisions of this Master Lease.

(d) The Master Lessee as Party is Material Consideration to Master Lease.

(1) The Master Lessee and the Port acknowledge and agree that the rights retained by and granted to the Port pursuant to this Article constitute a material part of the consideration for entering into this Master Lease and constitute a material and substantial inducement to the Port to enter into this Master Lease at the rental, for the terms, and upon the other covenants and conditions contained in this Master Lease, and that the acceptability of the Master Lessee, and of any Transferee of any right or interest in this Master Lease, involves the exercise of broad discretion by the Port in promoting commerce, navigation and shipping in the Port Area. Therefore, the Master Lessee agrees that the Port may condition its consent, if required hereunder to a proposed subletting or assignment, subject to such provisions as are reasonable to protect the rights and interest of the Port hereunder and to assure promotion of commerce, navigation and shipping.

(2) The Master Lessee agrees that its personal business skills and philosophy were an important inducement to the Port for entering into this Master Lease and that the Port may reasonably object to the Transfer to a proposed Transferee whose proposed use, while permitted under Section 4.1, would involve a different quality, manner or type of business skills than that of the Master Lessee, or which would result in the imposition upon the Port of any new or additional requirements under the provisions of any Law, including any Law regarding disabled or handicapped persons, such as the Americans With Disabilities Act of 1990.

(e) Assignment of Transferee Rent. The Master Lessee immediately and irrevocably hereby assigns to the Port, as security for the Master Lessee's obligations under this Master Lease, all rent from any Transfer involving subletting, licensing or the like, of all or a part of the Premises, and the Port, as assignee and as attorney-in-fact for the Master Lessee, or a receiver for the Master Lessee appointed on the Port's application, may collect such rent and apply it toward the Master Lessee's obligations under this Master Lease; provided, however, that, until the occurrence of an act of default by the Master Lessee and the expiration of all applicable cure periods, the Master Lessee shall have the right to collect such rent.

(f) No Transfer During Construction. The Master Lessee represents and agrees that its master lease of the Premises and its other undertakings pursuant to this Master Lease are, and will be used, for the purpose of developing the Premises and not for speculation in landholding. The Master Lessee further recognizes that, in view of:

(1) the importance of the development of the Premises to the general welfare of the community, and to the promotion and accommodation of trade, commerce and navigation at the Port;

(2) the substantial financial and other commitments that have and will be made by the Port for the purpose of making development of the Premises possible;

(3) the public interest guiding the Port in its selection of the Master Lessee as the master lessee and developer of the Premises and the fact that a change in ownership or control of the Master Lessee is for practical purposes a transfer or disposition of the Premises; and

(4) the fact that the Premises is not to be acquired or used for speculation, but only for development and operation by the Master Lessee in accordance with this Master Lease, the qualifications and identity of the Master Lessee, and its principals, are of particular concern to the community and the Port. The Master Lessee further recognizes that it is because of such qualifications and identity that the Port is entering into this Master Lease with the Master Lessee. Therefore, notwithstanding any provision of this Master Lease to the contrary, prior to Completion of Construction of all of the Project Improvements, no Transfer in this Master Lease (except solely Transfer resulting from death, mental or physical incompetence or incapacity, judicial foreclosure, trustee's sale or deed or assignment in lieu of foreclosure in connection with a Leasehold Mortgage entered into in accordance with Article 17) shall occur or be valid or effective without the Port's consent in its sole and absolute discretion. "Completion of Construction" means the recordation of a valid notice of completion, or the issuance of a certificate of occupancy for all buildings on the Premises that are part of the Project Improvements.

ARTICLE 19 ENVIRONMENTAL PROVISIONS

The provisions of Exhibit F shall apply with respect to matters relating to the Premises and the Environment. Notwithstanding anything in this Master Lease to the contrary, Response Actions relating to Contamination shall be performed by the Party so identified to do so in Exhibit F, and the cost for such Response Actions shall be borne by the Party so identified to so bear such costs in Exhibit F. To the extent there is a conflict between the provisions of the Master Lease and Exhibit F, the terms of Exhibit F shall control.

ARTICLE 20 MASTER LESSEE DEFAULT; REMEDIES

20.1 The Master Lessee Default. The occurrence of any one or more of the following events during the Term shall constitute a "Master Lessee Default" under this Master Lease:

(a) if the Master Lessee fails, in any material respect, to comply with, perform or observe,

(1) any obligation, covenant, agreement, term or condition in this Master Lease (including, without limitation, the failure to comply with applicable permits issued, whether conditionally or unconditionally, by Governmental Authorities), and such failure continues unremedied for a period of,

(A) 30 calendar days following notice thereof in all cases (other than a failure to pay monetary sums, including, without limitation, Rent, or to provide Guaranty Funds), or for such longer period as may be reasonably necessary to cure such failure, but in no event longer than 90 calendar days; provided that if a longer period is reasonably necessary, the Master Lessee has demonstrated to the reasonable satisfaction of the Port that (A) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure, (B) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period acceptable to the Port, in its reasonable discretion, and (C) such failure is in fact cured within such period, or

(B) 5 Business Days following notice thereof after a failure to pay monetary sums, including, without limitation, Rent, or to provide Guaranty Funds. In the event that the Port serves the Master Lessee with a Notice to Pay Rent or Quit pursuant to applicable Unlawful Detainer statutes such Notice to Pay Rent or Quit shall also constitute the notice required by this Section 20.1(a)(1)(B);

(2) the requirements or directives of a final, non-appealable judgment or award entered or stipulated in a matter submitted to the Dispute Resolution Procedure, and such failure continues unremedied for a period of 30 calendar days following notice thereof in all cases;

(b) the occurrence of a Transfer in contravention of Article 18;

(c) if the Master Lessee (i) admits, in writing, that it is unable to pay its debts as such become due, (ii) makes an assignment for the benefit of creditors, (iii) files a voluntary petition under Title 11 of the United States Code, or if the Master Lessee files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future United States bankruptcy code or any other present or future applicable Law, or shall seek or consent to, acquiesce in, or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Master Lessee, or of all or any substantial part of its properties or of the Premises or any interest therein, or (iv) takes any corporate action in furtherance of any action described in this Section 20.1(c);

(d) if within 60 calendar days after the commencement of any proceeding against the Master Lessee seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future United States bankruptcy code or any other present or future applicable Law, such proceeding has not been dismissed, or if, within 60 calendar days after the appointment, without the consent or acquiescence of the Master Lessee, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Master Lessee or of all or any substantial part of its properties or of the Premises or any interest therein, such appointment has not been vacated or stayed on appeal or otherwise, or if, within 60 calendar days after the expiration of any such stay, such appointment has not been vacated;

(e) if a levy under execution or attachment has been made against all or any material portion of the Premises or any interest therein as a result of any Encumbrance created, incurred, assumed or suffered to exist by the Master Lessee or any Person claiming through it, and

such execution or attachment has not been vacated, removed or stayed by court order, bonding or otherwise within a period of 60 calendar days, unless such levy resulted from actions or omissions of the Port;

(f) upon the occurrence of any event giving rise to an express termination right in favor of the Port after the Master Lessee's breach or other failure under this Master Lease;

(g) upon the Master Lessee's failure to commence construction of the Project Improvements on or before the identified commencement of construction set forth in the Approved Construction Schedule, or Final Construction Schedule, if applicable,

(h) if the Premises are deserted or abandoned by the Master Lessee for 90 consecutive calendar days in circumstances not otherwise constituting a Force Majeure Event; or

(i) The discovery by the Port that any material representation or financial statement given to the Port by the Master Lessee or any Transferee was materially false.

20.2 Remedies. Upon the occurrence of and during the continuance of a Master Lessee Default, the Port may, by written notice to the Master Lessee, in accordance with the terms hereof, declare the Master Lessee to be in default and may, subject to the rights of the Lender pursuant to Article 17 and the provisions set forth in Section 20.3 and Articles 22 and 26, do any or all of the following as the Port, in its sole discretion, shall determine:

(a) Terminate the Master Lessee's right to possession of the Premises by any lawful means (without the need for reentry or any other action on behalf of the Port in the case of termination by written notice to the Master Lessee), in which case this Master Lease shall terminate and the provisions under Section 20.3 shall apply.

(b) Recover from the Master Lessee the Port's Losses arising from such Master Lessee Default and any amounts due and payable under this Master Lease and, in connection therewith, exercise any recourse available to any Person who is owed damages or a debt, including, but not limited to,

(1) The worth at the time of award of the unpaid rent and sums equivalent to rent required to be paid by the Master Lessee under this Master Lease that had been earned at the time of termination;

(2) The worth at the time of award of the amount by which the unpaid rent and sums equivalent to rent required to be paid by the Master Lessee under this Master Lease that would have been earned after termination until the time of award exceeds the amount of such rental loss that the Master Lessee proves could have been reasonably avoided;

(3) The worth at the time of award of the amount by which the unpaid rent and sums equivalent to rent required to be paid by the Master Lessee under this Master Lease for the balance of the term after the time of award exceeds the amount of such rental loss that the Master Lessee proves could be reasonably avoided; and

(4) Any other amounts permitted by law to compensate the Port for detriment proximately caused by the Master Lessee's Default or which in the ordinary course of events would be likely to result therefrom, including, but not limited to, the costs and expenses incurred by the Port (A) in retaking possession of the Premises, (B) in cleaning and making repairs of and alterations to the Premises reasonably necessary to return the Premises to good condition for uses permitted by this Master Lease and in otherwise preparing the Premises for reletting, (C) in removing, transporting, and storing any of the Master Lessee's property left at the Premises although the Port shall have no obligation to remove, transport, or store any of such property, (D) in providing project management and (E) in reletting the Premises, including, but not limited to, brokerage commissions, advertising costs, and attorneys' fees.

The "worth at the time of award" of the amounts referred to in items (i) and (ii) immediately above is computed by allowing interest at the maximum rate permitted by law. The "worth at the time of award" of the amount referred to in item (iii) immediately above is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus 1%.

(c) Avail itself of the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations).

(d) Without waiving or releasing the Master Lessee from its obligations under this Master Lease, observe and perform the covenant or covenants of which the Master Lessee has defaulted (but in no event shall Port be obliged to do so), and in that event may pay such monies as may be required or as the Port may reasonably deem expedient, and the Port shall thereupon charge all monies to the Master Lessee together with interest thereon at an annual rate equal to the Prime Rate plus 4% percent, from the date on which the Port paid the monies. Such Master Lessee covenants and agrees with the Port to repay such monies to the Port, together with the interest, forthwith on demand as Additional Rent, and the Port shall have the same rights and remedies and may take the same steps for recovery of the monies so paid, together with interest, as the Port may take for recovery of arrears of Rent.

(e) Seek specific performance, injunction or other equitable remedies, it being acknowledged that damages are an inadequate remedy for a Master Lessee Default.

(f) Initiate and pursue unlawful detainer procedures in accordance with California Code of Civil Procedure Section 1161, et seq. (or any successor Law thereto).

(g) Subject to applicable Law, distrain against any of the Master Lessee's goods and personal property situated on the Premises; and

(h) Exercise any of its other rights and remedies provided for hereunder or at law or equity, whether now or hereafter available to the Port.

In addition to the foregoing, in the event of a Master Lessee Default, the Master Lessee shall pay to the Port interest at an annual rate equal to the Prime Rate plus 4% percent on all payments of Monthly Rent, Variable Rent and Additional Rent, and all other sums required to be paid under the provisions of this Master Lease, which have become overdue and which remain

unpaid. Interest shall be calculated from the date when Rent shall become payable under the terms of this Master Lease at the interest rate applicable at that date and shall accrue and be payable without the necessity of any demand therefor. If at any time the Port brings an Action against the Master Lessee because of a Master Lessee Default, and such Master Lessee Default is established, the Master Lessee shall pay to the Port all Losses incurred by the Port in bringing such Action.

20.3 Termination Consequences. Upon termination of this Master Lease in accordance with Sections 2.1(c), 7.1, 15.2(b)(1), 16.3(b), 16.4, 18.1(a)(6), 20.2(a) or 28.1(g), this Master Lease shall cease, the Term shall immediately become forfeited and void, and the following provisions shall apply:

(a) the Master Lessee shall, as of the Termination Date and without any action whatsoever being necessary on the part of the Port, well and truly surrender and deliver to the Port, the Premises free and clear of all Encumbrances other than (i) those affecting title to the Premises existing as of the Execution Date, and (ii) those created by or suffered to exist or consented to by the Port or any Person claiming through it;

(b) the Master Lessee hereby waives any notice now or hereafter required by Law with respect to vacating the Premises on the Termination Date;

(c) the Master Lessee shall be liable for all costs, expenses and other amounts for which it is liable or responsible hereunder incurred up to but not including the Termination Date;

(d) the Port shall have the option, by providing notice to the Master Lessee, of requiring that the Master Lessee assign to the Port or its nominee for the remainder of their terms, without warranty or recourse to the Master Lessee, all of its right, title and interest in, to and under all or any Authorizations;

(e) all “as-built” drawings, plans, other drawings, specifications and models prepared in connection with any Master Lessee Improvements and otherwise applicable to the Premises and in the Master Lessee’s possession shall become the sole and absolute property of the Port, and the Master Lessee shall promptly deliver to the Port all such as-built drawings, plans, other drawings, specifications and models (but may keep copies of those as-built drawings, plans, other drawings, specifications and models that were developed by the Master Lessee or its Representatives);

(f) the Master Lessee, at its sole cost and expense, shall promptly deliver to the Port copies of all records and other Documents relating to the Premises as the Port, acting reasonably, may request;

(g) the Master Lessee shall execute and deliver to the Port a quitclaim deed in recordable form or other release or other instrument reasonably required by the Port or its title insurer to evidence such termination;

(h) the Master Lessee shall assist the Port in such manner as the Port may require to ensure the orderly transition of control, maintenance and rehabilitation of the Premises; and

(i) the Port and the Master Lessee shall make appropriate adjustments, including adjustments relating to any fees and other similar charges collected on and after the Termination Date that are incurred prior to the Termination Date, and any adjustments and payment therefor shall be made by the appropriate Party on the Termination Date, but shall be subject to readjustment, if necessary, because of error in matters such as information, calculation, payments and omissions that are identified within the period of 180 calendar days following the Termination Date; provided, however, that the Port and the Master Lessee acknowledge that certain adjustments or readjustments may have to be made when a Third Party provides to the Port or the Master Lessee a final adjustment amount concerning a matter, and for such matters the adjustment and readjustment date shall each be correspondingly extended.

This Article 20 shall survive the expiration or any earlier termination of this Master Lease.

20.4 The Port's Rights; Non-Waiver. The Master Lessee acknowledges that no delay, failure or omission of the Port to re-enter the Premises or to exercise any right, power or privilege, or option, arising from any default by the Master Lessee, no acceptance of any Rent subsequent to any breach, non-observance or non-performance, nor any condoning, excusing or overlooking by the Port on previous occasions of breaches, non-observances or non-performances, shall be taken as a waiver of such breach, non-observance or non-performance or in any way defeat or affect the rights of the Port contained herein. No consideration by the Port permitting the Master Lessee to rectify any breach, non-observance or non-performance shall be taken as a waiver of the Master Lessee's covenants or agreements or shall in any way defeat or affect the rights of the Port to terminate this Master Lease for a subsequent breach. No waiver by the Port at any time of any of the terms, conditions or covenants or agreements of this Master Lease or of any default by the Master Lessee shall be deemed or taken as a waiver at any time thereafter of the same or of any other term, condition or covenant or agreement herein contained, nor of the strict and prompt performance thereof. No option, right, power, remedy or privilege of the Port shall be construed as being exhausted by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options or remedies given to the Port by this Master Lease are cumulative, and no one of them shall be exclusive of the other or exclusive of any remedies provided by law, and that exercise of one right, power, option or remedy by the Port shall not impair its rights to any other right, power, option or remedy.

ARTICLE 21 SURRENDER; HOLDING OVER; TRANSITION

21.1 Surrender At Term's End. The Master Lessee covenants that at the expiration or termination of this Master Lease, it will quit and surrender the Premises, together with all Improvements and all equipment and trade fixtures that are required to be surrendered with the Premises under this Master Lease, in accordance with Article 22. The Port shall have the right upon such termination to enter upon and take possession of all of the Premises, together with all such equipment and trade fixtures.

21.2 No Right to Holdover. The Master Lessee shall have no right to remain in possession of all or any part of the Premises after the expiration or termination of this Master Lease. The Master Lessee shall have no right to holdover and no tenancy shall be created by implication or law. However, if the Master Lessee fails to vacate and surrender possession of the

Premises on or prior to the Termination Date, the Master Lessee shall pay the Port 200% of the Monthly Rent immediately theretofore payable plus other rents prevailing at the date of such holding over for each month after the date that the Master Lessee fails to surrender possession to the Port upon expiration or termination of the Term, always subject to all rents being increased at the sole discretion of the Port at any time during the holding over period and upon notice to the Master Lessee. The Port's receipt and acceptance of such Monthly Rent as adjusted in this Section 21.2 shall not be construed as the Port's consent to any holding over by the Master Lessee. The Master Lessee hereby agrees to indemnify and hold harmless the Port from and against any and all Claims incurred by the Port as a result of the Master Lessee remaining in possession of all or any part of the Premises after the expiration or termination of this Master Lease. The Master Lessee shall not interpose any counterclaim in any summary or other proceeding based on holding over by the Master Lessee. Except as provided in this Section 21.2, all other terms and conditions of this Master Lease shall apply during any period of holding over by the Master Lessee without the Port's express written consent, in its sole and absolute discretion.

21.3 The Port's Consent To Holdover. The Master Lessee may only holdover after the expiration or termination of this Master Lease with the Port's consent, in its sole and absolute discretion. If the Master Lessee, with such the Port's written consent, remains in use or possession of the Premises after the expiration or termination of this Master Lease in any manner, such holding over shall be deemed merely a tenancy from month to month on such terms and conditions, and at a Monthly Rent (payable monthly in advance), as may be fixed from time to time by the Port by giving to the Master Lessee written notice thereof at any time not less than 7 calendar days before the expiration of any such month, to be effective upon the expiration of such month. Except as provided in this Section 21.3, all other terms and conditions of this Master Lease shall apply during any period of holding over by the Master Lessee with the Port's express written consent, in its sole and absolute discretion.

21.4 No Right to Relocation Assistance. It is understood and agreed that nothing contained in this Master Lease shall give the Master Lessee any right to relocation assistance or payment from the Port upon expiration or termination of the Term or upon the termination of any holdover tenancy by any means whatsoever. The Master Lessee acknowledges and agrees that upon such expiration or termination, it shall not be entitled to, and expressly hereby waives, any relocation assistance or payment pursuant to the provisions of Title 1, Division 7, Chapter 16, of the Government Code of the State of California (Sections 7260 et seq.) with respect to any relocation of its business or activities, including the Master Lessee Operations, upon such expiration or termination.

21.5 Transition. During the last Master Lease Year, the Master Lessee shall cooperate with the Port and any proposed subsequent master lessee, tenant, the Master Lessee or the like to the Premises identified by the Port to ensure the orderly transition of the Premises upon the expiration or termination of this Master Lease, including, without limitation, providing tours to, participating in transition meetings with, and providing relevant non-confidential information to, the Port or such subsequent tenant or the Master Lessee upon the reasonable request of the Port.

ARTICLE 22
HANDBACK; CLOSURE ACTIVITIES; STORAGE TANKS

22.1 Handback Requirements.

(a) The Master Lessee shall on the Termination Date hand over the Premises (“Handback”): (x) in the event the Termination Date occurs as a result of the exercise of termination right by a Party under this Master Lease, free of all Encumbrances (other than those Encumbrances which existed as of the Execution Date or that have been created or suffered by the Port for its primary benefit), free of charge to the Port, and in compliance with all Laws; and (y) in all other instances, free of all Encumbrances (other than those Encumbrances which existed as of the Execution Date or that have been suffered by the Port for its primary benefit), free of charge to the Port, in compliance with all Laws, in good operating condition, ordinary wear and tear excepted, and in at least a condition which is sufficient to support (collectively, the “Minimum Condition”):

(1) Operational capability to handle the same types of services which have been provided within the Premises for the prior 5 Master Lease Years

(b) The following criteria shall be taken into account and considered relevant in determining whether the Minimum Condition has been met at the time of Handback:

(1) The main civil and structural works shall not exhibit any undue signs of damage, wear, stress, cracking, settlement, corrosion, or weather erosion, such that they cannot reasonably be expected to satisfy their full design life specification;

(2) Limited life and “wear and tear” components of the Improvements have been replaced by the Master Lessee prior to Handback in accordance with good industry practice as and when they failed, wore out, or reached their design life or customary replacement frequency, as part of ongoing maintenance activities; and

(3) Major electrical and mechanical components or equipment shall be in good operating condition, normal wear and tear excepted.

The provisions of Sections 22.2, 22.3 shall apply in the case the Master Lessee is required to Handback the Premises meeting the Minimum Conditions pursuant to Section 22.1(a)(y).

22.2 Handback Activities.

(a) Approximately 24 months prior to the scheduled Termination Date, as such Termination Date may be extended, the Parties shall perform a joint inspect the Premises, and jointly certify to the condition of the Premises no later than 10 Business Days after such joint inspection (“Initial Inspection Report”) and propose a joint certified plan, if applicable, no later than 20 Business Days after such joint inspection to bring the condition of the Premises to at least the Minimum Condition (“Handback Plan”). The Handback Plan shall specify particular repairs, replacements and other work required to bring the condition of the Premises to at least the Minimum Condition (“Reinstatement Work”). If the Parties do not in

good faith cooperate with one another to comply with this Article 22 or otherwise can not agree on the joint inspections or any of their joint reports, then either Party may refer the matter for resolution in accordance with the Dispute Resolution Procedure.

(b) The activities to be performed by the Parties, pursuant to this Article 22 shall include the following, and the Parties shall fully cooperate with each other in such regards, including providing such documentation and making the Premises available for such inspections:

(1) examination of maintenance records and all “as-built” drawings, plans, other drawings, specifications and models prepared in connection with any Master Lessee Improvements and otherwise applicable to the Premises;

(2) the preparation of a detailed Initial Inspection Report;

(3) the examination of maintenance facilities and documentation prior to the Termination Date; and

(4) follow-up inspections and reviews of the completion and quality of the Reinstatement Work, and progress reports delivered to the Port and the Master Lessee at least every 3 months and such other times set forth for the completion of the stages of Reinstatement Work in the Reinstatement Schedule, which specify whether the Reinstatement Work is proceeding in accordance with the Reinstatement Schedule, any deficiencies in the Reinstatement Work or Reinstatement Schedule, any key issues affecting the completion of the Reinstatement Work, and an assessment of the completion level of and estimation of time to complete the Reinstatement Work.

22.3 Reinstatement Schedule and Estimated Reinstatement Costs.

(a) Within 120 calendar days of the completion of the Handback Plan, the Master Lessee will provide to the Port a report (“Reinstatement Plan”) setting out:

(1) the Master Lessee’s proposals as to the Reinstatement Work;

(2) the Master Lessee’s proposals as to the schedule for the carrying out of the Reinstatement Work, which shall be completed prior to the Termination Date (the “Reinstatement Schedule”); and

(3) the Master Lessee’s estimate of the costs of carrying out the Reinstatement Work (the “Estimated Reinstatement Costs”).

(b) The Port and may, within 60 calendar days after receipt of the Reinstatement Plan, by notice to the Master Lessee, make reasonable objections to the Master Lessee’s proposals concerning any or all of the Reinstatement Work, the Reinstatement Schedule and the Estimated Reinstatement Costs as set out in such Master Lessee’s report (“Port’s Objection Notice”). The Port’s Objection Notice shall give details of both the grounds for such objection and the Port’s proposals concerning the Reinstatement Work and Reinstatement Schedule and its estimate of the Estimated Reinstatement Costs.

(c) If no agreement is reached between the Port and the Master Lessee as to any matter referred to in the Port's Objection Notice within 30 calendar days of its delivery, then either Party may refer the matter for resolution in accordance with the Dispute Resolution Procedure; provided that, where there is any such dispute in relation to the Estimated Reinstatement Costs, the existence of such dispute shall not in any way reduce or limit the liability of the Master Lessee to provide the Handback Guaranty, except to the extent of any such part of the Estimated Reinstatement Costs that is in dispute. Upon resolution of such dispute, the value of the Handback Guaranty shall be adjusted to reflect the outcome of such dispute.

(d) Upon agreement or determination in accordance with the Dispute Resolution Procedure of the Reinstatement Work, the Reinstatement Schedule and the Estimated Reinstatement Costs, the Master Lessee will carry out, or arrange for the carrying out of, the Reinstatement Work in accordance with the Reinstatement Schedule, in each case at its own cost notwithstanding that the actual cost of the Reinstatement Work may be higher than the Estimated Reinstatement Costs, and such agreement or determination as to the Estimated Reinstatement Costs shall govern (the "Reinstatement Costs", provided that if the Port does not dispute the Estimated Reinstatement Costs, then such Estimated Reinstatement Costs shall be deemed the Reinstatement Costs).

(e) The agreement of the Port to any Reinstatement Work, Reinstatement Schedule or Estimated Reinstatement Costs, the participation of the Port in the Initial Inspection Report or the Handback Plan, or the complete or partial carrying out of the Reinstatement Work (whether revised or otherwise) will not relieve or absolve the Master Lessee from:

- (1) its obligation to provide the Handback Guaranty; or
- (2) any obligation to conduct any other inspection or perform any other work in accordance with, or to otherwise comply with, its obligations under this Master Lease.

(f) The Master Lessee shall ensure that the Basic Conditions are satisfied with respect to any Reinstatement Work and that all contractors carrying out the Reinstatement Work provide a 2 year warranty concerning such work, such warranty expressly transferring to the Port or any successor operator of the Premises designated by the Port on the Termination Date.

22.4 Handback Guaranty.

(a) The Master Lessee shall, within 7 calendar days after delivery of the Reinstatement Plan to the Port, provide a Letter of Credit concerning the Reinstatement Work valid for a period of 90 calendar days after the Termination Date (and in all events, the Letter of Credit shall be renewed no later than 10 calendar days prior to its expiration if the Reinstatement Work is not completed by the Termination Date, as determined by the Port, in an amount equal to the Reinstatement Costs (the "Handback Guaranty"), which the Port can draw upon in accordance with Section 22.4(b). If the Port confirms in writing the proper completion of a defined stage of the Reinstatement Work, as defined in the Reinstatement Schedule, then the Master Lessee may provide a replacement Handback Guaranty to the Port concerning only the remaining, uncertified Reinstatement Work, and the previously delivered Handback Guaranty shall be refunded to the Master Lessee.

(b) If (1) the Reinstatement Work is not properly completed within the time set forth in the Reinstatement Schedule, and in all cases, prior to the Termination Date, or (ii) the Master Lessee does not renew the Handback Guaranty within 10 calendar days prior to its expiration if the Reinstatement Work is not completed by the Termination Date, as determined by the Port, then, in addition to all other remedies available to the Port, including, but not limited to, seeking damages for interference with the Port's re-use of the Premises or other the Port property or the Master Lessee's liabilities as a holdover tenant, the Port shall have the option, in its sole discretion, to elect to draw upon and retain the Handback Guaranty in such amount that the Port reasonably determines equals amounts needed to properly complete or repair the Reinstatement Work not so completed plus a reasonable estimation of the Port's actual overhead and administration costs, based on the Port's customary practices, likely to be incurred in connection with performing such work.

22.5 Final Handback. Any Handback Guaranty remaining shall be refunded to the Master Lessee at such time that the Port confirms that the Reinstatement Work has been properly completed.

22.6 Master Lease Closure Activities.

(a) Preparation of Plan for Closure Activities. One year prior to the expiration or termination of the Master Lease or promptly upon a partial recapture of a portion of the Premises, the Master Lessee shall prepare a closure plan for conducting Closure Activities with respect to the Premises or such portion of the Premises upon a partial recapture, as applicable, which closure plan shall include, at a minimum, the investigation and testing of areas where Toxic Materials were handled, stored or potentially released during the Term, and any actions necessary to ensure that all Contamination has been remediated to a no less stringent Clean Up Standard than a residential Clean Up Standard. The Master Lessee shall submit the closure plan to the Port for its approval pursuant to Section 22.6(d) below, and, if required by Environmental Laws, shall also submit the closure plan to Governmental Authorities having jurisdiction over the Toxic Materials or Response Action.

(b) Performance of Closure Activities. The Master Lessee shall perform, or cause to be performed, all actions necessary to ensure that the Closure Activities have been completed prior to the Scheduled Termination Date, including final inspection and testing, and shall provide to the Port (i) documentary evidence that the condition of the Premises satisfy the requirements under this Section 22.6, and (ii) copies of such notices of compliance, clearances, "no further action" notices or other notices or approvals from the appropriate Governmental Authority as may be reasonably required by the Port to evidence the Master Lessee's completion of its Closure Activities. The Master Lessee, at its own expense, shall repair any damage to the Premises or other Port property caused by such work and unless otherwise requested by the Port, shall properly destroy, at the completion of all testing and monitoring, in accordance with Environmental Laws, any and all monitoring wells installed as a result of, or in connection with, the Master Lessee's occupancy of the Premises or otherwise installed as a result of or in connection with the Master Lessee Operations, or otherwise installed by the Master Lessee or at its direction.

(c) Survival. If the Master Lessee does not complete the work under this Section 22.6 in a manner which leaves the Premises (or portion of the Premises in the case of a partial recapture) in the condition required hereunder, or complete any required Response Action or

Closure Activities before the Scheduled Termination Date, then the Master Lessee's obligations under this Section 22.6 shall survive the Scheduled Termination Date until completed. The survival of the Master Lessee's obligations to complete any required Response Action or Closure Activities shall not relieve the Master Lessee of any other legal liabilities owed to the Port, including, but not limited to, damages for interference with the Port's re-use of the Premises or other Port property or the Master Lessee's liabilities as a holdover tenant. The Port shall cooperate with the Master Lessee and provide all access reasonably necessary for the Master Lessee to comply with these provisions.

(d) Closure Plans. The Master Lessee shall submit to the Port for review and approval its closure plans relating to the Closure Activities and any required Response Action sufficiently prior to the Master Lessee engaging in any Closure Activities such that the Master Lessee has enough time to meet its Response Action obligations set forth in Exhibit F after the Port's review and approval.

(e) Certificates. Upon the expiration or earlier termination of the Master Lease, the Master Lessee shall provide a certificate to the Port certifying that it has completed its obligations under Exhibit F, and certificates of closure from all appropriate Governmental Authorities, including, but not limited to, the DTSC, the RWQCB, the Alameda County Health Care Services Agency Department of Environmental Health, the City, the United States EPA, and the United States Coast Guard.

22.7 Storage Tanks. With regard to Storage Tanks, if any, at least 90 calendar days, but not more than 120 calendar days, before expiration of the Term, or, in the event of earlier termination, prior to the Termination Date, the Master Lessee shall give the Port written notice expressly referring to the provisions herein and stating the Master Lessee's intention either to close or to remove any Storage Tanks. The Port may elect by written notice to the Master Lessee, given at any time not later than 30 calendar days after receipt of notice of the Master Lessee's intention, to require the Master Lessee either to (i) remove said Storage Tanks, or (ii) leave the Storage Tanks in place in operating condition, provided, however, that if the Port requires the Master Lessee to leave the Storage Tanks in place in operating condition, the Master Lessee shall provide the Port with: (A) documentary evidence that the condition of the Storage Tanks are in full compliance with Environmental Laws; (B) if applicable, any Storage Tanks have been modified to comply with the upgrade requirements for USTs, spill and overfill prevention and underground piping pursuant to Chapter 6.7, Underground Storage of Hazardous Substances, H&S Code; (C) if applicable, with documentary evidence that the Storage Tanks have passed Tank Tightness Integrity Tests for the past five 5 years; (D) soil and groundwater monitoring data verifying that there has been no release of Toxic Materials from the Storage Tanks; and (E) all other monitoring records, equipment testing or maintenance records required by California Code of Regulations Title 23, Chapter 16, Section 2610, et seq. If the Port gives notice of election to the Master Lessee during said 30 calendar day period, the Master Lessee shall handle the Storage Tanks in accordance with the Port's intention as stated in its notice to the Master Lessee. If no notice of election is given to the Master Lessee, or if the Master Lessee fails to satisfy the requirements under Section 22.7(ii)(A)-(E) above, the Master Lessee shall remove said Storage Tanks as required by Environmental Laws.

**ARTICLE 23
PORT'S DEFAULT**

23.1 The Port Default. A “Port Default” shall have occurred if the Port fails, in any material respect, to comply with, perform or observe any obligation, covenant, agreement, term or condition in this Master Lease (except with respect to _____ and except matters involving the Port’s obligations described in Exhibit F, or those actions taken (i) to address an immediate threat to safety or security for persons or property at the Port, (ii) to comply with Law, or (iii) that are not inconsistent with the Port’s rights under this Master Lease or any other agreement between the Parties), and such failure continues unremedied for a period of 30 calendar days following notice thereof in all cases, or for such longer period as may be reasonably necessary to cure such failure, but in no event longer than 180 calendar days, provided the Port shall proceed with all due diligence to cure or cause to be cured such failure.

23.2 Remedies. Upon the occurrence and during the continuance of a Port Default, the Master Lessee may, subject to the provisions of Article 26:

(a) Seek specific performance, injunction or other equitable remedies, it being acknowledged that damages are an inadequate remedy for a Port Default; or

(b) Seek to recover from the Port any loss, liability, damage, penalty, charge or out-of-pocket and documented cost or expense actually suffered or incurred by the Master Lessee (including reasonable attorneys’ fees), but excluding any special, indirect, punitive and consequential damages.

23.3 The Master Lessee’s Remedies Limited. Unless and to the extent expressly provided under Section 23.2, in connection with a breach by the Port under this Master Lease, the Master Lessee shall not have the right to terminate this Master Lease, seek specific performance, injunction or other equitable remedies, seek to recover its Losses or seek other remedies in connection with such breach by the Port. The Master Lessee’s remedies upon a breach by the Port under this Master Lease are limited to those provided in Section 23.2 in accordance with this Article 23.

**ARTICLE 24
PORT ACCESS AND RIGHT TO INSPECT PREMISES**

The Port and its Representatives shall be entitled, at all reasonable hours, to enter and examine the Premises for any and all purposes including, without restricting the generality of the foregoing, the state of maintenance and repair of the Premises by the Master Lessee (including the Master Lessee Improvements, Contamination, and for such other purposes set forth in Section 7 of Exhibit F), to provide general tours of the Premises and in connection with any maintenance, operation and repairs to Contamination and utility systems on the Premises, including without limitation, electrical, storm water and sewer. The Port shall give reasonable prior notice thereof to the Master Lessee (except in the event of an emergency in the opinion of the Port acting reasonably). Subject to the Master Lessee’s reasonable cooperation with the Port and except in the event of an emergency in the opinion of the Port acting reasonably, the exercise of the rights in this Section 24 shall not unreasonably interfere with the Master Lessee Operations and shall be subject to the Master Lessee’s reasonable security and safety procedures

for the Premises, which procedures the Master Lessee has provided prior written notice of such procedures to the Port. The failure of the Port to notify the Master Lessee of any necessary maintenance or repair shall not relieve the Master Lessee of its obligation to so maintain and repair.

ARTICLE 25 AGENT FOR SERVICE OF PROCESS; APPLICABLE LAW AND VENUE

25.1 Agent For Service of Process. It is expressly agreed and understood that if the Master Lessee is not a resident of this State, or is an association or partnership without a member or partner resident of the State of California, or is a foreign corporation, then in any such event the Master Lessee shall file with the Port a designation of a natural person residing in the County of Alameda, State of California, giving the person's name, residence and business address as the Master Lessee's agent for the purpose of service of process in any court action between the Master Lessee and the Port arising out of or based upon this Master Lease, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon the Master Lessee. Notwithstanding the foregoing, if the Master Lessee is a foreign corporation, then in lieu of filing with the Port a designation as provided above in this Article 25, the Master Lessee may file with the Port a certified copy of its designation of agent filed with the California Secretary of State under California Corporations Code §2105. If for any reason service of such process upon such agent is not possible, then in such event the Master Lessee may be personally served with such process out of this State, and the Master Lessee agrees that such service shall constitute valid service upon the Master Lessee; and it is further expressly agreed that the Master Lessee is amenable to the process so served, submits to the jurisdiction of the court so acquired, and waives any and all objection and protest thereto.

25.2 Applicable Law and Venue. This Master Lease shall be construed and interpreted in accordance with the laws of the State of California, except to the extent that United States Federal law otherwise applies. Subject to the Dispute Resolution Procedure, all disputes arising from or relating to this Master Lease shall be determined by a competent State court in Alameda County, California, or by the U.S. District Court for the Northern District of California, which courts, and the courts with jurisdiction to review the decisions of said courts, shall be the only courts with any authority to determine any such dispute. Neither Party shall commence any Action in any other court or attempt to remove an Action to any other court, it being agreed that any violation of this Section 25.2 may be specifically enforced by mandatory injunction because money damages would be an inadequate remedy.

ARTICLE 26 DISPUTE RESOLUTION PROCEDURE

26.1 Scope. Any dispute arising out of, relating to or in connection with this Master Lease, including any question as to whether such dispute is subject to the dispute resolution procedures set forth below, which the Parties have been unable to resolve by the informal dispute resolution procedures described in Section 26.2 below, shall first be submitted to non-binding mediation under the mediation procedures described in Section 26.3 below, and if the matter is not resolved through such mediation procedures, then any Party may thereafter elect to pursue such dispute in any State court of competent jurisdiction sitting in the County, or by the United States District Court for the Northern District of California.

26.2 Informal Dispute Resolution Procedures. The Parties agree that, at all times, they will attempt in good faith to resolve all disputes that may arise under this Master Lease. The Parties further agree that, upon receipt of written notice of a dispute from a Party, the Parties will refer the dispute to the Designated Person of each Party. The Designated Persons shall negotiate in good faith to resolve the dispute, conferring as often as they deem reasonably necessary, and shall gather and in good faith furnish to each other the information pertinent to the dispute. Statements made by Representatives of the Parties during the dispute resolution mechanisms set forth in this Section 26.2 and documents specifically created for such dispute resolution mechanisms shall be considered part of settlement negotiations and shall not be admissible in evidence by any proceeding without the mutual consent of the Parties.

26.3 Mediation. Mediation of a dispute under this Master Lease may not be commenced until the earlier of: (a) such time as both of the Designated Persons, after following the procedures set forth in Section 26.2, conclude in good faith that amicable resolution through continued negotiation of the matter does not appear likely; or (b) 15 calendar days after the date of the notice referring the dispute to the Designated Persons, pursuant to Section 26.2. If, after such time period, the dispute remains unresolved, the Parties shall attempt to resolve the dispute through non-binding mediation administered by the Judicial Arbitration Mediation Services (“JAMS”), or such other association as may be agreed to by the Parties. The Parties will cooperate with each other in selecting the mediator from the panel of neutral mediators knowledgeable in port operations from the JAMS, and in scheduling the time and place of the mediation. Unless otherwise agreed to by the Parties, such selection and scheduling shall be completed within 45 calendar days after the date of the notice referring the dispute to the Designated Persons. Unless otherwise agreed to by the Parties, the mediation shall not be scheduled for a date that is greater than 120 calendar days from the date of the notice referring the dispute to the Designated Persons. The Parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs (other than each Party’s individual attorneys’ fees and costs related to the Party’s participation in the mediation, which fees and costs shall be borne by such Party). Statements made by Representatives of the Parties during the mediation procedures set forth in this Section 26.3 and documents specifically created for such mediation procedures shall be considered part of settlement negotiations and shall not be admissible in evidence by any proceeding without the mutual consent of the Parties.

26.4 Provisional Remedies. Notwithstanding anything to the contrary in this Article 26, no Party shall be precluded from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining any emergency or provisional remedy to protect its rights that may be necessary and that is not otherwise available under this Master Lease.

26.5 Tolling. If a Party receiving a notice of default under this Master Lease contests, disputes or challenges the propriety of such notice by making application to the dispute resolution procedure in this Article 26, any cure period that applies to such default shall be tolled for the time period between such application and final resolution of such dispute.

ARTICLE 27 ESTOPPEL CERTIFICATES

The Master Lessee or the Port, as the case may be, shall execute, acknowledge and deliver to the other and/or to Lender, promptly upon request, its certificate certifying to the

best of its knowledge (a) that this Master Lease is unmodified and in full force and effect (or, if there have been modifications, that this Master Lease is in full force and effect, as modified, and stating the modifications), (b) the Execution Date and Termination Date, if any, to which the Monthly Rent and Variable Rent have been paid, (c) whether there are then-existing any charges, offsets or defenses against the enforcement by the Port or the Master Lessee of any agreement, covenant or condition hereof on the part of the Port or the Master Lessee to be performed or observed (and, if so, specifying the same), and (d) whether there are then-existing any defaults by the Port or the Master Lessee in the performance or observance by the Port or the Master Lessee of any agreement, covenant or condition hereof on the part of the Port or the Master Lessee to be performed or observed and whether any notice has been given to the Port or the Master Lessee of any default which has not been cured (and, if so, specifying the same).

27.1 The Master Lessee and the Port also agree at the request of the other to provide other information readily available and reasonably related to a transaction and required therefor by the requesting Party; provided, however, that such other information shall not include financial information or other confidential information unless required to be provided by other provisions of this Master Lease.

ARTICLE 28 EQUAL OPPORTUNITY, NONDISCRIMINATION

28.1 Equal Opportunity; Nondiscrimination. In furtherance of the Port's long-standing policy to insure that equal employment opportunity is achieved and nondiscrimination is guaranteed in all Port-related activities, it is expressly understood and agreed with respect to the Master Lessee Operations and any construction on the Premises:

(a) That the Master Lessee shall not discriminate against any employee or applicant for employment on any basis prohibited by State or Federal Law. The Master Lessee shall take affirmative action to ensure that applicants and employees are treated fairly. Such action shall include, but not be limited to the following: hiring, upgrading, recruitment advertising; selection for training, including apprenticeship, demotion, transfer, compensation, lay-off or termination, or any other terms or conditions of employment. The Master Lessee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Port's Director of Equal Opportunity setting forth the provisions of this Section.

(b) That the Master Lessee shall, in all solicitations or advertisements for employees placed by or on behalf of the Master Lessee, state that all qualified applicants will receive consideration for employment without to any basis prohibited by State or Federal Law.

(c) That the Master Lessee will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Port's Director of Equal Opportunity, advising the labor union or workers' representative of the Master Lessee's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) That the Master Lessee shall not discriminate by segregation or otherwise against any person or persons on any basis prohibited by State or Federal Law in furnishing, or by refusing to furnish, to such person or persons the use of any public facility upon the Premises, including any and all services, privileges, accommodations, and activities provided thereby.

(e) That the Master Lessee shall maintain work force records showing male, female and minority employees by job category and similar information with respect to new hires and shall permit the Port's Director of Equal Opportunity to inspect such records at all reasonable times and not less than annually and shall submit a summary of such information annually on a form provided by the Port.

(f) That whenever the Master Lessee's total number of employees working at the Property is 15 or more, the Master Lessee shall within 90 calendar days of reaching such 15 or more employees, provide the Executive Director or his designee with a copy of its affirmative action program, if any, as may be required by an appropriate Federal and State agency or by the Port pursuant to any State or Federal Law.

(g) Notwithstanding anything in this Master Lease to the contrary, any breach of the provisions of this Article 28 shall constitute a material default and the Port shall have the right to terminate this Master Lease or seek judicial enforcement of such breached covenant.

28.2 Contracting With Vendors and for Professional Services.

(a) The Master Lessee agrees that it shall not discriminate against any professional service or vendor because of on any basis prohibited by State or Federal Law; and that the Master Lessee shall, in all solicitations or advertisements placed by or on behalf of the Master Lessee, for professional services, vendors or contractors, state that all qualified bidders will receive consideration on merit, without regard to on any basis prohibited by State or Federal Law.

(b) The Port's Equal Opportunity Division or its equivalent will assist the Master Lessee with resources to assist them in finding minority and women professional services and vendors.

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(b) The Port's Equal Opportunity Division or its equivalent will assist the Master Lessee with resources to assist them in finding minority and women professional services and vendors.

28.4 360 Access. It is expressly understood and agreed with respect to the Master Lessee Operations and any construction on the Premises:

(a) That the Master Lessee shall cooperate with the Port's 360 Access. The Master Lessee understands the Port's 360 Access seeks to serve the needs of the Port tenants for a qualified workforce and address the needs of the City's chronically unemployed and underemployed, by identifying employment opportunities, training and job preparation resources for persons seeking such opportunities and by facilitating access to this information;

(b) That the Master Lessee will notify 360 Access of job opportunities open with the Master Lessee, either informally, or by providing copies of all advertisements or solicitations by or on behalf of the Master Lessee, to the Port's Community Relations - 360 Access Coordinator, so that that office may assist the Master Lessee by providing pre-screened, qualified residents of the City and others seeking employment through the Port's 360 Access, including minorities, women, handicapped persons and veterans.

(c) That the Master Lessee shall consider 360 Access referrals for its recruitment and advertisement of available opportunities to solicit applicants from the local community as required by this Section and by relevant State or Federal equal employment opportunity law. The Master Lessee retains and at all times shall have the right, consistent with the Master Lessee's obligations pursuant to its affirmative action program, both to determine the qualifications of all applicants for employment and, in its sole discretion, to select the applicant it deems best qualified.

28.5 Non-Discrimination and Small Business Utilization Policy. On October 7, 1997, the Board initiated a formal policy to encourage full participation of firms from its Local Business Area, the counties of Alameda and Contra Costa ("LBA"), particularly those in its Local Impact Area ("LIA"), in its work. The LIA includes the cities of Oakland, Alameda, Emeryville and San Leandro. The Master Lessee must, in consultation with the Port, establish and maintain compliance on a case-by-case basis with the Port's Non-Discrimination and Small Business Utilization Policy, as the same may be amended from time-to-time, with respect with the Master Lessee Operations and any construction on the Premises.

28.6 Building Permits. The Master Lessee shall establish to the reasonable satisfaction of the Port, as a prerequisite to the issuance of a building permit from the Port for the Premises, that the Master Lessee is in compliance with the Port's Non-Discrimination and Small Business Utilization Policy, as amended from time-to-time, with respect to such permit.

28.7 Modified Policies and Programs. The Master Lessee acknowledges that the policies and programs described in this Article 28 are subject to change from time-to-time at the Port's sole discretion and the Master Lessee agrees to use its best efforts to promptly comply with such modified policies and programs as they may exist at any given time during the Term.

ARTICLE 29
LIABILITY AND INDEMNITY

29.1 No Port Liability. Except to the extent of the gross negligence or willful misconduct of the Port, or the Port's Representatives, and subject to Section 29.3, the Port shall not be liable or responsible in any way for:

(a) Damage to Property. Any loss or damage whatsoever to any property belonging to the Master Lessee or to its Representatives or to any other person who may be in or upon the Premises; or

(b) Utilities/Repairs. Any loss, damage or injury, whether direct or indirect, to persons or property resulting from any failure, however caused, in the supply of utilities, services or facilities provided or repairs made to the Premises under any of the provisions of this Master Lease or otherwise.

29.2 No Consequential Damages. Notwithstanding the provisions of Section 29.1 or anything in this Master Lease, the Port shall not in any event, including, without limitation, the gross negligence or willful misconduct of the Port or any Person for whom it is responsible in Law, be in any way liable or responsible to the Master Lessee for any consequential, indirect, special, punitive or incidental loss, injury or damages of any nature whatsoever (including, without limitation, loss of income or revenue or business interruption) that may be suffered or sustained by the Master Lessee or its Representatives, customers or any other Person for whom the Master Lessee is responsible in Law.

29.3 Indemnification by the Master Lessee. The Master Lessee shall pay, protect, indemnify, defend, save and hold harmless the Port and its Representatives from and against any and all Actions and Losses of any nature whatsoever, howsoever caused, without regard to the form of Action and Losses and whether based on strict liability, negligence or any other theory of recovery at law or in equity, incurred by a Person relating to or arising from any of the following (each, an "Indemnified Liability"):

(a) General. The Master Lessee Operations upon or at the Premises or the occupancy or use of the Premises or any part thereof by, or occasioned wholly or in part by any act or omission attributable to, the Master Lessee or its Representatives or any other Person for whom the Master Lessee is responsible in law; provided that in instances in which the Port's negligence contributes to the cause of any such Losses, the Master Lessee's obligation to indemnify and hold harmless the Port pursuant to this clause (a) shall be limited to that portion of the liability not attributable to the Port's negligence;

(b) The Master Lessee's Breach of Covenants and Obligations. Any breach by the Master Lessee of its representations, warranties, covenants and obligations under this Master Lease; and

(c) Other Indemnities. All matters to be indemnified by the Master Lessee under Sections 4.2(c), 6.2, 14.4, and 21.2 and Exhibit F of this Master Lease as provided thereunder.

In case any Action is brought against the Port in connection with an Indemnified Liability, (i) the Port shall notify the Master Lessee to resist or defend such Action by retaining counsel, at the Master Lessee's cost, reasonably satisfactory to the Port, and the Port will cooperate and assist, at no cost to the Port, in the defense of such Action if reasonably requested to do so by the Master Lessee; provided that in the event such Action relates to a conflict of interest or dispute between the Master Lessee and the Port, or during the continuance of a Master Lessee Default, the Port shall have the right to select counsel to defend such Action, at the Master Lessee's cost, and (ii) in all instances, the Port may retain its own counsel and defend such Action at its sole cost. The obligations of the Master Lessee and the Port under this Section shall survive the Termination Date, and any rejection in bankruptcy of this Master Lease.

The foregoing provisions of this Section are not intended and shall not be construed to limit in any manner whatsoever the protection or benefits to which the Port otherwise would be entitled as an additional insured under any liability insurance maintained or required to be maintained by the Master Lessee under this Master Lease.

29.4 The Master Lessee Not the Port Agent. The Master Lessee hereby agrees that it is not, nor is it intended to be, the agent, servant or independent contractor of the Port, as such terms are used in California Civil Code Section 2782. In addition, the Master Lessee agrees that neither it, nor any of its Representatives shall claim or assert that the negligence or willful misconduct of the Master Lessee is or should be imputed to the Port under any agency or other legal theory. The Master Lessee hereby waives, to the extent permitted by applicable law, the provision of California Civil Code Section 2782 (which Section places limitations on indemnifications in certain contracts).

29.5 Sub-Lessees. The Master Lessee shall include provisions in each sublease that the Master Lessee enters into with respect to the Premises that (1) the Sub-Lessee agrees to indemnify and hold harmless the Port in the same manner as the Master Lessee agrees to indemnify and hold harmless the Port in accordance with this Section above, and (2) the Sub-Lessee agrees to maintain at all times during the term of the sublease liability insurance with the coverages described in this Section above, in an amount not less than \$1,000,000.00 combined single limit, and which names the Port an additional insured; provided, that the Port reasonably may require additional coverages, and increased amounts, as a condition to consent to a sublease and from time-to-time thereafter.

ARTICLE 30 WAIVER OF CLAIMS

Subject to Section 2.1(b), the Master Lessee hereby waives any claim against the City, the Port and their respective Representatives, for any loss, liability, damage, penalty, charge or out-of-pocket cost or expense caused by any Action directly or indirectly attacking the validity of this Master Lease or any part thereof or right granted thereby or asserting any right or interest in the Premises inconsistent with rights granted to the Master Lessee by this Master Lease, or by any judgment or award in any suit or proceedings instituted by a party other than the Port directly or indirectly attacking the validity of this Master Lease, or any part thereof, or by any judgment or award in any suit or proceeding declaring this Master Lease null, void or voidable, or delaying the same, or any part thereof, from being carried out. The Port and the Master Lessee each agree that it shall not in any way attempt to have this Master Lease declared

null or void, and that it shall reasonably cooperate with the other to defend the validity of this Master Lease and of the rights and obligations granted by this Master Lease.

ARTICLE 31 REPORTING; BOOKS AND RECORDS

31.1 Monthly Accounting. The Master Lessee agrees to prepare and delivery to the Port the monthly reporting of Gross Revenues in accordance with Section 5.2(c).

31.2 Five Year Capital Plans Report. Commencing at the end of Master Lease Year 15 and every 5 years thereafter, the Master Lessee shall deliver to the Port within 60 calendar days after the end of the applicable Master Lease Year, a five year consolidated capital plan showing in reasonable detail all material the Master Lessee Improvements that the Master Lessee proposes to construct or install at the Premises and all major equipment to be acquired by the Master Lessee that the Master Lessee proposes to install at the Premises.

31.3 Incident Management, Notifications and Reports. The Master Lessee shall immediately notify the Port of all emergencies, and promptly notify the Port of all material accidents and incidents occurring on or at the Premises, and of all material claims made by or against the Master Lessee, or potential material claims that the Master Lessee reasonably expects to make against, or to be made against it by, third parties in connection with its use and occupancy of the Premises. In addition, within 30 calendar days following the end of each calendar quarter of each Master Lease Year, the Master Lessee shall deliver to the Port a quarterly report of all such occurrences, including the following details in a format specified by the Port: (a) type of incident (e.g., bodily injury, death or property damage) and summary of each such incident; (b) classification of incident (e.g., machinery, right-of-way or other); (c) number of incidents by type and classification; (d) costs to correct incidents by type and classification; (e) claims made by the Master Lessee and revenue received by type and classification; and (f) claims made against the Master Lessee and losses incurred or losses claimed by type and classification.

31.4 Environmental Reports. The Master Lessee shall provide all reports and other Documents required under Exhibit F.

31.5 Other Reports.

(a) The Master Lessee shall deliver to the Port small and local business utilization in construction and professional services reports as required under applicable adopted Port policy.

(b) The Master Lessee shall deliver to the Port reports that demonstrate the Master Lessee's compliance or non-compliance with the Prevailing Wage Requirements and MAPLA as required under applicable adopted Port policy.

(c) The Master Lessee shall deliver to the Port quarterly Living Wages and Labor Standards at the Port-Assisted Businesses reports as required under applicable adopted Port policy.

(d) The Master Lessee shall provide to the Port such other reports reasonably requested by the Port.

31.6 The Port's Right to Inspect and Audit Books and Records.

(a) Books and Records Available for Inspection.

(1) The books and records required to be maintained by the Master Lessee under this Master Lease shall be available upon 7 calendar days' notice for inspection and copying by the Port or its Representative, and the Master Lessee hereby agrees to make or cause such books and records to be so available; provided, however, that such inspection shall be made during reasonable business hours and shall not be conducted in a manner or at a time which is unduly disruptive of the Master Lessee's business. In addition, such books and records shall be retained for at least 7 years after the occurrence of the transactions to which they related notwithstanding the expiration or termination of this Master Lease, provided, however, that if prior to the expiration of such 7-year period, any audit, review or investigation is commenced by the Port under Section 31.6(b), or any claim is made or litigation is commenced relating to this Master Lease by the Port, such books and records shall continue to be maintained by the Master Lessee, and the Port shall continue to have the right to inspect such books and records in the manner stated in this Master Lease, until the audit, claim or litigation is final. Failure of the Master Lessee to maintain such books and records as required herein shall constitute a breach of this Master Lease.

(2) If such books and records are not kept and maintained within a 50-mile radius from the offices of the Port at 530 Water Street, Oakland, California, the Master Lessee has the option within 7 calendar days of the Port's request of either (i) having said original books and records transported to a location at the primary offices of the Port or (ii) having the Port's Representatives inspect said books and records at a location where the Master Lessee maintains its records. In the latter case, the Master Lessee shall pay the Port for reasonable travel, lodging and subsistence expenses incurred in connection with such inspection, in accordance with the Port's adopted travel policies, from the auditor's duty station to the location at which the books and records are maintained, for each day of travel and on-site work. After the inspection is complete, the Port shall bill the Master Lessee for such travel expenses and the Master Lessee shall promptly pay such bill.

(b) The Port's Right to Audit. The Port shall have the right, upon 7 calendar days' notice to the Master Lessee to make an audit or cause an audit to be made of the Master Lessee's Documents, including, without limitation, its books and records and computerized accounting systems relating to the Master Lessee's operation in order to determine the correctness of the fees or Rent paid by the Master Lessee to the Port and the Master Lessee's compliance with the provisions of this Master Lease for any Master Lease Year which ended no more than 7 years prior to the date of commencement of such audit; provided that any such audits shall not occur more often than once a year unless the Port in good faith believes the Master Lessee may have breached the terms of this Master Lease. Such audit may include, but is not limited to, a review of general input, processing, and output controls of information systems, using read only access, for all computerized applications used to record financial transactions/information and other statistical reports. Additionally, the Port at its sole discretion may require the Master Lessee to provide any other records that are deemed necessary to enable the Port to perform an accurate audit of the

Master Lessee's fees or Rent due under this Master Lease, and such records and data that the Port determines in its discretion to be necessary or convenient in connection with its review or audit thereof. The Master Lessee shall provide all of the requested audit information in a manner and within the time frame as provided in Section 31.6(a). Failure to do so shall constitute a breach or default of this Master Lease. Such records shall be provided within 7 calendar days after the request thereof and, in the event that deductions, allocations or adjustments reducing the fees or Rent due are not supported or substantiated by such records, all such amounts shall be disallowed in determining amounts payable to the Port. The Master Lessee shall, if requested, freely lend its own assistance in making such inspection, examination, or audit, and, if such records are maintained in electronic and other machine-readable format, shall provide the Port and its Representatives such assistance as may be required to allow complete access to such records. The Master Lessee also shall lend such assistance and support freely to the Port as the Port may reasonably request in the conduct and review of any specific customer activity or other survey as the Port deems necessary. The Port's right to inspect and audit extends to relevant Documents and records necessary to confirm the information reflected in the reports provided to the Port under this Master Lease, including, without limitation, documentation necessary to confirm Variable Rent, Gross Revenue and those costs associated with the Master Lessee's performance under Exhibit F

(c) Fees and Interest if Underpayment Discovered by Audit. If, as a result of an audit performed above, it is established that additional amounts are due from the Master Lessee to the Port, the Master Lessee shall forthwith, upon written demand from the Port, pay to the Port such additional amounts, together with the delinquency charge provided for in the applicable Section of this Master Lease. Further, if such audit establishes that the Master Lessee has understated and underpaid any such amounts due under this Master Lease for any contract period by 3% or more, then the entire expense of such audit (including without limitation the prorated salary of the Port's auditors, fringes and overhead allocation) shall be paid by the Master Lessee and a revised revenue control or tracking procedures reasonably calculated to eliminate the recurrence of such deficiency shall be implemented by the Master Lessee. If it is established that the Master Lessee has overpaid the Port, the Port shall forthwith, upon written demand from the Master Lessee, refund such overpayments to the Master Lessee or, at the option of the Master Lessee, apply such overpayment to future Rent due from the Master Lessee to the Port.

(d) Inspection and Audit Rights Survive Expiration. The Port's rights under this Section 31.6 to inspect, copy and audit the books and records of the Master Lessee shall survive the expiration or termination of this Master Lease.

ARTICLE 32 SUCCESSORS

Each and every of the provisions, agreements, terms, covenants and conditions herein contained to be performed, fulfilled, observed and kept shall be binding upon the successors and assigns of the Parties hereto, and the rights hereunder, and all rights, privileges and benefits arising under this Master Lease and in favor of either Party shall be available in favor of the successors and assigns thereof, respectively; provided no assignment by or through the Master Lessee in violation of the provisions of this Master Lease shall vest any rights in such assignee or successor.

**ARTICLE 33
TIME OF ESSENCE**

Time is hereby expressly declared to be of the essence in the performance of and the compliance with each of the provisions and conditions of this Master Lease. All times provided in this Master Lease for the performance of any act shall be strictly construed.

**ARTICLE 34
NOTICES**

Any notice or other communication required to be given under or pursuant to this Master Lease, including without limitation a statutory notice, a notice of default and a Notice to Pay Rent or Quit, shall be in writing and shall be deemed properly delivered, given or served when personally delivered or mailed by certified or registered U.S. mail, postage prepaid, to the following addresses:

If to the Port:

Director of Maritime
The Port of Oakland
530 Water Street
Oakland, CA 94607
Facsimile: (510) 835-1641

With a copy to:

Deputy Port Attorney - Maritime
The Port of Oakland
530 Water Street
Oakland, CA 94607
Facsimile: (510) 444-2093

If to the Master Lessee:

With a copy to:

If notice of any change in its address is given by a Party in accordance with the foregoing, the other Party shall thereafter give notices at such changed address.

**ARTICLE 35
QUIET POSSESSION**

Subject to the terms and conditions of this Master Lease and to any Encumbrances to which this Master Lease is subordinate pursuant to this Master Lease, the Port hereby covenants and agrees that for so long as the Master Lessee shall perform all of the covenants and agreements herein stipulated to be performed on the Master Lessee's part, (a) the Port shall not disturb the Master Lessee's quiet enjoyment and possession of the Premises, (b) the Master Lessee shall have the exclusive right to perform the Master Lessee Operations throughout the Term. Notwithstanding the foregoing, this Article 35 shall have no effect on the Port acting in a regulatory, quasi-regulatory, legislative or quasi-legislative role or authority and in no event shall Master Lessee have the right to terminate this Master Lease as a result of the Port's default and the Master Lessee's remedies for the Port's default shall be limited to those remedies provided in Section 23.2.

**ARTICLE 36
ATTORNEYS' FEES AND COSTS**

If the Master Lessee or the Port commences any action or proceeding against the other arising out of or in connection with this Master Lease, the prevailing Party shall be entitled to have and recover from the losing Party reasonable attorneys' fees and costs of suit. The Port also shall be entitled to reasonable attorneys' fees and costs to protect the Port's interest under this Master Lease in the event of the Master Lessee's bankruptcy, and all such fees and costs shall be deemed actual pecuniary losses within the meaning of the Federal Bankruptcy Code.

**ARTICLE 37
MASTER LEASE THE ENTIRE AGREEMENT; OTHER AGREEMENTS**

The Master Lessee agrees that the provisions of this written Master Lease and those provisions of the Option Agreement hereunder incorporated (along with any other provisions of the Option Agreement reasonably necessary for such incorporation) constitute the entire agreement between the Master Lessee and the Port regarding the Premises and the Parties' rights and obligations with respect thereto, and supersede all prior agreements and understandings, whether oral or written, between the Parties with respect to the matters contained in this Master Lease. No representation, covenant or other matter oral or written, that is not expressly set forth in this Master Lease, those provisions of the Option Agreement hereunder incorporated (along with any other provisions of the Option Agreement reasonably necessary for such incorporation) or in Documents expressly referred to in this Master Lease shall be a part of, modify or affect this Master Lease; provided, however, that this Master Lease may be modified at the sole discretion of each of the Port and the Master Lessee if the modification is in writing executed by the Port and the Master Lessee and authorized by ordinance or resolution of the Board. It is expressly acknowledged, understood and agreed that, except as may otherwise be expressly provided herein, neither the Port nor the Master Lessee shall have any obligation whatsoever to amend or revise any term or condition of this Master Lease, including, without limitation, any amendment or revision relating to allowable uses of the Premises, the Term or any Rents, or which may in any respect modify any rights or obligations of the Port or the Master Lessee under the provisions of this Master Lease.

**ARTICLE 38
PROMOTION OF PORT AND FACILITIES**

The Master Lessee shall in good faith and with all reasonable diligence when advertising the Premises seek to promote the harbor and Airport facilities in the City of Oakland in order to promote and aid the commerce and trade of the Port of Oakland and the use of its facilities.

**ARTICLE 39
REAL ESTATE BROKERS**

The Master Lessee and the Port each represent that it has not had dealings with any real estate broker, finder or other similar person, with respect to this Master Lease in any manner. The Master Lessee and the Port each shall hold harmless the other from all damages resulting from any claims that may be asserted against the other by any broker, finder or other similar person with whom it has or purportedly has dealt.

**ARTICLE 40
COVENANT AGAINST CONTINGENT FEES**

The Master Lessee warrants that no person or agency has been employed or retained to solicit or obtain this Master Lease upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Port shall have the right to recover three times the full amount of the contingent fee.

“Bona fide agency,” as used in this Section means an established commercial or selling agency, maintained by the Master Lessee for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence.

“Bona fide employee,” as used in this Section, means a person, employed by the Master Lessee and subject to the Master Lessee’s supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence.

“Contingent fee,” as used in this Section, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Port contract.

“Improper influence,” as used in this Section, means any influence that induces or tends to induce a Port Commissioner, employee or officer to give consideration or to act regarding a Port contract on any basis other than the merits of the matter.

**ARTICLE 41
THIRD PARTY RIGHTS**

Except for Leasehold Mortgages entered into in accordance with Article 17 and as provided under Sections 7.5 and 29.3, the Parties agree that it is their specific intent that no broker

or any other Person shall be a party to, or a third party beneficiary of, this Master Lease or the escrow; and further that the consent of a broker or other Person shall not be necessary to any agreement, amendment, or Document with respect to the transaction contemplated by this Master Lease.

ARTICLE 42 NO PARTNERSHIP

Notwithstanding any provision which could be construed to the contrary herein, this Master Lease shall not be deemed or construed to make the Master Lessee and the Port partners or joint venturers, principal and agent, or employer and employee, or to render one Party liable for any of the debts or obligations of any other Party unless expressly so provided herein.

ARTICLE 43 MISCELLANEOUS

43.1 Approvals and Consents.

(a) Procedures.

(1) Wherever the provisions of this Master Lease require or provide for or permit an approval or consent by the Port of or to any action, Person, Document or other matter contemplated by this Master Lease, such request for approval or consent must (A) contain or be accompanied by any documentation or information required for such approval or consent in reasonably sufficient detail, as reasonably determined by the Port, (B) clearly set forth the matter in respect of which such approval or consent is being sought, (C) form the sole subject matter of the correspondence containing such request for approval or consent, and (D) state clearly that such approval or consent is being sought.

(2) Except with respect to (A) any approvals (including without limitation, when the Port is acting as the lead agency for CEQA purposes) when the Port is acting in a regulatory, quasi-regulatory, legislative or quasi-legislative role or authority, and (B) matters covered under Exhibit F or as otherwise expressly provided in this Master Lease, wherever the provisions of this Master Lease require or provide for or permit an approval or consent by the Port of or to any action, Person, Document or other matter contemplated by this Master Lease, the following provisions shall apply: (1) such approval or consent shall not be unreasonably or arbitrarily withheld, conditioned or delayed (unless such provision provides that such approval or consent may be unreasonably or arbitrarily withheld, conditioned or delayed or is subject to the discretion of the Port); (2) the Port shall (unless such provision provides that such approval or consent may be unreasonably or arbitrarily withheld, conditioned or delayed or is subject to the discretion of the Port), within such time period set forth herein (or if no time period is provided, within 45 calendar days, subject to the Port's right to extend such period for an additional 15 calendar days) after the giving of a notice by the Master Lessee requesting an approval or consent in accordance with Section 43.1(a)(1), advise the Master Lessee by notice either that it consents or approves or that it withholds its consent or approval, in which latter case it shall set forth, in reasonable detail, its reasons for withholding its consent or approval, which reasons may include the insufficiency, as determined by the Port acting reasonably, of the information or documentation provided; (3) if the responding notice referred to in this Section

43.1(a)(2) indicates that the Port does not approve or consent, the Master Lessee may take whatever steps may be necessary to satisfy the objections of the Port set out in the responding notice and, thereupon, may resubmit such request for approval or consent from time-to-time and the provisions of this Section 43.1(a) shall again apply until such time as the approval or consent of the Port is finally obtained; (4) if the disapproval or withholding of consent referred to in Section 43.1(a)(2) is subsequently overruled by the Port, such approval or consent shall be deemed to have been given on the date of the final determination of such overruling; and (5) for the avoidance of doubt, any dispute as to whether or not a consent or approval has been unreasonably withheld, conditioned or delayed shall be resolved in accordance with the Dispute Resolution Procedure.

(b) Approved Review Documents. Subject to the other provisions hereof, wherever in this Master Lease an approval or consent is required with respect to any Review Document, following such approval such Review Document shall not be amended, supplemented, replaced, revised, modified, altered or changed in any manner whatsoever without obtaining a further approval in accordance with the provisions of this Section 43.1.

(c) All Approvals In Writing. No provision in this Master Lease requiring the approval or consent of the Port shall be deemed to have been fulfilled or waived unless the written consent of the Port has first been obtained.

43.2 Enactment, Administration, Application and Enforcement of Laws by the City or the Port. Nothing in this Master Lease shall fetter, modify or otherwise interfere with the right and authority of (a) the City or the Port to enact, administer, apply and enforce any Law, and (b) the Port in providing its approvals when acting in its regulatory, quasi-regulatory, legislative or quasi-legislative role or authority. Unless a remedy is available or provided for this Master Lease, the Master Lessee shall not be entitled to claim or receive any compensation or other relief whatsoever as a result of the enactment, administration, application or enforcement of any Law by the Port, or in connection with the failure of the Port to grant approvals when acting in its regulatory, quasi-regulatory, legislative or quasi-legislative role or authority.

43.3 Warranty of Signatories. Each of the persons signing this Master Lease on behalf of the Master Lessee represent and warrant to the Port that the Master Lessee is _____, that each said person has been duly authorized by the Master Lessee to sign this Master Lease and that this Master Lease is a valid and binding obligation of the Master Lessee.

43.4 Memo of Master Lease. This Master Lease may not be recorded or filed in the public land or other public records of any jurisdiction by either Party. A Memorandum of Master Lease Agreement in the form of Exhibit J shall be executed by the Parties concurrently herewith and the Master Lessee may record the same in the County Recorder's Office of Alameda County.

43.5 Bankruptcy. Neither this Master Lease nor the Master Lessee's interest created herein nor any estate hereby created will pass or enure to the benefit of any trustee in bankruptcy or any receiver of the Master Lessee for the benefit of creditors of the Master Lessee or otherwise by operation of law.

43.6 Severability. Should any provision in this Master Lease be illegal or not enforceable, it shall be considered separate and severable from this Master Lease and the remaining provisions shall remain in force and be binding upon the Parties as though the said provision had never been included.

43.7 Counterparts. This Master Lease may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto except having additional signature pages executed by other Parties to this Master Lease attached thereto.

43.8 The Master Lessee Not on Government List. The Master Lessee represents and warrants that neither the Master Lessee nor any Person controlling the Master Lessee (i) is included on any Government List; (ii) has been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Order No. 133224 (September 23, 2001) or in any enabling or implementing legislation or other Presidential Executive Orders in respect thereof; (iii) has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any offense under the criminal laws against terrorists, the criminal laws against money laundering, the Bank Secrecy Act, as amended, the Money Laundering Control Act of 1986, as amended, or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorists (USA PATRIOT ACT) Act of 2001, Public Law 107-56 (October 26, 2001), as amended; or (iv) is currently under investigation by any governmental authority for alleged criminal activity. For purposes of this Master Lease, the term “Government List” means (1) the Specially Designated Nationals and Blocked Persons Lists maintained by the Office of Foreign Assets Control, United States Department of the Treasury (“OFAC”), (2) the Denied Persons List and the Entity List maintained by the United States Department of Commerce, (3) the List of Terrorists and List of Disbarred Parties maintained by the United States Department of State, (4) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the lists, laws, rules and regulations maintained by OFAC pursuant to any authorizing statute, Executive Order or regulation, (5) any other similar list maintained by the United States Department of State, the United States Department of Commerce or any other governmental authority or pursuant to any Executive Order of the President of the United States of America and (6) any list or qualification of “Designated Nationals” as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, as all such Government Lists may be updated from time to time.

43.9 References to this Master Lease. The words “herein,” “hereby,” “hereof,” “hereto” and “hereunder” and words of similar import refer to this Master Lease as a whole and not to any particular portion of it. The words “Article,” “Section,” “paragraph,” “sentence,” “clause” and “Schedule” mean and refer to the specified article, section, paragraph, sentence, clause or schedule of or to this Master Lease.

43.10 References to Any Person. A reference in this Master Lease to any Person at any time refers to such Person’s permitted successors and assignees.

43.11 Meaning of Including. In this Master Lease, the words “include,” “includes” or “including” mean “include without limitation,” “includes without limitation” and “including without limitation,” respectively, and the words following “include,” “includes” or “including” shall not be considered to set forth an exhaustive list.

43.12 Meaning of Notice. In this Master Lease, the word “notice” means “written notice,” unless specified otherwise.

43.13 Consents and Approvals. Unless specified otherwise, wherever the provisions of this Master Lease require or provide for or permit an approval or consent by either Party, such approval or consent, and any request therefor, must be in writing (unless waived by the other Party).

43.14 Trade Meanings. Unless otherwise defined herein, words or abbreviations that have well-known trade meanings are used herein in accordance with those meanings.

43.15 Laws. Provisions required by any existing or future Law to be inserted in this Master Lease are deemed inserted in this Master Lease whether or not they appear in this Master Lease or, upon application by either Party, this Master Lease will be amended to make the insertion; provided, however, that in no event will (a) the failure to insert any such provision before or after this Master Lease is signed prevent the enforcement of such provision, or (b) the insertion of any such provision affect any consequences provided for in this Master Lease for a change in Law or otherwise prejudice the Master Lessee’s rights hereunder. Unless specified otherwise, references to a Law are considered to be a reference to (i) the Law as it may be amended from time-to-time, (ii) all regulations and rules pertaining to or promulgated pursuant to such Law, and (iii) all future Laws pertaining to the same or similar subject matter.

43.16 Currency. Unless specified otherwise, all statements of, or references to, dollar amounts or money in this Master Lease are to the lawful currency of the United States of America.

43.17 Generally Accepted Accounting Principles. All accounting and financial terms used herein, unless specifically provided to the contrary, shall be interpreted and applied in accordance with generally accepted accounting principles in the United States of America, consistently applied.

43.18 Calculation of Time. For purposes of this Master Lease, a period of days shall be deemed to begin on the first day after the event that began the period and to end at 5:00 p.m. (Pacific Time) on the last day of the period. If, however, the last day of the period does not fall on a Business Day, the period shall be deemed to end at 5:00 p.m. (Pacific Time) on the next Business Day.

43.19 Number and Gender. In this Master Lease, words in the singular include the plural and vice versa, and words in one gender include all genders.

43.20 Headings. All headings and captions appearing in this Master Lease have been inserted for convenience and reference only and in no way define, limit or enlarge the scope or meaning of this Master Lease or any provision thereof.

43.21 Cooperation with Financing Programs and Grants. the Port, upon the request of the Master Lessee, shall reasonably consider and, if determined to be acceptable to it, cooperate with the Master Lessee's ongoing and future efforts to obtain grants from Governmental Authorities or debt financing assistance through the issuance of special purpose bonds (including "special facility bonds" which may be issued by the Port on behalf of the Master Lessee to the extent permitted under the Port's bond financing documents) or from other financing programs for which the Master Lessee may be eligible; provided that the Master Lessee agrees to comply with all applicable policies and practices of the Port in connection with such programs (including, but not limited to, the right to designate the bond counsel, the tax counsel, the financial advisors, the underwriters, and any other advisors in connection with such matters and to require Third Party credit support for the transaction), and to reimburse the Port for all costs and expenses incurred by the Port in connection therewith. Nothing in this Section 43.21 shall obligate the Port (a) to advocate or recommend the enactment or adoption of any Federal or State legislation or regulations, or (b) to cooperate with the Master Lessee in connection with obtaining any such grants or debt financing if the Port is required to commit to the expenditure or allocation of the Port funds in connection with such request or, if such cooperation could have any adverse affect on the Port, its properties, finances or financial statements.

43.22 Further Acts. Each of the Parties hereto shall perform such further acts and execute such further agreements as may be required from time-to-time to give proper effect to the intent of this Master Lease.

43.23 No Representations. The making, execution and delivery of this Master Lease by the Parties have not been induced by any representations, statements, warranties or agreements other than those expressly set forth herein.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed the day and year first above written.

PORT

CITY OF OAKLAND, a municipal corporation, acting by and through its Board of Port Commissioners

By: _____
Executive Director
Omar R. Benjamin

LESSEE

[_____]

By: _____
Name: _____
Title: _____

THIS MASTER LEASE SHALL NOT BE VALID OR EFFECTIVE FOR ANY PURPOSE UNLESS AND UNTIL IT IS SIGNED BY THE PORT ATTORNEY OR HIS DESGINEE.

Approved as to form and legality this _____ day of _____ 20 ____.

Approved as to form and legality this __ day of _____, 2009

DAVID L. ALEXANDER,
Port Attorney

By: _____
Deputy Port Attorney

EXHIBIT A

[LEGAL DESCRIPTION OF PREMISES]

EXHIBIT B

[SITE MAP OF PREMISES]

EXHIBIT C

[PROJECT]

EXHIBIT D

[APPROVED BUDGET]

EXHIBIT E

[APPROVED CONSTRUCTION SCHEDULE]

EXHIBIT F

[ENVIRONMENTAL RESPONSIBILITIES]

EXHIBIT G

Irrevocable Letter of Credit

Irrevocable and Transferable
Letter of Credit #

Amount: U.S. \$ _____

To: Board of Port Commissioners of the City of Oakland
530 Water Street
Oakland, California 94604

Ladies and Gentlemen:

For the account of [_____], a [_____], we hereby issue in your favor our Irrevocable Letter of Credit for U.S. \$_____.

The amount of this credit is immediately available to you by your drafts on us at sight accompanied by the following statement signed by your Executive Director, Deputy Executive Director Financial Services or Deputy Executive Director Operations:

“I certify that the amount of our drawing is due the Board of Port Commissioners of the City of Oakland pursuant to the terms of the Master Lease Agreement (Master Lease of Real Property Located in City of Oakland, County of Alameda).”

Drafts must clearly specify the number of this credit, be in substantially the form attached, and be presented at our counters at _____, not later than the close of business on _____, _____, or such later date as this credit shall have been extended to (the “Expiration Date”).

If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice that the purported demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor, and that we are returning any documents to you. Upon being notified that the purported demand for payment was not effected in accordance with this Letter of Credit, you may attempt to correct any such non-conforming demand for payment before the Expiration Date.

Our obligations hereunder are primary obligations to the Board of Port Commissioners of the City of Oakland and shall not be affected by the performance or non-performance by [_____] under any agreement with the Board of Port Commissioners of the City of Oakland or by any bankruptcy, insolvency or other similar proceeding initiated by or against [_____]. [_____] is not the beneficiary under this Letter of Credit and possesses no interest whatsoever in proceeds of any draw hereon.

This Letter of Credit is subject to the “International Standby Practices (ISP98),” International Chamber of Commerce Publication No. 590, and, as to matters not governed by ISP98, shall be governed by and construed in accordance with the laws of California, without regard to principles of conflicts of law.

We agree with you that drafts drawn and in compliance with the terms of this credit will be duly honored by us on delivery of the statement as specified.

All bank charges and commissions are for the account of [_____] and shall not be due by or charged to the Port.

Very truly yours,

[Name and Address of Bank]

Authorized Signature and Title

SIGHT DRAFT

City

Date

Pay to the order of the Board of Port Commissioners of the City of Oakland, at sight,
_____ (\$_____) U.S. Dollars, drawn under Letter of Credit
#_____, issued by _____ to the Board of Port
Commissioners of the City of Oakland for the account of _____.

**BOARD OF PORT COMMISSIONERS OF
THE PORT OF OAKLAND**

By: _____

Name: _____

Title: Executive Director*

- Deputy Executive Director
- Financial Services*
- Deputy Executive Director
- Operations*

*Strike Two

EXHIBIT H

Document Retention

1. Authorizations,
2. orders,
3. approvals,
4. reports,
5. plans,
6. inventories,
7. correspondence,
8. applications for Authorizations,
9. Notices of Intent,
10. Storm Water Pollution Prevention Plans,
11. Annual Comprehensive Site Compliance Evaluations,
12. Annual Reports,
13. monitoring results and notices of violations, and
14. notices to comply and requests for information from or to Governmental Authorities and relating or pertaining to the Premises or the Master Lessee Operations.

EXHIBIT I

Insurance Requirements for the Master Lessee Improvements

The Master Lessee shall carry or require all Master Lessee Contractors that shall perform work on or about the Premises, or shall otherwise be present at or about the Premises, to carry, at no cost to the Port, such insurance coverage required under this Exhibit during all times that such Master Lessee is conducting Master Lessee Improvements or a Master Lessee Contractor is performing work or may be present on the Premises, and shall furnish to the Port satisfactory certificates of insurance of the same.

GENERAL REQUIREMENTS

All certificates of insurance must include the full name of the insured and the name under which the insured operates, for example, John Smith, d/b/a Smith Electrical (d/b/a means “doing business as”). All Master Lessee Contractors shall be required to maintain Workers’ Compensation insurance including a waiver of subrogation in favor of the Port and the City. All required policies shall be primary and on a non-contributory basis with any insurance the Port, the City or the Master Lessee may carry and shall also contain cross-liability and severability of interest provisions. Prior to any Master Lessee Contractor’s presence on the Premises, certificates evidencing the required insurances shall be provided to the Port. Except for Worker’s Compensation and Professional Liability Insurance, each such certificate must show such required coverage, must include additional insured endorsements applicable to the Port and the City, and show coverage for all operations, activities, and programs, including completed operations, conducted on the Premises.

If any coverage expires prior to completion of the work or the conclusion of such Master Lessee Contractor presence on the Premises, then the Master Lessee shall furnish to the Port replacement certificates of insurance prior to the expiration of such coverage. All certificates of insurance must include a provision that there will be no cancellation, material modification or reduction of coverage without 30 calendar days’ written notice to the Port.

The insurance coverage required hereunder shall not be canceled or excluded on account of completion, occupancy or use of the Improvements unless and until (1) the Port is given at least 30 days’ prior written notice of cancellation after completion of construction or (2) there is on file with the Port with respect to the same Improvements the originally executed endorsement or endorsements required under the Master Lease evidencing the requirements under Section 14.1 of the Master Lease.

The required Commercial General Liability, Automobile Liability, and Contractors’ Pollution Legal Liability policies described below shall list the Port, the Board, each of its Commissioners, officers, employees, agents, and the City as additional insured parties and, to the extent applicable, shall list as additional insureds those required to be so named under Section 5.1 of the OAB ARMOA. The applicable Master Lessee Contractor insured shall be responsible for any self-insured retention, deductibles or uncovered exposures, and the Master Lessee shall have reasonably concluded, after due inquiry, that such Master Lessee Contractor is financially capable of paying such self-insured retention, deductibles or uncovered exposures.

COMMERCIAL GENERAL LIABILITY INSURANCE

Except as noted below in relation to Master Lessee Contractors retained to perform Response Actions on the OAB EDC Property, each Master Lessee Contractor shall carry Commercial General Liability Insurance, including coverage for independent contractors, premises and operations, personal injury, explosion, collapse and underground damage liability endorsement (commonly called X, C and U hazard), products and completed operations, blanket contractual liability and broad form property damage coverage (including completed operations), of not less than the following limits:

(a) If the total cost of the applicable contract is \$20,000 or less, coverage in an amount of not less than \$1 million per occurrence, \$2 million annual general aggregate and \$2 million Products and Completed Operations aggregate;

(b) If the total cost of the applicable contract is more than \$20,000, but not more than \$500,000, coverage in an amount of not less than \$2 million per occurrence and annual general aggregate, and \$2 million Products and Completed Operations aggregate;

(c) If the total cost of the applicable contract is \$500,001, but not more than \$1 million, coverage in an amount of not less than \$5 million per occurrence and annual general aggregate, and \$5 million Products and Completed Operations aggregate; and

(d) If the total cost of the applicable contract is \$1,000,001 or more, coverage in an amount of not less than \$10 million per occurrence and annual general aggregate, and \$10 million Products and Completed Operations aggregate.

Such insurance limits may be provided with a combination of primary and umbrella / excess insurance as long as such umbrella / excess insurance is following form to the underlying insurance.

As to each Master Lessee Contractor retained to perform Responses Action on the OAB EDC Property, Master Lessee shall require said Master Lessee Contractor to maintain the insurance required under Section 5.1 of the OAB ARMOA, with limits for that insurance which are the greater of the limits required hereunder or the limits required under Section 5.1 of the OAB ARMOA.

BUSINESS AUTOMOBILE LIABILITY

Each Master Lessee Contractor shall carry Automobile Liability Insurance, including owned, non-owned, leased and hired car coverage in an amount of not less than \$5 million combined single limit per occurrence.

WORKERS' COMPENSATION; EMPLOYERS' LIABILITY; USL&H

As required by any applicable Law, and including coverage for California and the States in which any Master Lessee Contractor is domiciled, each Master Lessee Contractor shall carry Worker's Compensation Insurance covering all Persons employed by such Master Lessee Contractor in connection with any work to be performed on or about the Premises, or such

employees presence at or about the Premises, for which claims for death, disease or bodily injury may be asserted against such Master Lessee Contractor, the Port, the City, or the Premises.

Each Master Lessee Contractor shall also carry Employers Liability Insurance covering all Persons employed by such Master Lessee Contractor in connection with any work to be performed on or about the Premises, or such employees presence at or about the Premises, in the amount of not less than \$1 million per accident, \$1 million per each employee and \$1 million policy benefit for injury by disease.

As required by any applicable Law, each Master Lessee Contractor shall carry insurance as required under the United States Longshoreman & Harborworkers Act covering all Persons employed by such Master Lessee Contractor in connection with any work to be performed on or about the Premises, or such employees presence at or about the Premises.

CONTRACTORS' POLLUTION LEGAL LIABILITY INSURANCE

Master Lessee shall carry, or require each Master Lessee Contractor to carry, Contractor's Pollution Legal Liability Insurance with limits of at least \$5,000,000.

BUILDER'S RISK

Each Master Lessee Contractor or the Master Lessee shall carry all risk or special form Builder's Risk Insurance, including coverage for earthquake and flood and with a deductible not greater than \$250,000, covering in the aggregate the total completed value of the proposed Master Lessee Improvements (on a completed value, non-reporting basis), including any "soft costs," cost of work performed and equipment, supplies and materials furnished, together with such "soft cost" coverage costs in connection with delayed completion, and such other endorsements as the Port may require.

PROFESSIONAL LIABILITY INSURANCE

For any Master Lessee Improvements that involve professional services, professionals performing such professional services shall be required to maintain Professional Liability Insurance with limits of at least \$10,000,000 per claim and policy aggregate and such insurance must remain in force until 10 years after final completion of the Master Lessee Improvements.

EXHIBIT J

Form of Memorandum of Master Lease Agreement

Prepared by and after
recording return to:

The Port Attorney's Office
The Port of Oakland
530 Water Street, 4th Floor
Oakland, CA 94607
Attn: Deputy the Port Attorney - Maritime

**DOCUMENT EXEMPT FROM RECORDATION FEE
UNDER GOVERNMENT CODE SECTION 27383**

MEMORANDUM OF MASTER LEASE AGREEMENT

The **CITY OF OAKLAND**, a municipal corporation, acting by and through its Board of Port Commissioners (the "Port"), and [_____], a [_____] (the "Master Lessee"), do hereby declare on this ___ day of _____, 20__ this Memorandum Master Lease Agreement (this "Memo"):

Pursuant to that certain Master Lease Agreement executed on _____, 20__ (the "Master Lease"), the Port demised and leased unto the Master Lessee, and the Master Lessee leased and demised from the Port, that certain property described in the Master Lease and more particularly described on Exhibit A attached hereto (the "Premises"), on and subject to the terms, covenants and conditions contained in the Master Lease.

The term of the Master Lease commenced as of _____, 20__ and shall terminate on _____, 20__, unless sooner terminated or extended as provided in the Master Lease.

1. The Master Lessee shall not Transfer (as defined in the Master Lease) the Master Lease without the prior written consent of the Port in accordance with the Master Lease. Unless specifically approved in writing by the Board, no such assignment will relieve the Master Lessee from its obligations to perform all of the terms, covenants and conditions of the Master Lease.

2. This Memo is intended only to provide notice of certain terms and conditions contained in the Master Lease and is not to be construed as a complete summary of the terms and conditions thereof. In the event the terms contained herein conflict with the terms and conditions of the Master Lease, the Master Lease shall control.

3. Upon the earlier of termination or expiration of the Master Lease, pursuant to the terms thereof, the Port shall execute a release of this Memo (the "Release") which shall be filed in the official public records of Alameda County, California and shall be effective to release this Memo. If the Master Lease has been properly terminated or has expired by its terms, then the

Port and the Master Lessee agree to execute the Release within 10 days after receipt of a written request for the same by either party.

4. Except as otherwise indicated, all initially capitalized terms used in this Memo and not defined herein shall have the meanings ascribed to them in the Master Lease.

[Signatures to follow]

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Master Lease Agreement as of the ___ day of _____, 20____.

CITY OF OAKLAND, a municipal corporation, acting by and through its Board of Port Commissioners

By: _____
Executive Director
Omar R. Benjamin

THIS MEMORANDUM OF MASTER LEASE AGREEMENT SHALL NOT BE VALID OR EFFECTIVE FOR ANY PURPOSE UNLESS AND UNTIL IT IS SIGNED BY THE PORT ATTORNEY OR HIS DESGINEE.

Approved as to form and legality this _____ day of _____ 20 ____.

Approved as to form and legality this __ day of _____, 2009

DAVID L. ALEXANDER,
Port Attorney

By: _____
Deputy Port Attorney

ACKNOWLEDGMENT

State of California)
)
County of _____)

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public in and for said
County and State

[SEAL]

ACKNOWLEDGMENT

State of California)
)
County of _____)

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public in and for said
County and State

[SEAL]

EXHIBIT "A"

Premises