

BASIC LEASE INFORMATION

Date of Lease: December 15, 2020

Landlord: City of Richmond, a municipal corporation and charter city
Landlord's Address: 450 Civic Center Plaza
Richmond, CA 94804

Tenant: Terminal Three Partners, LLC,
a California limited liability company
Tenant's Address: 1475 Powell Street, Suite 101
Emeryville, CA 94608

Premises: Terminal 3, a marine terminal located at 1411 Harbour Way South, Richmond, California 94804, inclusive of all the existing structures (including the primary warehouse (the “Warehouse”) on the Premises), which property is more fully described on Exhibit A.

Commencement Date: The date of this Lease.

Rent Commencement Date: The first day following end of the Due Diligence Period

Expiration Date: Original Term expires twenty six (26) years after the Commencement Date, as provided in Section 2.01.

Base Rent and Initial Base Rent: See Section 2.04

Permitted Use: The restoration of Terminal 3 into a working waterfront asset, consistent with the Port Priority Use designation by the Bay Conservation and Development Commission (BCDC) and all BCDC requirements, and subsequent operation as a marine transfer station, ferry and truck parking, container and other storage, ship repair, outdoor event space, and farmers’ markets, and legal ancillary and/or related uses thereto, so long as such are legal uses consistent with applicable zoning laws.

THIS LEASE is entered into as of December 15 2020 between Landlord and Tenant.

Article 1.

Premises

1.01. Lease. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises for the development, redevelopment, and construction (“**Project**”), and the subsequent leasing and operation, of the Premises, upon all of the terms, covenants and conditions set forth in this Lease. The Premises is more particularly shown with hatch marks on Exhibit A. Effective upon the Rent Commencement Date, the possession of the Premises shall be delivered to Tenant, Tenant shall thereupon assume responsibility as tenant of the Premises, and the Premises shall additionally include as of said date all of Landlord’s interest in and to all easements, rights and appurtenances relating to the Premises, if any. Effective upon the Rent Commencement Date, the Premises shall also include Landlord’s interest in and to all easements, rights and appurtenances relating to the Premises, if any. Effective upon the Rent Commencement Date, Landlord shall assign to Tenant (during the Term of and conditioned upon the continuing effectiveness of this Lease) all of the rights of Landlord under those certain leases (the “**Existing Leases**”) between Landlord and (a) Sause Brothers (being that certain Lease dated as of October 1, 2017, between Landlord and Sause Bros., Inc., an Oregon corporation, the “**Sause Lease**”) and (b) Sprint (being that certain Lease Agreement dated as of October 1, 1998, between Landlord and Nextel of California, Inc., a Delaware corporation, the “**Sprint Lease**”). During the Due Diligence Period, as defined below in Section 1.02(j), Landlord and Tenant shall jointly prepare commercially reasonable documents providing for the assumption and assignment of the Existing Leases, and commercially reasonable “tenant direction” letters addressed to such tenants providing for the payment of rent to Tenant upon the assignment of the Existing Leases.

1.02. Acceptance of Premises.

(a) Tenant accepts the Premises in its AS IS “WHERE IS” “ALL FAULTS” condition existing as of the Commencement Date. Tenant acknowledges that neither Landlord nor any of Landlord’s agents has agreed to undertake any alterations or additions or to perform any maintenance or repair of the Premises whatsoever, except as expressly set forth herein. Tenant shall obtain all necessary permits to use the Premises for the Permitted Use. The Premises and all elements thereof are leased subject to (i) all zoning regulations, restrictions, rules and ordinances, building codes and other laws and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction; (ii) all matters of record; (iii) all real estate taxes and assessments; and (iv) all matters that would be disclosed by an accurate survey or an inspection of the Premises. Tenant has the right and is encouraged by Landlord to obtain a leasehold title policy by a recognized title insurance company.

(b) Tenant understands and expressly acknowledges that unknown liabilities, conditions and defects may exist with respect to the Premises, and that Tenant explicitly took those possibilities into account in determining and agreeing to enter into this Lease.

(c) Tenant shall not rely on any warranties or representations, express or implied, of Landlord, any Landlord Party or any agent, contractor or employee of Landlord or a Landlord Party relating to the Premises, the physical condition, development potential, operation, or income generated by the Premises or any other matter or things affected by or related to the Premises, except for the express warranties and representations, if any, expressly contained in this Lease, and no such representation or warranty shall be implied with respect to the Premises. For the purposes of this Lease, a “**Landlord Party**” shall mean and include the council members, partners, trustees, officers, directors, shareholders, members and managers of Landlord, and their respective officers, members, managers, partners, employees, and agents. Without limiting the generality of the foregoing disclaimer of representations and warranties, except for the warranties and representations expressly contained in this Lease, Landlord specifically disclaims any warranties or representations of any kind or character, express or implied, with respect to (i) matters of title, (ii) environmental matters relating to the Premises or any portion thereof, including, without limitation, the presence of hazardous or toxic materials, including asbestos, or any mold or harmful or toxic materials in, on, under or in the vicinity of the Premises, (iii) geological conditions, including, without limitation, subsidence, subsurface conditions, water table, underground water reservoirs, limitations regarding the withdrawal of water, and geologic faults and the resulting damage of past and/or future faulting, (iv) whether, and the extent to which the Premises or any portion thereof is affected by any stream (surface or underground), river, body of water, wetlands, flood prone area, flood plain, floodway or special flood hazard, (v) drainage, (vi) soil conditions, including the existence of instability, past soil repairs, soil additions or conditions of soil fill, or susceptibility to landslides, or the sufficiency of any undershoring, (vii) the presence of endangered species or any environmentally sensitive or protected areas, (viii) zoning or building entitlements to which the Premises or any portion thereof may be subject, (ix) the availability of any utilities to the Premises or any portion thereof including, without limitation, water, sewage, gas and electric, (x) usages of adjoining properties, (xi) access to the Premises or any portion thereof, (xii) the Premises’ compliance with any site plans or other plans and specifications, or the size, location, age, use, design, quality, description, suitability, structural integrity or soundness, state of repair, water-tightness, operation, habitability, quality of construction or physical condition of the Premises or any portion thereof including, without limitation, the plumbing, sewer, heating, ventilating, air conditioning and electrical systems, roofing, windows, balconies, walls, floors and foundations, (xiii) the value, title or financial condition or potential performance of the Premises, or any income, expenses, charges, liens, encumbrances, rights or claims on or affecting or pertaining to the Premises or any part thereof, (xiv) the condition or use of the Premises or compliance of the Premises with any or all past, present or future federal, state or local ordinances, rules, regulations or laws, building, fire, parking or zoning ordinances, codes or other similar laws, including without limitation the Americans with Disabilities Act, (xv) the existence or nonexistence of underground storage tanks, surface impoundments, or landfills, (xvi) the merchantability of the Premises or fitness of the Premises for any particular purpose, (xvii) the truth, accuracy or completeness of any documents made available to Tenant, (xviii) tax consequences, or (xix) any other matter or thing with respect to the Premises.

(d) Tenant has, prior to the execution of this Lease, fully inspected and investigated the Premises and matters relevant to the Premises and has made all inquiries, inspections, tests, audits, studies and analyses that it has deemed necessary or desirable in connection with the Premises, and has approved the results of its investigations and inspections (including engineering, structural or other tests with respect to the condition of the Premises). Tenant has relied solely upon the results of Tenant's own inspections and judgment and other information obtained or otherwise available to Tenant, rather than upon any information of Landlord, in determining to enter into this Lease. Landlord has been under no duty to make affirmative disclosures or inquiry regarding any matter which may or may not be known to Landlord or any Landlord Party, and Tenant, for itself and for its successors and assigns, hereby specifically waives and releases Landlord and each Landlord Party from any such duty that otherwise might exist.

(e) Tenant acknowledges that Landlord has advised Tenant that, because of their age, the preexisting improvements, such as concrete, within the Premises may contain asbestos-containing materials ("**ACMs**"). If ACMs are likely to be disturbed in the course of developing any alterations, additions or improvements, Tenant shall encapsulate or remove the ACMs in accordance with an asbestos-removal plan reasonably approved by Landlord and otherwise in accordance with all applicable Hazardous Materials Laws, including giving all notices required by California Health & Safety Code Sections 25915-25919.7.

(f) Tenant acknowledges that Landlord has advised Tenant that soils within the Premises may contain lead-based paints ("**LBP**"). Lead from paint, paint chips and dust can pose health hazards if not managed properly. Tenant may at its sole cost and expense, have a state-certified LBP Inspector complete a LBP inspection and abatement and, if Tenant completes such inspection, shall provide an abatement certification to Landlord. Landlord has no specific knowledge of the presence of LBP in or about the Premises.

(g) Tenant hereby waives and releases Landlord, and each Landlord Party, from any and all present or future claims, demands, causes of actions, losses, damages, including, without limitation, exemplary, punitive, indirect or consequential, special or other damages, liabilities, costs and expenses (including attorney's fees whether suit is initiated or not) whether known or unknown, liquidated or contingent ("**Claims**") arising from or relating to the condition of the Premises, including, without limitation, any of the matters set forth in these Sections 2.2(a)-(j), and any environmental and other physical conditions affecting the Premises whether the same are a result of negligence or otherwise. The release set forth in this Section specifically includes, without limitation, any Claims arising in connection with the presence or alleged presence of asbestos or harmful or toxic substances in, on, under or about the Premises including, without limitation, any claims under or on account of (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as the same may have been amended or may be amended from time to time ("**CERCLA**") and similar state statutes and any regulations promulgated thereunder; (ii) any other federal, state or local law, ordinance, rule or regulation, now or hereafter in effect, that deals with or otherwise in any manner relates to, environmental matters of any kind; or (iii) this Lease or the common law. The release set forth in this Section

specifically includes, without limitation, any claims under the Americans with Disabilities Act of 1990 or similar federal, state or local laws, as any of those laws may be amended from time to time and any regulations, orders, rules of procedure or guidelines promulgated in connection with such laws, regardless of whether they were in existence on the date of this Lease. Tenant acknowledges that Tenant has been represented by independent legal counsel of Tenant's selection and Tenant is granting this release of its own volition and after consultation with Tenant's counsel. In connection with such waiver and release, Tenant expressly waives all rights under California Civil Code Section 1542, which provides that "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

Initials:



Tenant

All the terms and provisions of this Section 1.02 shall survive the Date of this Lease and the expiration or sooner termination of this Lease.

(h) The Premises are subject to, among other Laws, the requirements of the Americans with Disabilities Act, a federal law codified at 42 U.S.C. 12101 et seq., including, but not limited to Title III thereof, and all regulations and guidelines related thereto, together with any and all similar laws, rules, regulations, ordinances, codes and statutes now or hereafter enacted by local or state agencies having jurisdiction thereof, including, but not limited to, Title 24 of the California Code of Regulations, and the Unruh Civil Rights Act, California Civil Code Section 51 et seq., as the same may be in effect on the date of this Lease and may be hereafter modified, amended or supplemented (collectively, the "Accessibility Laws"). Any alterations constructed by Tenant (including any Major Alterations) to be constructed hereunder shall comply with the requirements of all Applicable Laws, including, but not limited to, Accessibility Laws, and all costs incurred to comply therewith shall be a part of and included in the cost of the alterations to be paid for by Tenant. Tenant shall be solely responsible for conducting its own independent investigation of these matters and for ensuring that the design of all Alterations strictly complies with all requirements of all Applicable Laws, including, but not limited to, Accessibility Laws. To Landlord's actual knowledge, as of the date of this Lease, the Premises have not undergone an inspection by a Certified Access Specialist (CASp), as defined in Section 55.52 of the California Civil Code. The foregoing statement is included in this Lease solely for the purpose of complying with California Civil Code Section 1938 and shall not in any manner affect Landlord's and Tenant's respective responsibilities for compliance with construction related accessibility standards as provided in this Lease. Landlord makes no representations, express or implied, as to the compliance of the Premises with applicable Accessibility Laws, and except to the extent expressly set forth in this Lease, Landlord shall have no liability or

responsibility to make any repairs or modifications to the Premises or the Project to comply with Accessibility Laws or other Laws.

(i) In accordance with California Civil Code Section 1938(e), Landlord also hereby states the following: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." The parties expressly agree that if Tenant elects to obtain a CASp inspection of the Premises, Landlord shall have the right to approve the scope of such inspection. Tenant shall be solely responsible for any and all costs to perform the CASp inspection. In addition, if the results of the inspection determine that any repairs or modifications are required to correct violations of construction-related accessibility standards, then Tenant, at Tenant's sole expense, shall perform such repairs or modifications.

(j) **Due Diligence Period.** During the ninety (90) day period following the date of this Lease (the "**Due Diligence Period**"), Tenant shall perform such investigations of the Premises as Tenant deems appropriate (the "**Investigations**") and Landlord (at no cost or expense to Landlord) shall cooperate with the Investigations as reasonably requested by Tenant. During the Due Diligence Period, Tenant and Tenant's representatives shall have the right to enter the Premises for the purpose of performing the Investigations, as reasonably conditioned by Landlord. Tenant shall promptly repair any damage to the Premises resulting from the Investigations. If Tenant is not satisfied in any respect with any of the Investigations, Tenant may terminate the Lease by written notice to Landlord given no later than the expiration of the Due Diligence Period, and, thereupon, the Lease shall terminate without any further liability by either party.

1.03 Tenant's Construction Obligation. As a part of this Lease, Tenant shall undertake and complete significant work (the "**Tenant Work**") to the Premises as described in the Work Letter Agreement attached hereto as Exhibit B, which work shall be in accordance with and make the Premises compliant in all respect with all laws, ordinances, rules, regulations and orders (state, federal, municipal or promulgated by other agencies or bodies having or claiming jurisdiction) related to the use, condition or occupancy of the Premises now in effect or that may hereafter come into effect including, but not limited to the Americans with Disabilities Act, 42 U.S.C. §§ 1201 et seq. (all of such Tenant Work collectively referred to herein as the "**Initial Improvements**"). The Initial Improvements shall be constructed diligently, as and in the manner otherwise required by the Work Letter Agreement (Exhibit B hereto), and in a good and workmanlike manner. . Subject to Force Majeure delay, Tenant shall promptly and diligently commence construction of the Tenant Work, shall prosecute such construction diligently, and

shall substantially complete such construction within twenty four (24) months after the issuance of the Permit (as defined and described in Paragraph 3(a) of the Work Letter Agreement).

1.04 Reserved Easements. Landlord reserves to itself and the right to grant to others in the future nonexclusive utility easements (including easements for construction, maintenance, repair, replacement and reconstruction of such utility easements) over, under, through, across or on the Premises, provided Landlord shall (a) solicit, in advance of entering into any such easement, the consent of Tenant, which shall not be unreasonably withheld, and (b) use reasonable efforts to provide that such work occurring and any easement is located such that it will not unreasonably interfere with Tenant's use and enjoyment of the Premises. Tenant shall not be obligated to maintain or repair any such easement facilities (whether existing as of the date hereof or granted in the future) unless the need for repair is caused by Tenant's negligence or other wrongful conduct.

Article 2.

Term, Use and Rent

2.01. Term.

(a) The term of this Lease shall commence upon the Commencement Date and shall continue in full force for twenty-six (26) years (the "**Original Term**"), subject to extension as provided below. The last day of the Original Term (or, as applicable of any Extension Term (as defined below) is the "Expiration Date" of the Lease. The Original Term (or Extension Term, as applicable) shall terminate upon the Expiration Date, unless sooner terminated or extended pursuant to the terms of this Lease.

(b) Upon the occurrence of the Expiration Date or any earlier termination of this Lease, Landlord and Tenant shall each be released and discharged from any claims or liabilities thereafter arising; provided, however, that nothing herein shall be deemed to release or discharge either party from those obligations that expressly survive the termination of this Lease, including those claims made by a third party for which Landlord has a claim of defense and indemnity against Tenant.

(c) Landlord hereby grants to Tenant options (each an "**Option**" and collectively the "**Options**") to extend the Term of the Lease on the same terms, conditions and provisions as contained in the Lease, except as otherwise provided herein, for four (4) periods of ten (10) years each (each an "**Extension Term**"). The Extension Term(s) shall commence as of the day following the Expiration Date, and the day following the expiration of the each Extension Term, respectively.

(i) Method of Exercise. Tenant shall exercise each Option by delivery of irrevocable and unconditional written notice (the "**Option Notice**") of such election to Lessor at least twelve (12) months prior to the Expiration Date (or the expiration of the applicable Extension Term).

(ii) Incorporation of Lease by Reference. All of the terms, covenants and conditions contained in this Lease shall be applicable to the Extension Term in the event of exercise; provided, however, that the Term shall then be extended by ten (10) years and the monthly Base Rent shall be modified as provided below.

(iii) Base Rent. The monthly Base Rent for each Extension Term shall be the amount set forth in Section 2.04(d).

2.02. Permitted Use.

(a) Tenant shall use the Premises solely for the Permitted Use and for no other use or purpose, except as permitted by Landlord pursuant to Landlord's prior written consent, which consent may be withheld in Landlord's sole discretion.

(b) The Premises shall be operated and maintained in an efficient, and business-like manner. Except to the extent governed by the Sause Lease, or any applicable legal requirements, Tenant shall not be obliged to use the Landlord's dockage and wharfage fee schedule (as published in Landlord's "**Tariff Schedule**").

(c) Tenant shall be permitted to use any fixtures, equipment and signs currently at the Premises that are the property of Landlord; provided that it shall be Tenant's responsibility to maintain and repair such fixtures, equipment and signs.

2.03. Personnel. Tenant shall furnish and supervise sufficient personnel to properly and efficiently operate and maintain the Premises in accordance with the terms of this Lease. Such personnel shall either be employees, volunteers or contractors of Tenant or employees of Operator. All such personnel shall be courteous to customers of the Premises. Further, Tenant shall promptly attend to the reasonable complaints and/or comments of Landlord and the customers of the Premises. As used herein, "**Operator**" shall mean any third-party engaged by Tenant to operate the Premises and approved by Landlord pursuant to Section 4.04.

2.04. Base Rent.

(a) Initial Base Rent Prior to Substantial Completion. Commencing on the Commencement Date and continuing until the date of Substantial Completion (as said term is defined in the Work Letter Agreement (Exhibit B hereto), Tenant shall pay to Landlord the annual sum of Four Hundred Forty Thousand Dollars (\$440,000) in equal monthly installments of \$36,666.66 (the "**Minimum Guaranteed Rent**"). The Minimum Guaranteed Rent payable shall be adjusted annually thereafter, on the date of each such annual anniversary including during any Extension Term (each such date, including the date of the first payment, being an "**Adjustment Date**") by multiplying Four Hundred Forty Thousand Dollars (\$440,000) by a fraction, the numerator of which shall be the Index (defined below), for the month immediately preceding such Adjustment Date, and the denominator of which shall be the Index for the month immediately preceding the Commencement Date, but in no event shall such adjustment result in an annual increase of less than two percent (2%) or more than four percent (4%).

“Index” As used herein means the Consumer Price Index for All Urban Consumers, San Francisco Oakland San Jose, California, All Items 1982-1984 = 100 (as defined by the United States Department of Labor’s Bureau of Labor Statistics as of the date hereof). If publication of the Index ceases, or the composition thereof or method of calculation thereunder is substantially changed, the calculations required by this Lease shall be computed upon the basis of whatever index published by the United States Department of Labor, or otherwise, is reasonably determined by Landlord as most nearly comparable as a measure of general changes in price levels for the San Francisco Bay Area metropolitan area.

(b) Base Rent upon Substantial Completion. Effective as of the day following the date of Substantial Completion and throughout the Original Term, the Minimum Guaranteed Rent (as adjusted annually in the preceding subparagraph) shall be accompanied by a payment by Tenant to Landlord of the Landlord’s Profit Share (defined below). It is the intention of the preceding subparagraphs to provide for an aggregate **“Base Rent”** that is defined as and comprised of an amount not less than the Minimum Guaranteed Rent plus the Landlord’s Profit Share.

(c) Profit Share. Effective as of the day following the date of Substantial Completion and throughout the Original Term, Landlord shall be entitled to a share of the profits of the operations at the Premises by Tenant. The **“Landlord’s Profit Share”** is a percentage of the Net Cash Flow (defined below), calculated and paid as follows:

(i) On an annual basis the Net Cash Flow shall be distributed in the ratio of Seven and 50/100 percent (7.50%) to Landlord and Ninety Two and 50/100 Percent (92.50%) to Tenant.

(ii) The Landlord’s Profit Share shall be paid monthly based upon the reasonable estimate thereof by Tenant, and shall be adjusted by Tenant no more frequently than quarterly, to reflect and account for changes thereto. The initial estimate and all subsequent estimates shall be made in writing by Tenant to Landlord with reasonable documentation supporting same.

(iii) Annually, within ninety (90) days after the end of the year, Tenant shall provide Landlord with a comprehensive reconciliation of the Net Cash Flow calculations for the preceding year. In the event the Commencement Date is any date other than January 1, then the balance of the first calendar year of the Original Term shall be reconciled for the period of the Commencement Date through December 31, and thereafter all of said reconciliations shall be on a calendar year basis. The annual reconciliation shall be accompanied by reasonable documentation substantiating and/or explaining same, and Landlord may request any further documentation reasonably necessary to review same. Landlord shall have the right to audit the books and records of Tenant upon reasonable notice, provided, however, that such right shall extend to the books and records related to the then most current reconciliation. Absent

written objection by Landlord to an annual reconciliation within two hundred seventy (270) days after the receipt thereof by Landlord, such reconciliation shall be deemed “final” and not subject to further review or challenge by Landlord. At the time such annual reconciliation is provided to Landlord, if sums are then owing by Tenant to Landlord for the period covered, said funds shall accompany the reconciliation. If Tenant has, for said period, overpaid Landlord’s Profit Share for the period, then said overpaid amount shall be deducted from the then next sums otherwise to be paid to Landlord under this Lease.

(iv) “**Net Cash Flow**” means the Gross Revenue (defined below), minus the Minimum Guaranteed Rent, minus the Amortized Improvements Cost (defined below).

(v) “**Gross Revenue**” means the aggregate of all revenue received by Tenant from all operations by Tenant at the Premises including, without limitation, all lease revenue, all fees (including wharfage/berthing), license or other income from any and all activities at the Premises. Gross Revenue shall not include any (A) sales or other taxes paid by any payor to Tenant to the extent such tax is required by law to be collected by Tenant and paid over to any governmental agency or (B) any sums paid by any subtenant at the Premises that are a reimbursement under any operative lease (or licenses) for an expense advanced by Tenant but which sum is the responsibility of such subtenant under such lease (or license) or (C), sums received that are offset by costs of collection related thereto and/or costs incurred by Tenant in its capacity as sublandlord, under subleases or licenses, as required by such subleases or licenses, if and as same may be incurred.

(vi) “**Amortized Improvement Cost**” means the annual amortization of the Final Improvement Cost (as defined in the Work Letter Agreement (Exhibit B hereto), as amortized over the then balance of the Original Term commencing as of the day of such advance of funds, inclusive of interest at the rate of ten percent (10%). To the extent that in a given year the Amortized Improvement Cost amount (applicable to such year) is not reached and, accordingly, Net Cash Flow is less than zero, then, to the extent Net Cash Flow is below zero (meaning that less than all of the then annual amount of the Amortized Improvement Cost would be available to pay such sum), said shortfall shall thereupon be carried forward to the following year.

Base Rent shall be payable without demand and without any reduction, abatement, counterclaim or setoff except as otherwise expressly provided in this Lease, in lawful money of the United States, at Landlord’s address specified on the Basic Lease Information sheet or at such other address as may be designated by Landlord in the manner provided for giving notice under Section 7.11 hereof.

By example and to avoid confusion, if in a given year (after Substantial Completion) the Gross Revenue is \$2,000,000, the Minimum Guaranteed Rent is \$480,000 (being the Minimum Guaranteed Rental under Section 2.04(b)(i), hypothetically increased annually by the Index to reach this amount), and the Amortized Improvement Cost is \$1,110,000,

then the Net Cash Flow would be \$410,000. For the purpose of the \$2,000,000 Gross Revenue would be allocated and disbursed in such example as follows:

- 1st - \$480,000 to Landlord being the Minimum Guaranteed Rent; and
- 2nd - \$1,110,000 to Tenant being the Amortized Improvement Cost; and
- 3rd - \$30,750 to Landlord (being 7.5% of \$410,000); and
- 4th - \$379,250 to Tenant (being 92.5% of \$410,000).

(d) Base Rent During Extension Term(s). The Base Rent payable during all periods of all Extension Terms shall not incorporate the Amortized Improvement Cost as a factor (such have been fully amortized during the Initial Term), and accordingly consist of (i) the Minimum Guaranteed Rent as calculated under Section 2.04(a) (adjusting annually by the Index, as described therein), plus (ii) that amount calculated by multiplying (x) seven and one-half percent (7.5%) times (y) the total Gross Revenue minus that amount paid to Landlord under item (i) (above).

2.05. Payment of Certain Expenses by Tenant. Without limiting the generality of Section 2.08 below, Tenant shall pay, prior to delinquency, all expenses and costs of every kind and nature that are necessary or prudent in connection with the management, maintenance, repair, preservation and operation of the Premises including, but not limited to, the following: (1) wages, salaries and related expenses, payroll taxes, insurance and other benefits of all on-site and off-site employees and personnel engaged in the operation, maintenance, repair and security for the Premises; (2) all supplies, materials, equipment and equipment rental used in the operation, maintenance, repair and security for the Premises; (3) all fees and charges due to any Operator hired by Tenant to operate the Premises; (4) utilities, including water and power for the Premises; (5) all maintenance, janitorial and service agreements for the Premises and the equipment thereon, including, without limitation, any alarm and/or security service; (6) all operating permits and licenses and all personal property taxes, possessory interest taxes, parking, sales or use taxes, assessments or fees, business or license taxes or fees, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, or charges of any kind that are assessed, levied, charged, confirmed or imposed by any public authority upon the operation of the Premises (or any portion or component thereof) or this Lease; (7) all insurance required under Article 6 below; (8) all data processing, accounting and legal fees for the operation of the Premises; and (9) telecommunications charges. Should Landlord separately invoice Tenant for any of the above expenses, Tenant shall pay such expenses as additional rent within ten (10) days of receipt of such invoices.

2.06. Payment of Certain Taxes by Tenant. Tenant shall be liable for all taxes levied against personal property and trade fixtures placed by Tenant in the Premises, which taxes shall be paid when due and before any delinquency. If any such taxes are levied against Landlord or Landlord's property and if Landlord elects to pay the same or if the assessed value of

Landlord's property is increased by inclusion of personal property and trade fixtures placed by Tenant in the Premises and Landlord elects to pay the taxes based on such increase, Tenant shall pay to Landlord upon demand that part of such taxes for which Tenant is primarily liable hereunder.

2.07 Building Restoration and Rehabilitation. Tenant shall initially restore and rehabilitate the Premises in a manner consistent with and as more particularly described in the Work Letter Agreement (Exhibit B hereto). Such restoration and rehabilitation shall be performed in accordance with the requirements and conditions set forth in Sections 4.05(a) – (e), below.

2.08 Net Lease. It is understood and agreed by Tenant that this Lease is an absolute, unconditional fully net lease and the Base Rent (as such is defined in Section 2.04), and all other sums payable hereunder, shall be absolutely net to Landlord in all respects. Tenant shall be responsible for all taxes, payments in lieu of taxes, assessments, utility charges, liens, insurance, maintenance, repairs and all other costs and expenses of any nature whatsoever (whether of an operating or capital nature) associated with the Premises or the Project. Tenant shall pay all sums payable hereunder without notice or demand, and without set-off, abatement, suspension or deduction and Tenant shall not interpose any counterclaim or defense of whatever nature or description in any proceeding by Landlord for the collection of money due hereunder, provided, however, that such agreement not to interpose any counterclaim or defense shall not be construed as a waiver of Tenant's right to assert a counterclaim or defense against any action seeking to terminate this Lease or as a waiver of Tenant's right to assert claims against Landlord in any separate action. Tenant shall take all actions necessary on Tenant's part to insure that any and all such payments will be received by the Landlord by the dates due as specified in this Lease.

Article 3.

Landlord's Covenants

3.01. Basic Services. Utilities and water service are provided to the Premises and shall be put in Tenant's name. Landlord shall not be liable for damages to either person or property, nor shall Landlord be deemed to have evicted Tenant, nor shall there be any abatement of Rent, nor shall Tenant be relieved from performance of any covenant on its part to be performed under this Lease by reason of any (i) deficiency in the provision of electricity, gas or water; (ii) breakdown of equipment or machinery utilized in supplying services; or (iii) curtailment or cessation of services due to causes or circumstances beyond the reasonable control of Landlord or by the making of necessary repairs or improvements, unless such deficiency, breakdown, curtailment or cessation is due to the sole active negligence or willful misconduct of Landlord.

3.02. Graphics and Signage. All new signs, notices, advertisements and graphics of every kind or character, displayed in the Premises or visible from the exterior of the

Premises shall be subject to Landlord's prior written approval, at Landlord's reasonable discretion, and shall be constructed and installed at Tenant's sole expense, subject to all applicable laws.

3.03. Repair Obligation. Except as specifically set forth in this Lease, Landlord shall have no obligation whatsoever to maintain or repair the Premises exclusive of matters described in Section 5.05, below. Landlord shall have the right, but not the obligation, to undertake work or repair that Tenant is required to perform under this Lease and that Tenant fails or refuses to perform in a timely and efficient manner. Tenant shall reimburse Landlord upon demand, as additional rent, for all costs reasonably incurred by Landlord in performing any such work or repair for the account of Tenant. The parties intend that the terms of this Lease govern their respective maintenance and repair obligations. Tenant expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease with respect to such obligations or affords Tenant the right to make repairs at the expense of Landlord or to terminate this Lease by reason of the condition of the Premises or any needed repairs.

3.04. Real Property Taxes and Debt Service. Subject to Section 2.06 above, Landlord shall pay any and all real property taxes, assessments and fees, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind that are assessed, levied, charged, confirmed or imposed by any public authority upon the Premises (or any portion or component thereof) or upon the Rent due hereunder. Landlord shall pay all debt service, ground lease rental, or similar payments due with respect to the Premises, if any.

3.05. Peaceful Enjoyment. Landlord covenants with Tenant that upon Tenant paying the Rent and all other charges required under this Lease and performing all of Tenant's covenants and agreements herein contained, Tenant shall peacefully have, hold and enjoy the Premises subject to all of the terms of this Lease. This covenant and the other covenants of Landlord contained in this Lease shall be binding upon Landlord and its successors only with respect to breaches occurring during its or their respective ownerships of Landlord's interest hereunder.

Article 4.

Tenant's Covenants

4.01. Payments by Tenant. Tenant shall pay Base Rent at the times and in the manner provided in this Lease. Absent specification, all payments of Base Rent are due on the first day of each month and delinquent if not received by the tenth (10th) day of each such month. All obligations of Tenant hereunder to make payments to Landlord shall constitute rent and failure to pay the same when due shall give rise to the rights and remedies provided for in Section 6.07(b). If there is more than one Tenant, the obligations imposed under this Lease upon Tenant shall be joint and several.

4.02. Repairs by Tenant. Tenant shall be obligated to maintain and repair the Premises, to keep the same at all times in good order, condition and repair, and, upon expiration of the Term, to surrender the same to Landlord in the same condition as on the Commencement

Date, subject to the requisite performance of the Tenant Work, reasonable wear and tear and taking by condemnation excepted. Tenant's obligations shall include, without limitation, the obligation to repair all damage caused by Tenant, its agents, employees, contractors, invitees and others using the Premises with Tenant's express or implied permission. Tenant shall further be responsible for regular cleaning of the Premises and its driveways and entrance/exit areas. Tenant shall give Landlord prompt notice of any damage to or defective condition in any part of the Premises. Tenant acknowledges that Tenant's obligations from time to time may include the substructure of the pier and warehouse which constitute a part of the Premises, and pierside dredging to at least 32 feet below the waterline.

4.03. Waste. Tenant shall not commit or allow any waste or damage to be committed in any portion of the Premises. Tenant shall keep the Premises free of trash and refuse at all times.

4.04. Assignment or Sublease. Tenant shall have the right to sublease all or any part of Tenant's interest in this Lease or in the Premises, provided that (a) if Tenant elects to engage an Operator to operate the Premises on Tenant's behalf, then Tenant's selection of an Operator shall be subject to Landlord's approval, which approval shall not be unreasonably withheld, conditioned or delayed and (b) if Tenant assigns the entirety of its interest in this Lease, or subleases more than fifty percent of the Premises to a single subtenant, then such assignment or sublease shall be subject to Landlord's approval, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant's right to grant a mortgage and/or security interest in this Lease and/or Tenant's interest in the Premises and/or any subleases is governed by the provisions set forth in Exhibit D attached hereto. Without limiting the other transaction(s) that may constitute or result in an assignment of this Lease, each of the following shall be deemed to be an assignment under this Lease: (a) the merger or consolidation of Tenant with or into another entity, whether or not Tenant is the surviving entity, except a merger of Tenant into a wholly-owned subsidiary to effect a reincorporation in another state; (b) except in the case of a public offering of securities registered with the Securities and Exchange Commission, a transfer, issuance, or dilution of greater than fifty percent (50%) of the ownership or beneficial interests (whether stock, partnership interest, membership interest or otherwise) in Tenant, either in a single transaction or a series of transactions (whether related or unrelated), such that the ultimate owners or holders (whether direct or indirect) of such interests on the date of this Lease cease to own more than fifty percent (50%) of the ownership or beneficial interest in Tenant; (c) the commencement of liquidation proceedings or the dissolution of Tenant (whether or not in connection with liquidation proceedings); (d) the reorganization or restructuring of Tenant, including by a spin-off or split-off; and (e) the change in the identity of such number of "controlling persons" as, under the organizational documents of Tenant, is the minimum number of persons required to approve any act involving the management or operation of the business of Tenant. For purposes of this Section 4.04, (1) the term "controlling persons" means the directors if Tenant is a corporation, the members or managers if Tenant is a limited liability company, the general partners if Tenant is a partnership, or other persons having equivalent control over said approval if another entity, and (2) the term "organizational documents" means the charter, bylaws, and shareholders' agreement if Tenant is a corporation,

the articles of organization or certificate of formation and operating agreement if Tenant is a limited liability company, the partnership agreement if Tenant is a partnership, or equivalent documents governing Tenant's organization and governance if Tenant is another entity.

4.05. Alterations, Additions and Improvements.

(a) Other than the Initial Improvements, Tenant shall not make or allow to be made any alterations or additions in or to the Premises that exceed (in the aggregate, as to any proposed alteration or addition) that amount greater than six (6) months' Base Rent without first obtaining the written consent of Landlord. Landlord's consent will not be unreasonably withheld, conditioned or delayed with respect to proposed alterations and additions that: (i) comply with all applicable laws, ordinances, rules and regulations; (ii) will not interfere with the Landlord's future use of the Premises; and (iii) will not trigger any additional costs to Landlord (other than those for which Tenant is obligated to reimburse Landlord pursuant to the terms of this Lease).

(b) Any consent given by Landlord under this Section 4.05 shall be deemed conditioned upon: (i) Tenant's acquiring all applicable permits required by governmental authorities; (ii) Tenant's furnishing to Landlord copies of such permits, together with copies of the approved plans and specifications, prior to commencement of the work thereon; and (iii) Tenant's compliance with the conditions of all applicable permits and approvals in a prompt and expeditious manner.

(c) Tenant shall provide Landlord with not less than ten (10) days prior written notice of commencement of the work so as to enable Landlord to post and record appropriate notices of nonresponsibility. All alterations and additions permitted hereunder shall be made and performed by Tenant without cost or expense to Landlord. Tenant shall pay the contractors and suppliers all amounts due to them when due and keep the Premises free from any and all mechanics', materialmen's and other liens and claims arising out of any work performed, materials furnished or obligations incurred by or for Tenant.

(d) Any and all alterations, additions or improvements made to the Premises by Tenant shall become the property of Landlord upon installation and shall be surrendered to Landlord without compensation to Tenant upon the termination of this Lease by lapse of time or otherwise unless Landlord conditioned its approval of such alterations, additions or improvements on Tenant's agreement to remove them, in which case Tenant shall, by the Expiration Date, remove such alterations, additions and improvements, repair any damage resulting from such removal and restore the Premises to their condition existing prior to the date of installation of such alterations, additions and improvements. Notwithstanding anything to the contrary set forth above, this clause shall not apply to movable equipment, personal property or furniture owned by Tenant. Tenant shall repair at its sole cost and expense all damage caused to the Premises by removal of Tenant's movable equipment, personal property or furniture and such other alterations, additions and improvements as Tenant shall be required or allowed by Landlord to remove from the Premises. Nothing herein shall be construed to require Tenant to remove any structures that are located in the Premises as of the Commencement Date.

(e) All alterations, additions and improvements permitted under this Section 4.05 shall be constructed diligently, in a good and workmanlike manner and in compliance with all applicable laws, ordinances, rules and regulations including, without limitation, building codes and those related to accessibility and use by individuals with disabilities.

4.06. Compliance With Laws and Insurance Standards. Tenant shall not occupy or use, or permit any portion of the Premises to be occupied or used in a manner that violates any applicable law, ordinance, rule, regulation, order, permit, covenant, easement or restriction of record, or for any business or purpose that is productive of fire hazard. Tenant shall not do or permit anything to be done that would result in the cancellation of the all-risk property insurance coverage on the Premises and/or its contents. Tenant shall, at Tenant's sole cost and expense, comply with all laws, ordinances, rules, regulations and orders (state, federal, municipal or promulgated by other agencies or bodies having or claiming jurisdiction) related to the use, condition or occupancy of the Premises now in effect or that may hereafter come into effect including, but not limited to, (a) accessibility and use by individuals with disabilities, (b) environmental conditions in, on or about the Premises, and c) Chapters 2.28 (Nondiscrimination Clauses in City Contracts Ordinance), 2.50 (Business Opportunity Ordinance) 2.56 (Local Employment Program Ordinance), 2.60 (Living Wage Ordinance) and 2.65 (Ordinance Banning the Requirement to Provide Information of Prior Criminal Convictions on All Employment Applications) of the Richmond Municipal Code, if applicable. If anything done by Tenant in its use or occupancy of the Premises shall create, require or cause imposition of any requirement by any public authority for structural or other upgrading of or alteration or improvement to the Premises, Tenant shall, at Landlord's option, either perform the upgrade, alteration or improvement at Tenant's sole cost and expense or reimburse Landlord upon demand, as additional rent, for the reasonable cost to Landlord of performing such work. The judgment of any court of competent jurisdiction or the admission by Tenant in any action against Tenant, whether Landlord is a party thereto or not, that Tenant has violated any law, ordinance, rule, regulation, order, permit, covenant, easement or restriction shall be conclusive of that fact as between Landlord and Tenant.

4.07. No Nuisance. Tenant shall use and occupy the Premises, and control its agents, employees, contractors, invitees and visitors, in such manner so as not to create any nuisance.

4.08. Entry by Landlord. Landlord, its employees, agents and consultants, shall have the right to enter the Premises at any time to inspect the same, to perform such work as may be permitted or required under this Lease, to make repairs to or alterations of the Premises, to deal with emergencies, to post such notices as may be permitted or required by law to prevent the perfection of liens against Landlord's interest in the Premises or to show the Premises to prospective tenants, purchasers, encumbrancers or others; provided, however, that Landlord shall use commercially reasonable efforts to minimize interference with Tenant's use of the Premises. Tenant shall not be entitled to any abatement of rent or damages by reason of the exercise of any such right of entry which is in compliance with this Section 4.08.

4.09. Estoppel Certificate. Within ten (10) business days following Landlord's request, Tenant shall execute, acknowledge and deliver written estoppel certificates addressed to (i) any mortgagee or prospective mortgagee of Landlord, or (ii) any purchaser or prospective purchaser of all or any portion of, or interest in, the Premises, on a form reasonably specified by Landlord, certifying as to such facts (if true) and agreeing to such notice provisions and other matters as such mortgagee(s) or purchaser(s) may reasonably require, including, without limitation, the following: (a) that this Lease is unmodified and in full force and effect (or in full force and effect as modified, and stating the modifications); (b) the amount of and date to which Rent and other charges have been paid in advance; and (c) acknowledging that Landlord is not in default under this Lease (or, if Landlord is claimed to be in default, stating the nature of the alleged default). However, in no event shall any such estoppel certificate require an amendment of the provisions of this Lease or otherwise affect or abridge Tenant's rights or increase Tenant's obligations hereunder. Any such estoppel certificate may be relied upon by any such mortgagee or purchaser. Failure by Tenant to execute and deliver any such estoppel certificate within the time requested shall, at Landlord's election, constitute a default hereunder.

4.10. Surrender. Subject to the provisions of Section 4.05 hereof, on the Expiration Date (or earlier termination of this Lease), Tenant shall quit and surrender possession of the Premises to Landlord in as good order and condition as they were in on the Commencement Date, reasonable wear and tear, taking by condemnation and repairs that are Landlord's responsibility under this Lease excepted. Reasonable wear and tear shall not include any damage or deterioration that would have been prevented by good maintenance practice or by Tenant performing all of its obligations under this Lease. Tenant shall, without cost to Landlord, remove all furniture, equipment, trade fixtures, debris and articles of personal property owned by Tenant in the Premises, and shall repair any damage to the Premises resulting from such removal. Any such property not removed by Tenant by the Expiration Date (or earlier termination of this Lease) shall be considered abandoned, and Landlord may remove any or all of such items and dispose of same in any lawful manner or store same in a public warehouse or elsewhere for the account and at the expense and risk of Tenant. If Tenant shall fail to pay the cost of storing any such property after storage for thirty (30) days or more, Landlord may sell any or all of such property at public or private sale, in such manner and at such times and places as Landlord may deem proper, without notice to or demand upon Tenant. Landlord shall apply the proceeds of any such sale as follows: first, to the costs of such sale; second, to the costs of storing any such property; third, to the payment of any other sums of money that may then or thereafter be due to Landlord from Tenant under any of the terms of this Lease; and fourth, the balance, if any, to Tenant.

4.11. Tenant's Remedies. Landlord shall not be deemed in breach of this Lease unless Landlord fails within a reasonable time to perform an obligation required to be performed by Landlord. For purposes of this Section 4.11, a reasonable time shall in no event be less than thirty (30) days after receipt by Landlord of written notice specifying wherein such obligation of Landlord has not been performed; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days after such notice are reasonably required for its performance, then Landlord shall not be in breach of this Lease if performance is commenced

within said thirty (30)-day period and thereafter diligently pursued to completion. Tenant shall not have the right to terminate this Lease or withhold, reduce or offset any amount against any payments of Rent due and payable under this Lease by reason of a breach of this Lease by Landlord.

Article 5.

Environmental Matters

5.01. Hazardous Materials Prohibited.

(a) Tenant shall not cause or permit any Hazardous Material (as defined in Section 5.01(b) below) to be brought, kept, used, generated, released or disposed in, on, under or about the Premises by Tenant, its agents, employees, contractors or invitees; provided, however, that Tenant may use, store and dispose of, in accordance with applicable Laws, limited quantities of standard office and janitorial supplies, but only to the extent reasonably necessary for Tenant's operations in the Premises and provided that Tenant remains liable for the release or disposal of any such materials and supplies at or on the Premises that occurs during the Term hereof. Tenant hereby indemnifies Landlord from and against any breach by Tenant of the obligations stated in the preceding sentence, and hereby agrees to defend and hold Landlord harmless from and against any and all claims, liability, losses, damages, costs and/or expenses (including, without limitation, diminution in value of the Premises, or any portion thereof, and sums paid in settlement of claims, fines, penalties, attorneys' fees, consultants' fees and experts' fees) that arise during or after the Term as a result of such breach. This indemnification of Landlord by Tenant includes, without limitation, death of or injury to person, damage to any property or the environment and costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state or local governmental agency or political subdivision, including the City of Richmond, because of any Hazardous Material present in, on, under or about the Premises (including soil and ground water contamination) that results from such a breach. Without limiting the foregoing, if the presence of any Hazardous Material in, on, under or about the Premises caused or permitted by Tenant results in any contamination of the Premises, Tenant shall promptly take all actions at its sole expense as are necessary to return the same to the condition existing prior to the introduction of such Hazardous Material; provided that Landlord's approval of such actions, and the contractors to be used by Tenant in connection therewith, shall first be obtained. This indemnification of Landlord by Tenant shall survive the expiration or sooner termination of this Lease. Notwithstanding the foregoing, in no event shall Tenant be liable for any Hazardous Materials located on the Premises as of the Commencement Date or any Hazardous Materials placed on the Premises by a party other than Tenant or Tenant's agents, contractors or employees.

(b) As used in this Lease, the term "**Hazardous Material**" means any hazardous or toxic substance, material or waste that is or becomes regulated by any local governmental authority, the State of California or the United States government. The term "**Hazardous Material**" includes, without limitation, any substance, material or waste that is (i)

defined as a “hazardous waste” or similar term under the laws of the jurisdiction where the Premises is located; (ii) designated as a “hazardous substance” pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. § 1317); (iii) defined as a “hazardous waste” pursuant to Section 1004 of the Federal Resource, Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. (42 U.S.C. § 6903); (iv) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. (42 U.S.C. § 9601); (v) hydrocarbons, petroleum, gasoline, crude oil or any products, by-products or fractions thereof; or (vi) asbestos in any form or condition.

(c) As used in this Article 5, the term “**Laws**” means any applicable federal, state or local laws, ordinances, rules or regulations relating to any Hazardous Material affecting the Premises, including, without limitation, the specific laws, ordinances and regulations referred to in Section 5.01(b) above. References to specific Laws shall also be references to any amendments thereto and to any applicable successor Laws.

5.02. Safety Precautions and Storm Water Pollution Control.

(a) In connection with Tenant’s use and occupancy of the Premises, Tenant shall take measures to minimize the potential for Hazardous Materials or other pollutants to enter the San Francisco Bay and/or City of Richmond’s storm water drainage system. The targeted pollutants include Hazardous Materials and floatable materials, oxygen demanding substances (e.g. plant debris, street litter and organic substances), bacteria and viruses, sediment, and nutrients (e.g. nitrogen and phosphorous). These measures shall pertain to the extent related to Tenant’s use and occupancy of the Premises, and shall include, but not be limited to, taking all steps reasonably necessary in:

(1) Preventing fuel spills and leaks and reducing the impact to storm water by not topping off fuel tanks; using secondary containment when transferring fuel from tanker trucks to fuel tanks; using absorbent material on small spills and for general cleaning rather than hosing; carrying out all federal, state, regional and local requirements regarding underground storage tanks or installing above ground tanks; fueling mobile equipment at designated fueling areas; and designing fueling areas to prevent the run-on of storm water and the run-off of spills. “Secondary containment” means a back-up system that prevents the spread of pollutants should any spill, leak or otherwise escape.

(2) Preventing the discharge of pollutants to storm water from vehicle, boat and equipment maintenance and repair by containing waste oil under cover with absorbent material under each container; keeping drip pans or container under the areas that might drip pollutants; using a vehicle maintenance area designed to prevent storm water pollution; cleaning storm drain inlets regularly, especially after large storms; not pouring materials down storm drains; dry sweeping instead of hosing down work areas; storing idle equipment under cover, switching to non-toxic chemicals for maintenance when possible; cleaning small spills with rags and larger spills with absorbent materials; and minimizing the use of solvents.

(3) Preventing the discharge of pollutants to storm water from outdoor equipment and operations by reducing the amount of waste created; enclosing or covering all or some of the equipment; and installing secondary containment.

(4) Preventing the discharge of pollutants to storm water from vehicle and equipment washing and steam cleaning by maintaining designated wash areas, preferably covered, to prevent contact with storm water; and not permitting any wash water to enter the storm drains.

(5) Preventing the discharge of pollutants to storm water from outdoor loading/unloading of materials by parking tank trucks or delivery vehicles so that spills or leaks can be contained; covering the loading and unloading docks to reduce exposure of materials to rain; and using drip pans under hoses.

(6) Preventing the discharge of pollutants to storm water from outdoor storage areas by installing appropriate safeguards against accidental release; installing secondary containment where reasonably required; conducting regular inspections.

(7) Protecting materials from rainfall run-on, run-off and wind dispersal by storing materials indoors; complying with specific federal, state, regional and local standards regarding storage of Hazardous Material; enclosing or covering materials; periodically sweeping parking lots or other surfaces near bulk material storage areas to remove debris blown or washed from storage areas; and installing pellet traps at storm water discharge points where plastic pellets are loaded and unloaded.

(8) Preventing the discharge of pollutants to storm water from waste handling and disposal by tracking waste generation, storage, and disposal; reducing waste generation and disposal through source reductions, reuse and recycling; preventing run-on and run-off from waste management areas; and covering dumpsters and garbage cans during the rainy season.

(9) Preventing the discharge of pollutants to storm water from contaminated or erodible surface areas by leaving as much vegetation on-site as reasonably possible; minimizing soil exposure; stabilizing exposed soils; and preventing storm water run-on and run-off.

(10) Preventing the discharge of pollutants to storm water from buildings and grounds maintenance by washing and cleaning up with as little water as reasonably possible; preventing and cleaning up spills immediately; and keeping debris from entering the storm drains.

(11) Preventing the discharge of pollutants to storm water from building repair, remodeling, and construction by using appropriate containment and erosion controls; and enclosing or covering building material storage areas.

(12) Preventing the discharge of pollutants to storm water and receiving waters from over water activities by minimizing over water maintenance; limiting over

water hull surface maintenance to sanding and minor painting; not spray painting vessels while they are on the water; avoid washing down boats with soap and detergent; using phosphate-free and biodegradable detergent for hull washing; keeping organic and inorganic wastes out of the water; and cleaning up spills and wastes immediately. "Over water activities" refers to activities undertaken by Tenant on the waters of San Francisco Bay or waters flowing into San Francisco Bay.

(13) Preventing the discharge of pollutants to storm water by using ground cloths when painting boats on land; using tarps, plastic sheeting, or other material to contain spray paint and blasting sand; properly disposing of surface paint chips, used blasting sand, residual paints, and other material; and sweeping any dry docks before flooding them.

5.03. Right of Entry. Landlord, its employees, agents and consultants, shall have the right to enter the Premises at any time in order to conduct periodic environmental inspections and tests to determine whether any Hazardous Materials are present. The costs and expenses of such inspections shall be paid by Landlord unless a default or breach of this Lease, violation of Laws or contamination caused or permitted by Tenant is found to exist. In such event, Tenant shall reimburse Landlord upon demand, as additional rent, for the reasonable costs and expenses of such inspections.

5.04. Notice to Landlord. Tenant shall promptly notify Landlord in writing of: (i) any enforcement, clean-up, removal or other governmental or regulatory action instituted or threatened regarding the Premises pursuant to any Laws; (ii) any claim made or threatened by any person against Tenant or the Premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Material; and (iii) any reports made to or received from any governmental agency arising out of or in connection with any Hazardous Material in or removed from the Premises, including any complaints, notices, warnings or asserted violations in connection therewith.

5.05. Certain Pre-Existing Conditions. Tenant shall perform all due diligence investigations it desires during the Due Diligence Period, including environmental investigations. Notwithstanding anything to the contrary in this Lease, under no circumstance shall Tenant be liable for any unanticipated Hazardous Materials that Tenant can prove by clear and convincing evidence were placed or brought upon the Premises by Landlord ("**Landlord Caused Hazardous Materials**"). To the extent that Tenant identifies any Hazardous Materials during the Due Diligence Period, or would have discovered such Hazardous Materials during the Due Diligence Period if Tenant had made "all appropriate inquiries" into conditions at the site as contemplated by CERCLA, then such Hazardous Materials shall conclusively be deemed not to constitute Landlord Caused Hazardous Materials and Landlord shall have no liability related thereto, and Tenant's sole remedy with respect to Landlord and this Lease shall be the right to terminate this Lease prior to the expiration of the Due Diligence Period. Landlord shall indemnify, defend and hold Tenant harmless from and against any and all liability arising out of Landlord Caused Hazardous Materials that are not discovered even following "all appropriate inquiries"; in no event, however, shall Landlord have any liability for any resulting consequential or punitive damages. Notwithstanding the preceding or any other provision in this Lease, any

work accomplished by Tenant to remove and/or remediate any Hazardous Materials, including those described in the Work Letter Agreement, at Paragraph 1, items (i) (Repair of the existing soil cap, and restoration of necessary environmental infrastructure) and/or (j) (Coordination with the responsible party of Terminal 2 to comply with requirements of the Department of Toxic and Substance Control (DTSC)) shall be without waiver (by Landlord and/or Tenant) of any rights as against third parties for indemnity, contribution and/or any other rights against such responsible parties.

Article 6.

Insurance, Indemnity, Condemnation, Damage and Default

6.01. Insurance. Landlord is not obligated to maintain insurance on the Premises.

6.02. Tenant's Insurance Requirements. Tenant, at its own cost and expense, shall provide and maintain insurance coverage as required in Exhibit C.

6.03. Indemnity and Exoneration.

(a) Except to the extent caused by the sole active negligence or willful misconduct of Landlord, Landlord and Landlord's representatives shall not be liable for any loss, injury or damage to person or property of Tenant, Tenant's agents, employees, contractors, invitees or any other person, whether caused by theft, fire, act of God, acts of the public enemy, riot, strike, insurrection, war, court order, requisition or order of governmental body or authority or that may arise through repair, alteration or maintenance of any part of the Premises or failure to make any such repair or from any other cause whatsoever except as expressly otherwise provided in Sections 6.05 and 6.06.

(b) Except to the extent caused by the sole active negligence or willful misconduct of Landlord, its agents, contractors or employees, Tenant shall indemnify, protect, defend and hold the Landlord and its representatives, harmless of and from any and all claims, liability, costs, penalties, fines, damages, injury, judgments, forfeiture, losses (including without limitation diminution in the value of the Premises) or expenses (including without limitation attorneys' fees, consultant fees, testing and investigation fees, expert fees and court costs) arising out of or in any way related to or resulting directly or indirectly from (i) the use or occupancy of the Premises, (ii) the activities of Tenant, its agents, employees, contractors or invitees in or about the Premises, (iii) any failure to comply with any applicable law, and (iv) any default or breach by Tenant in the performance of any obligation of Tenant under this Lease.

(c) Tenant shall indemnify, protect, defend and hold the Landlord and its representatives, harmless of and from any and all claims, liability, costs, penalties, fines, damages, injury, judgments, forfeiture, losses (including without limitation diminution in the value of the Premises) or expenses (including without limitation attorneys' fees, consultant fees, testing and investigation fees, expert fees and court costs) arising out of or in any way related to or resulting directly or indirectly from work or labor performed, materials or supplies furnished

to or at the request of Tenant or in connection with obligations incurred by or performance of any work done for the account of Tenant in the Premises.

(d) The provisions of this Section 6.03 shall survive the expiration or sooner termination of this Lease.

6.04. Waiver of Subrogation. Tenant agrees that in the event of loss arising out of any of the perils for which it has agreed to provide insurance against, Tenant shall look solely to its insurer for recovery. Tenant hereby grants to Landlord, on behalf of its insurers, a waiver of any right to subrogation which any such insurer of Tenant may acquire against Landlord by virtue of the payment of any loss under such insurance.

6.05. Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of such power (all of which are referred to herein as "condemnation"), this Lease shall cease and terminate as of the date of taking as to the portion which is so taken. If the portion taken does not feasibly permit the continuation of the operation of the Premises by Tenant (in which case the taking shall be deemed a "Major Taking"), Tenant shall have the right to terminate this Lease within thirty (30) days after the full extent of such intended condemnation is ascertained and fixed, and, if so terminated, such termination shall be effective as of the date of actual taking. Any condemnation award shall be allocated in proportion to their respective interests as they appear as of the date of condemnation. In addition, in the event of a Minor Taking, the sum otherwise payable as Minimum Guaranteed Rent, as described in Section 2.04 shall be equitably reduced consistent with the reduction to the Gross Revenue caused by the loss of the property so taken. Tenant shall be entitled to any compensation separately awarded to Tenant for loss of Tenant's (and any subtenant's) trade fixtures, if any.

6.06. Damage or Destruction.

(a) **Collection of Claims.** If the Premises or its improvements, or any portion thereof shall be damaged or destroyed by fire or other casualty prior to the expiration of the Term, Tenant shall proceed promptly to establish and collect all valid claims which may have arisen against insurers or others based upon any such damage or destruction.

(b) **Special Account.** If the total amount of all proceeds of any such claims ("**Insurance Proceeds**") and any other monies provided for the reconstruction, restoration or repair of the Premises or its improvements shall exceed One Hundred Thousand Dollars (\$100,000.00), the same shall be paid into an escrow account, with a single escrow agent which shall be appointed jointly by Landlord and Tenant. Payments from such escrow account shall conform to the requirements of this Article and, in the event of restoration, shall be made on a progress payment basis against vouchers certified by a registered architect selected by Tenant and approved by Landlord, and supervising the work of restoration, and shall be subject to reasonable retainage and (provided the same do not contravene the provisions of this Lease) made in accordance with usual and reasonable disbursement requirements pertaining thereto.

(c) Restoration. Unless otherwise determined in accordance with Section 6.06 (d) or Section 6.06(e), Tenant shall fully repair and reconstruct the Premises and its improvements to its condition at the time of such damage or destruction and the Insurance Proceeds and any other funds so collected shall be used and expended by Tenant for such purpose. Any deficiency shall be paid by Tenant. Tenant's obligation hereunder shall not be affected by the unavailability or insufficiency of Insurance Proceeds. Any excess proceeds after such repair or reconstruction has been fully completed shall be retained by Tenant, subject to the rights of Landlord to require that such excess be applied to the extent necessary to pay any outstanding Base Rent and additional rent owed by Tenant to Landlord pursuant to this Lease. Tenant shall have no right whatsoever to terminate this Lease in the event of a fire or other casualty (except in the event of an uninsured loss, as described below), and neither the Rent nor any other obligations of Tenant under this Lease shall be affected by any such casualty, and Tenant hereby specifically waives all other rights to the contrary it might otherwise have under law or by statute, including, without limitation, California Civil Code Sections 1932 and 1933.

Notwithstanding anything to the contrary herein, in the event of the complete destruction of the Premises as a result of an uninsured loss (exclusive of such loss caused by the intentional or willful act of Landlord or Tenant, in which event said responsible party shall be obliged to make all such repairs as may be required), then Tenant shall have the right to elect to either (i) terminate this Lease, or (ii) promptly arrange for and undertake the repairs necessary to fully repair and reconstruct the Premises and its improvements to its condition at the time of such damage or destruction. Tenant's election shall be made by providing written notice to Landlord within sixty (60) days of the date of such damage (such 60 days being the "**Casualty Evaluation Period**"), and, if Tenant elects the termination, same shall be effective thirty (30) days from the date of such notice. Absent notice of termination, Tenant shall be deemed to have elected to arrange for and undertake the repairs, which shall be promptly commenced and diligently pursued to completion. The phrase "complete destruction" means such damage that cannot reasonably be repaired within six (6) months and for which the reasonably estimated cost of such repair exceeds that amount equal to the aggregate Base Rent payable for the preceding twelve (12) months.

(d) Original or Modified Plans. Any restoration undertaken pursuant to the provisions of this Section 6.06 shall in all respects substantially conform to the provisions of the previously approved plans for the damaged improvements, incorporating any alterations or modifications approved by Landlord prior to the casualty, or shall be built in accordance with such new or modified plans and specifications as Tenant and Landlord may at the time agree upon and approve, subject to any building and zoning laws and other applicable Laws then in existence.

(e) Commencement and Completion of Restoration. When reconstruction or repair of the Premises, or any portion thereof, which have been destroyed or damaged, is required by the provisions of this Article 11, such reconstruction or repair shall be commenced within a period not to exceed sixty (60) days after the Insurance Proceeds have been received by Tenant (or, if the conditions then prevailing require a longer period, such longer

period as shall reasonably be required by Tenant proceeding with due diligence), and Tenant shall diligently prosecute such reconstruction or repair to completion, such reconstruction or repair to be completed within twelve (12) months after the commencement thereof.

(f) **No Abatement of Rent.** There shall be no abatement of Rent during the time that the Premises or portions thereof are unusable by Tenant or any of the Occupants (or if the use thereof has been materially impaired), except that during the Casualty Evaluation Period Base Rent shall be abated in proportion to the degree to which such use is impaired as a consequence of an uninsured casualty event.

(g) **Demolition and Debris Removal Insurance.** Proceeds of demolition and debris removal insurance, if separately obtained pursuant to Exhibit C hereof, shall be separately accounted for by the escrow agent and shall be used to the extent available to pay the cost of any such demolition and debris removal occasioned by a casualty unless otherwise agreed by Landlord and Tenant, with Tenant responsible for paying any shortfall between such proceeds and the cost of such demolition and debris removal.

6.07. Default by Tenant.

(a) **Events Of Default.** The occurrence of any of the following shall constitute an “**Event of Default**” on the part of Tenant:

(1) **Nonpayment Of Rent.** Failure to pay any installment of Rent due and payable hereunder where such failure continues for a period of five (5) business days after written notice thereof to Tenant;

(2) **Other Obligations.** Failure to perform any obligation, agreement or covenant under this Lease other than those matters specified in Sections 6.07(a)(1), such failure continuing for a period of thirty (30) days after written notice of such failure (or such longer period as is reasonably necessary to remedy such default, provided that Tenant commences the remedy within such thirty (30) day period and continuously and diligently pursues such remedy until such default is cured);

(3) **General Assignment.** Any general arrangement or assignment by Tenant for the benefit of creditors;

(4) **Bankruptcy.** The filing of any voluntary petition in bankruptcy by Tenant, or the filing of an involuntary petition against Tenant, which involuntary petition remains undischarged for a period of ninety (90) days. In the event that under applicable law the trustee in bankruptcy or Tenant has the right to affirm this Lease and continue to perform the obligations of Tenant hereunder, such trustee or Tenant shall, within such time period as may be permitted by the bankruptcy court having jurisdiction, cure all defaults of Tenant hereunder outstanding as of the date of the affirmance of this Lease and provide to Landlord such adequate assurances as may be necessary to ensure Landlord of the continued performance of Tenant's obligations under this Lease;

(5) Receivership. The appointment of a trustee or receiver to take possession of all or substantially all of Tenant's assets or the Premises when possession is not restored to Tenant within ten (10) business days;

(6) Attachment. The attachment, execution or other judicial seizure of all or substantially all of Tenant's assets or the Premises, if such attachment or other seizure remains undismissed or undischarged for a period of ten (10) business days after the levy thereof;

(7) Insolvency. The admission by Tenant in writing of its inability to pay its debts as they become due; the filing by Tenant of a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation; the filing by Tenant of an answer admitting or failing timely to contest a material allegation of a petition filed against Tenant in any such proceeding; or, if within sixty (60) days after the commencement of any proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed.

(b) Remedies Upon Default.

(1) Termination. If an Event of Default occurs, Landlord shall have the right, with or without notice or demand, immediately (after expiration of any applicable notice and grace periods specified herein) to terminate this Lease, and at any time thereafter to recover possession of the Premises or any part thereof and expel and remove therefrom Tenant and any other person occupying the same, by any lawful means, and again repossess and enjoy the Premises without prejudice to any of the remedies that Landlord may have under this Lease, or at law or in equity by reason of Tenant's default or of such termination.

(2) Continuation After Default. Even though Tenant has breached this Lease and/or abandoned the Premises, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession under Section 6.07(b)(1) hereof in writing, and Landlord may enforce all of its rights and remedies under this Lease, including (but without limitation) the right to recover Rent as it becomes due, and Landlord, without terminating this Lease, may exercise all of the rights and remedies of a landlord under Section 1951.4 of the Civil Code of the State of California (Landlord may continue the Lease in effect after Tenant's breach and abandonment and recover Rent and Additional Charges as they become due, since Tenant may sublet or assign, subject only to reasonable limitations) or any amended or successor code section. Acts of maintenance or preservation, efforts to relet the Premises or the appointment of a receiver upon application of Landlord to protect Landlord's interest under this Lease shall not constitute an election to terminate Tenant's right to possession. If Landlord elects to relet the Premises for the account of Tenant, the rent received by Landlord from such reletting shall be applied as follows: first, to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord; second, to the payment of any costs of such reletting; third, to the payment of Rent due and unpaid hereunder; and the balance, if any, shall

be held by Landlord and applied in payment of future Rent as it becomes due. If that portion of rent received from the reletting that is applied against the Rent due hereunder is less than the amount of the Rent due, Tenant shall pay the deficiency to Landlord promptly upon demand by Landlord. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Landlord, as soon as determined, reasonable costs and expenses incurred by Landlord in connection with such reletting or in making alterations and repairs to the Premises that are not covered by the rent received from the reletting.

(c) Damages Upon Termination. Should Landlord terminate this Lease pursuant to the provisions of Section 6.07(b)(1) hereof, Landlord shall have all the rights and remedies of a landlord provided by Section 1951.2 of the Civil Code of the State of California or any amended or successor code section. Upon such termination, in addition to any other rights and remedies to which Landlord may be entitled under applicable law, Landlord shall be entitled to recover from Tenant: (i) the worth at the time of award of the unpaid rent and other amounts that had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of such rent loss that Tenant proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rent loss that Tenant proves could be reasonably avoided; and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or that, in the ordinary course of things, would be likely to result therefrom. The "worth at the time of award" of the amounts referred to in clauses (i) and (ii) shall be computed with interest at the lesser of eighteen percent (18%) per annum or the maximum rate then allowed by law. The "worth at the time of award" of the amount referred to in clause (iii) shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (1%).

(d) Late Charge. If any payment required to be made by Tenant under this Lease is not received by Landlord on or before the date the same is due (after any applicable grace period), Tenant shall pay to Landlord an amount equal to five percent (5%) of the delinquency. The parties agree that Landlord would incur costs not contemplated by this Lease by virtue of such delinquencies, including without limitation administrative, collection, processing and accounting expenses, the amount of which would be extremely difficult to compute, and the amount stated herein represents a reasonable estimate thereof. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's breach or default with respect to such delinquency, or prevent Landlord from exercising any of Landlord's other rights and remedies.

(e) Interest on Past-Due Obligations. Except as expressly otherwise provided in this Lease, any sums due a party hereto from the other (other than late charges), that is not received by the party to whom owed on the date on which it was due, shall bear interest from the day after it was due at the maximum rate then allowed by law, in addition to the late charge provided for in Section 6.06(d).

(f) Landlord's Right to Perform. Notwithstanding anything to the contrary set forth elsewhere in this Lease, in the event Tenant fails to perform any affirmative duty or obligation of Tenant under this Lease, then within thirty (30) business days after written notice to Tenant (and without notice in case of an emergency) Landlord may (but shall not be obligated to) perform such duty or obligation on Tenant's behalf, including, without limitation, the obtaining of insurance policies or governmental licenses, permits or approvals. Tenant shall reimburse Landlord upon demand for the reasonable costs and expenses of any such performance (including penalties, interest and attorneys' fees incurred in connection therewith). Such reasonable costs and expenses incurred by Landlord shall be deemed additional rent hereunder.

(g) Remedies Cumulative. All rights, privileges and elections or remedies of Landlord are cumulative and not alternative with all other rights and remedies at law or in equity to the fullest extent permitted by law.

(h) Non-Waiver of Certain Rights. Tenant's rights of redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179, or under any other present or future law in the event Tenant is evicted and Landlord takes possession of the Premises by reason of a default are expressly preserved and are not waived by this Lease.

Article 7.

Miscellaneous Matters

7.01. Security Deposit. On execution of this Lease Tenant shall deliver to Landlord the sum of Thirty Seven Thousand dollars (\$37,000) (the "**Deposit**"). The Deposit shall be held by Landlord as security for the performance by Tenant of all of the provisions of this Lease. Following an Event of Default by Tenant under this Lease, Landlord may use, apply or retain all or any portion of the Deposit for the payment of any rent or other charge in default, or the payment of any other sum to which Landlord may become obligated by Tenant's default, or to compensate Landlord for any expense, loss or damage which Landlord may suffer thereby. If Landlord so uses or applies all or any portion of the Deposit, then within ten (10) days after demand therefor Tenant shall deposit cash with Landlord in an amount sufficient to restore the Deposit to the full amount thereof, and Tenant's failure to do so shall be a material breach of this Lease. Landlord shall not be required to keep the Deposit separate from its general accounts. If Tenant performs all of Tenant's obligations under this Lease, the Deposit, or so much thereof as has not theretofore been applied by Landlord, shall be returned, without payment of interest for its use, to Tenant (or, at Landlord's option, to the last assignee, if any, of Tenant's interest under this Lease) at the expiration of the term hereof, and after Tenant has vacated the Premises. No trust relationship is created herein between Landlord and Tenant with respect to the Deposit. Tenant waives the provisions of California Civil Code Section 1950.7, and all other present and future laws which restrict the amount or types of claim that a landlord may make upon a security deposit or imposes upon a landlord or a successor any obligation with respect to the handling or return of security deposits.

7.02. No Brokers. Tenant and Landlord each represents and warrants to the other that they have not had any dealings with any agents, brokers, finders or other similar parties in connection with the negotiation of this Lease and the consummation of the transaction contemplated hereby. Each of Tenant and Landlord hereby agrees to indemnify, defend and hold the other free and harmless from and against liability for compensation or charges that may be claimed by any agent, broker, finder or other similar party by reason of any dealings with or actions in connection with the negotiation of this Lease and the consummation of this transaction, including any costs, expenses and attorneys' fees incurred with respect thereto.

7.03. No Waiver. No waiver by Landlord of the default or breach of any term, covenant or condition of this Lease by Tenant shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent default or breach by Tenant of the same or of any other term, covenant or condition hereof. Landlord's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Landlord's consent to, or approval of, any subsequent or similar act by Tenant, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent. Regardless of Landlord's knowledge of a default or breach at the time of accepting Rent, the acceptance of Rent by Landlord shall not be a waiver of any preceding default or breach by Tenant of any provision hereof, other than the failure of Tenant to pay the particular Rent so accepted. Any payment given Landlord by Tenant may be accepted by Landlord on account of monies or damages due Landlord, notwithstanding any qualifying statements or conditions made by Tenant in connection therewith, which statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Landlord at or before the time of deposit of such payment.

7.04. Recording. Neither this Lease nor a memorandum thereof shall be recorded without the prior written consent of Landlord, which consent may be withheld in Landlord's sole discretion.

7.05. Holding Over. If Tenant holds over after expiration or termination of this Lease without the written consent of Landlord, such tenancy shall be from month-to-month only, and in such case Base Rent shall be payable at a monthly rate equal to one hundred fifty percent (150%) of the Base Rent to that which Tenant was obligated to pay for the month immediately preceding the end of the Term, together with such other amounts as may become due hereunder. No holding over by Tenant after the Term shall operate to extend the Term. Any holding over with the consent of Landlord in writing shall thereafter constitute a month-to-month lease, terminable upon thirty (30) days' written notice from either party, at a monthly rental rate equal to that which Tenant was obligated to pay for the month immediately preceding the end of the Term, together with such other amounts as may become due hereunder.

7.06. Transfers by Landlord. Landlord shall have the right to transfer and assign, in whole or in part, all its rights and obligations hereunder and in the Premises and other property referred to herein, and in such event and upon such transfer (any such transferee to have the benefit of, and be subject to, the rights and obligations of Landlord hereunder), Landlord shall be released from any further obligations hereunder, and Tenant agrees to look solely to such successor in interest of Landlord for the performance of such obligations.

7.07. Attorneys' Fees. In the event either party places the enforcement of this Lease, or any part of it, or the collection of any Rent due, or to become due, hereunder, or recovery of the possession of the Premises, in the hands of an attorney, or files suit upon the same, the prevailing party shall recover its reasonable attorneys' fees, costs and expenses, including those that may be incurred on appeal. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not suit is filed or any suit that may be filed is pursued to decision or judgment. The term "prevailing party" shall include, without limitation, a party who substantially obtains or defeats the relief sought, as the case may be, whether by judgment or the abandonment by the other party of its claim or defense; provided however, the parties may agree to compromise or settlement in writing, which compromise or settlement may include a provision that each party is to bear their own attorneys' fees and costs. The attorneys' fee award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred.

7.08. Termination; Merger. No act or conduct of Landlord, including, without limitation, the acceptance of keys to the Premises, if any, shall constitute an acceptance of the surrender of the Premises by Tenant before the scheduled Expiration Date. Only a written notice from Landlord to Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of this Lease.

7.09. Amendments; Interpretation. This Lease may not be altered, changed or amended, except by an instrument in writing signed by the parties in interest at the time of the modification. The captions of this Lease are for convenience only and shall not be used to define or limit any of its provisions. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent, request, waiver or other action by the Landlord is required or permitted under this Lease, such action may be given, made, or taken by the City of Richmond's City Manager on behalf of the Landlord, or by any person who shall have been designated in writing to Tenant by the City Manager, without further approval or authorization required by the Richmond City Council, and any such action shall be in writing; provided, however, that the City Manager may seek such authorization when he or she deems it appropriate in his or her sole and absolute discretion. The City Manager may also, at his or her discretion, agree in writing to modification of the dates by which actions are to be completed or to waive non-substantive terms and conditions of this Lease, to make non-substantive amendments to this Lease in furtherance of the goals and objectives of this Lease, or to make reasonable modifications to this Lease requested by lenders. The City Manager or his or her designee is authorized to execute and deliver, on behalf of the Landlord, any ancillary documents and to take any action necessary or desirable to effectuate the provisions and intent of this Lease.

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

7.11. Notices. All notices, demands, consents and approvals that are required or permitted by this Lease to be given by either party to the other shall be in writing and shall be deemed to have been fully given by personal delivery or by recognized overnight courier service or when deposited in the United States mail, certified or registered, with postage prepaid, and addressed to the party to be notified at the address for such party specified on the Basic Lease Information sheet, or to such other place as the party to be notified may from time to time designate by at least fifteen (15) days' notice to the notifying party given in accordance with this Section 7.11. A copy of all notices given to Landlord under this Lease shall be concurrently transmitted to such party or parties at such addresses as Landlord may from time to time hereafter designate by notice to Tenant. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. Notices delivered by recognized overnight courier shall be deemed given twenty-four (24) hours after delivery of the same to the courier. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

7.12. Force Majeure. Any prevention, delay or stoppage of work to be performed by Landlord or Tenant that is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefor, acts of God, governmental restrictions or regulations or controls, judicial orders, enemy or hostile government actions, civil commotion, or other causes beyond the reasonable control of the party obligated to perform hereunder, shall excuse performance of the work by that party for a period equal to the duration of that prevention, delay or stoppage. Nothing in this Section 7.12 shall excuse or delay Tenant's obligation to pay Rent or other charges due under this Lease.

7.13. Successors and Assigns. This Lease shall be binding upon and inure to the benefit of Landlord, its successors and assigns (subject to the provisions hereof) and shall be binding upon and inure to the benefit of Tenant, its successors.

7.14. Further Assurances. Landlord and Tenant each agree to promptly sign all documents reasonably requested to give effect to the provisions of this Lease.

7.15. No Prior Agreements. This Lease, including the exhibits and addenda attached to it, contains all agreements of Landlord and Tenant with respect to any matter referred to herein. No prior agreement or understanding pertaining to such matters shall be effective.

7.16. Applicable Law. This Lease shall be governed by, construed and enforced in accordance with the laws of the State of California. This Lease is made in Contra Costa County, California, and any action relating to this Lease shall be instituted and prosecuted in the courts of Contra Costa County, California.

7.17. Time of the Essence. Time is of the essence of each and every covenant of this Lease. Each and every covenant, agreement or other provision of this Lease on Tenant's part to be performed shall be deemed and construed as a separate and independent covenant of Tenant, not dependent on any other provision of this Lease or on any other covenant or agreement set forth herein.

7.18. No Joint Venture. This Lease shall not be deemed or construed to create or establish any relationship of partnership or joint venture or similar relationship or arrangement between Landlord and Tenant hereunder. If requested by Landlord, Tenant shall post signs at the Premises stating that Landlord is not responsible for the day-to-day operations of the Premises.

7.19. Authority. If Tenant is a corporation, limited liability company, trust or general or limited partnership, each individual executing this Lease on behalf of Tenant represents and warrants that he or she is duly authorized to execute and deliver this Lease on Tenant's behalf and that this Lease is binding upon Tenant in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first written above.

LANDLORD: CITY OF RICHMOND,
a municipal corporation and charter city

Approved as to form:


City Attorney

By: 
its Mayor

TENANT: TERMINAL THREE PARTNERS, LLC,
a California limited liability company

By: 
Name: JP ORFORD III
Title: MGR

Exhibit A

Premises

Exhibit A is intended only to show the general outline of the Premises as of the beginning of the Term of this Lease. The depiction of any improvements or facilities or specifications in this Exhibit is for illustrative purposes only, but does not mean that such items exist. Landlord is not required to provide, install or construct any such items. It does not in any way supersede any of Landlord's rights set forth in the Lease with respect to arrangements and/or locations of building and facilities and changes in such arrangements and/or locations. It is not to be scaled; any measurements or distances shown should be taken as approximate.

Exhibit A

Premises

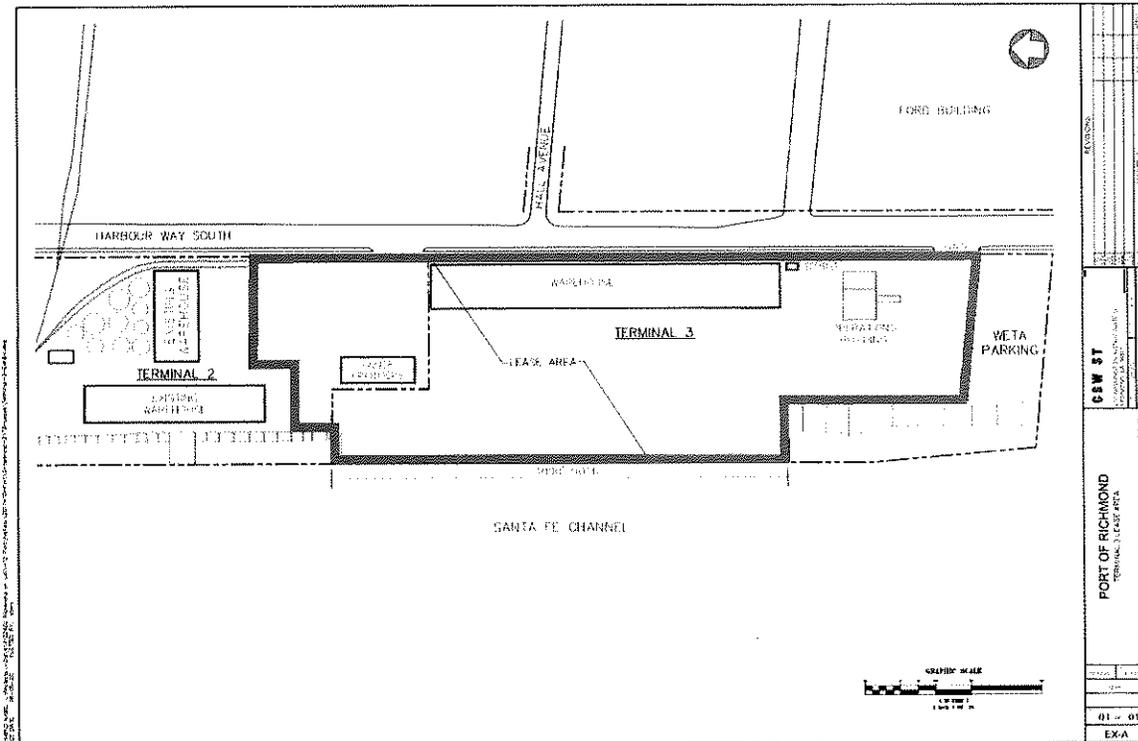


Exhibit B

Work Letter Agreement

1. General Scope of Work and Responsibilities of Tenant.

This Work Letter Agreement is an exhibit to and forms a part of the Lease to which this is attached as Exhibit B. It is the obligation of Tenant to undertake certain Tenant Work at its sole cost and expense, that is generally intended to restore the Premises from its current degraded condition into a working waterfront asset consistent with the Port Priority Use designation by the Bay Conservation and Development Corporation (BCDC) and pursuant to plans approved by Landlord. The general scope of the Tenant Work is anticipated to include at a minimum the following:

- (a) Potential onsite use of soil stockpile currently within the Warehouse;
- (b) Evaluation and rehabilitation of the existing warehouse building;
- (c) Restoration of the security of the Premises;
- (d) The potential demolition of the existing administration building;
- (e) Rehabilitation of pavement throughout the Premises;
- (f) Rehabilitation of the wharf to maintain its ongoing serviceability (including pierside water depth of 32 feet), including any required dredging and substructure work;
- (g) Removal of existing light standards on the Premises;
- (h) Restoration of electrical infrastructure as needed to meet Premises needs;
- (i) Repair of the existing soil cap, and restoration of necessary environmental infrastructure (consistent with requirements of regulatory agencies); and
- (j) Coordination with the responsible party of Terminal 2 to comply with requirements of the Department of Toxic and Substance Control (DTSC).

Upon completion, Tenant shall be responsible for the ongoing maintenance of the Initial Improvements. Notwithstanding anything to the contrary in this Lease, the work contemplated by items (i) and (j) above are without waiver (by Landlord and/or Tenant) of any rights as against third parties for indemnity, contribution and/or any other rights, as further described in Section 5.05 of the Lease.

Tenant shall advance the costs for the Tenant Work and arrange for same to be performed, subject to certain oversight, including certain approvals by Landlord, as described below.

2. Budget, Approval of Plans and Cost Estimate.

(a) Initial Budget. Attached hereto as Exhibit B-1 is a detailed proposed budget (the "**Budget**"), which budget additionally details the scope of the intended Tenant Work. Within ninety (90) days of the Commencement Date, Tenant shall obtain bids for the Tenant Work (copies of which shall be made available to Landlord if and as so desired). Unless the aggregate dollar amount of the bids exceeds the Budget by more than ten percent

(10%), Tenant shall proceed to have the necessary plans prepared as described in the following subparagraph. If said dollar amount does exceed the Budget by more than ten percent (10%), then Tenant and Landlord shall meet and confer to jointly review the scope of the intended Tenant Work, all bids, and the Budget, and shall, if possible, mutually agree to a modification to the Budget and/or the intended scope of the Tenant Work, or, absent such agreement, if Landlord declines to consent to such increased Budget amount, Landlord and Tenant shall engage a qualified, neutral, third-party consultant to review the proposed scope of the Tenant Work and the bids thereon, and said consultant shall provide his/her independent cost estimate. The cost of said consultant shall be borne by the Landlord. The independent cost estimate shall be completed within 30 calendar days of the Landlord requesting such review. Tenant and Landlord shall use the independent cost estimate as the basis to reach agreement on the final cost estimate within 30 calendar days after receiving said independent estimate. The agreed upon final cost estimate will constitute the new Budget, and said total dollar amount therein shall be the "Improvement Cost." If Tenant and Landlord are unable to agree on the new Budget amount as described above during the Due Diligence Period (e.g. within ninety (90) days after the Date of this Lease), either Landlord or Tenant shall have the right to terminate the Lease by providing written notice thereof to the other party and simultaneously tendering possession of the Premises to Landlord (in the condition in which same were received by Tenant), upon which termination Tenant shall be refunded the Security Deposit and neither party shall have any further obligations under the Lease. Absent such termination, the Budget amount as attached hereto shall be the "Improvement Cost."

(b) Plans. Tenant shall, upon the execution of this Lease, arrange as necessary for the preparation of detailed plans (the "**Preliminary Plans**") sufficient to permit third parties to submit bids or other proposals as may be desired for the performance of the Tenant Work, or portions thereof, and, ultimately, shall prepare and deliver to Landlord final plans and specifications and working drawings for the construction of the Initial Improvements that will include (to the extent required) structural, fire protection, life safety, mechanical and electrical working drawings, and final architectural drawings for said improvements (collectively, the "**Final Working Drawings**"). Tenant shall provide Landlord with the Preliminary Plans for Landlord's approval, which shall not be unreasonably withheld, conditioned or delayed. The Final Working Drawings, when prepared, shall substantially conform to the Preliminary Plans approved by Landlord. No later than ten (10) business days calendar days after the Final Working Drawings are provided to Landlord, Landlord must either approve the Final Working Drawings or set forth in writing with particularity any changes necessary to bring the Final Working Drawings into substantial conformity with the Preliminary Plans (or, if no such Preliminary Plans were approved by Landlord, then the changes otherwise desired by Landlord). Landlord shall not have the right to object to any logical development or refinement of the Preliminary Plans approved by Landlord or any changes specifically necessitated by changes in applicable law after the approval of the Preliminary Plans. If Landlord fails to timely deliver to Tenant notice of Landlord's approval of the Preliminary Plans, Tenant may send a second (2nd) notice to Landlord, which notice must contain the following inscription, in bold faced lettering: "**SECOND NOTICE DELIVERED PURSUANT TO PARAGRAPH 2(b) OF WORK AGREEMENT FOR TERMINAL 3 LEASE - - FAILURE TO TIMELY RESPOND WITHIN FIVE (5) BUSINESS DAYS SHALL RESULT IN DEEMED APPROVAL OF PRELIMINARY PLANS SUBMITTED TO LANDLORD.**" If

Landlord fails to deliver notice of Landlord's consent to, or good faith corrective comments within such five (5) Business Day period, Landlord shall be deemed to have approved the Preliminary Plans in question. Upon approval, actual or deemed, of the Final Working Drawings by Landlord and Tenant, the Final Working Drawings will be referred to as the "**Approved Working Drawings.**"

Landlord may retain a qualified construction consultant or consultants ("**Landlord's Construction Consultants**") solely to assist Landlord with reviewing plans and other submittals, inspecting the Tenant's Work, attending meetings, and performing its responsibilities generally under this Agreement. The fees of the Landlord's Construction Consultant shall be solely Landlord's responsibility. Tenant acknowledges and agrees that Landlord's decision to approve or disapprove any matter under this Agreement is not, and will not be deemed to be, a regulatory determination, but is an exercise of Landlord's proprietary authority over the Premises as the owner of the fee.

3. Completion of Construction of Initial Improvements/Timetable.

(a) Construction. As soon as practicable following preparation of the Approved Working Drawings, Tenant shall have said plans (whether in the form of the Approved Working Drawings or, if necessary, finalized as may be required for such submission) (the "**Plans**") submitted to the appropriate governmental agency for issuance of a building permit (the "**Permit**") or other required governmental approval prerequisite to construction. Following approval of the Plans by governmental authorities and receipt of the Permit, Tenant shall authorize the commencement of construction of the Initial Improvements and proceed to complete such construction in a workmanlike manner. Tenant shall diligently pursue the issuance of the permit. Tenant shall be deemed to be "diligently pursuing" the issuance of the Permit if Tenant is in compliance with the following: (i) Tenant submits the Plans to Landlord within the time frames set forth in this Exhibit B, (ii) Tenant submits to the proper governmental authorities all required documents, plans and specifications, detailed in full and in compliance with all governmental requirements, for the issuance of the Permit, as required by and within the required time periods set forth in this Exhibit B, simultaneously (providing copies of all such submissions to Landlord upon request); (iii) Tenant pays in a timely manner all fees required by the governmental authorities in order for the Permit to be made available for issuance; (iv) Tenant cooperates with the governmental authorities by (a) submitting additional information or documents, as may be required from time to time, within a reasonable number of days following request therefor, and (b) promptly responding to any questions or comments from governmental authorities; (v) Tenant keeps Landlord advised of Tenant's progress in obtaining the issuance of the Permit; and (vi) once available, Tenant picks up the Permit within five (5) days of the availability of same. Landlord shall cooperate with Tenant, at no out-of-pocket expense to Landlord, with standard assistance required as fee owner, to secure the issuance of the Permit. Tenant shall provide Landlord with written notice of (x) the actual filing date for the Permit, together with a date stamped copy of the first page of Tenant's application from applicable governmental agencies showing the actual filing date for the Permit, (y) the actual date the Permit is available for issuance to Tenant, and (z) the actual date the Permit is picked-up by Tenant, which notice shall be accompanied by a copy of the Permit.

(b) Timetable. Attached as Exhibit B-2 hereto is a proposed timetable (the “**Timetable**,” consisting of three (3) schedules, and captioned, “Master Schedule for Terminal 3,” “Primary Terminal Schedule” and “Yard and Admin Restoration Schedule”), setting forth the time targets Tenant has preliminarily set for the Tenant Work. Accounting for customary and commercially typical delays that will occur, Tenant agrees that Tenant shall comply with the Timetable, and that the date of Substantial Completion shall (subject to the provisions of this Lease, including, without limitation, subparagraph (c), below) be not later than the last day of the twenty-fourth (24th) month following the issuance of the Permit (the “**Substantial Completion Target Date**”).

(c) Force Majeure. If Tenant is delayed (or reasonably anticipates such a delay) in its ability to achieve Substantial Completion by the Substantial Completion Target Date, to the extent that such delays are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; epidemics (including any Federal, State or local order limiting, restricting or prohibiting the activities and/or mobility of persons related to COVID-19 or any related virus); quarantine; restrictions; freight embargoes; acts or failure to act of the City or any other public or governmental agencies or entity that cause a significant portion of the Premises to be unusable in accordance with this Lease; or any other reasonable cause beyond the control of Tenant and without any fault of Tenant, and provided that Tenant shall have commenced and is then assiduously pursuing all reasonable and available means and measures necessary to minimize or eliminate such delay resulting from any such causes or conditions, then Tenant shall have the right to give written notice of any such delay to Landlord, within fifteen (15) days of Tenant’s knowledge of the occurrence of such event, and the Substantial Completion Target Date shall be extended by a period of time equal to such delay, and Tenant shall not be deemed to be in default under the Lease or this Work Letter Agreement. Upon such extension, the Original Term shall be similarly extended such that, exclusive of said period of delay, the Original Term remains 26 years in duration.

(d) Cost Overrun. During the construction of the Initial Improvements, there may arise unforeseen site conditions, or unforeseen economic conditions, that increase the cost of construction over the anticipated Improvement Cost (for example and without limitation, increases to prevailing wages). To the extent that said unforeseen matters are reasonably expected to result in an increase in the Improvement Cost that does not exceed ten percent (10%) of said cost, then Tenant shall advance such funds as needed to accomplish same, and, such sum shall be included in and as a part of the final accounting and reconciliation of the Tenant Work and the calculation of the Final Improvement Cost (defined below). If such unforeseen matters are reasonably expected to result in an increase of greater than ten percent (10%), then Tenant shall, promptly upon learning of same (and not more than thirty (30) days after so learning), prepare and submit an updated and amended Budget to Landlord which identifies with specificity the cause(s) and impact of such matter(s) on each line item within the Budget. Landlord and Tenant shall meet and confer promptly with regard to the preceding, and, absent mutual agreement as to revisions to the Budget, they shall engage a qualified, neutral, third-party consultant to review the proposed Budget (and then balance of the scope of the Tenant Work and the bids thereon, and any additional information so desired by said consultant), and said consultant shall provide his/her independent cost estimate, which shall then be deemed the operative Budget for purposes of calculating the Improvement Cost (regardless of whether

said consultant determines that any cost estimates proposed by Tenant are too high). To the extent that said final operative Budget and the Improvement Cost amount does not include sums then needing to be expended by Tenant to complete the Initial Work, such additional sums shall be advanced by Tenant and not subject to inclusion in the Final Improvement Cost (defined below). The cost of said consultant shall be borne by the Tenant.

(e) Change Orders. Except as to items falling with the preceding subparagraph (c), above, if either party desires any material changes, alterations, or additions to the Approved Working Drawings, the requesting party must submit a detailed written request for consent thereto to the other party (a “**Change Order**”). A material change shall not include a change desired by Tenant that is consistent with the Plans and results in little or no substantive net change to the Budget. Change Orders shall be subject to the mutual approval of Landlord and Tenant, which shall not be unreasonably withheld, provided such change does not materially change the Improvement Cost or the Timetable or would delay Substantial Completion.

4. General Requirements For Construction By Tenant.

(a) Construction Requirements. Tenant shall construct the Initial Improvements in a good and workmanlike manner and in conformity with all applicable local laws, ordinances and regulations.

(b) Tenant’s Selection of Contractors.

(1) Procurement, Prevailing Wage and Local Employment. Bids for construction shall be solicited in compliance with applicable provisions of Chapter 2.52 of the Richmond Municipal Code (Contracting and Purchasing Procedures). Landlord shall be provided a copy of the tabulation of bid results upon request. Contract(s) for the construction of the Initial Improvements shall be awarded to the qualified contractor(s) submitting the lowest responsible bid(s), as determined by the Tenant.

Tenant, Contractor (defined below) and all subcontractors shall pay not less than the prevailing rates of wages as those wages are determined pursuant to Labor Code Sections 1720 *et seq.*, and implementing regulations of the Department of Industrial Relations, and to comply with all other applicable federal, State and local laws, regulations and ordinances pertaining to labor standards insofar as those laws, regulations and ordinances apply to the performance of this Agreement, including any applicable City of Richmond employment requirements, including but not limited to the City of Richmond’s Living Wage Ordinance (Richmond Municipal Code Chapter 2.60), the City of Richmond’s Business Opportunity Ordinance (Richmond Municipal Code Chapter 2.50), the City of Richmond’s Local Employment Program Ordinance (Richmond Municipal Code Chapter 2.56), and the City of Richmond’s Ordinance Banning the Requirement to Provide Criminal Convictions on All Applications (Richmond Municipal Code Chapter 2.65). During the performance of the Initial Improvements work, Tenant and/or its Contractor shall post at the Premises the applicable prevailing rates of per diem wages.

Tenant shall maintain and/or shall cause Contractor to maintain accurate payroll records showing the name, address, social security number, work

classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker and others employed on the Initial Improvements. Each payroll record shall contain or be verified by a written declaration made under penalty of perjury, stating both of the following: (1) the information contained in the payroll record is true and correct, and (2) the employer has complied with the requirements of Labor Code Section 1771 (prevailing wage provisions), Section 1811 (eight-hour day, forty-hour week provisions), and Section 1815 (overtime compensation) for any work performed by his or her employees on the Initial Improvements. Tenant shall and/or shall cause Contractor to provide certified payroll records to Landlord each week, no later than ten (10) days after the end of a weekly pay period. Payroll records shall be maintained and made available in accordance with Labor Code Section 1776. In addition, Tenant shall and/or shall cause Contractor promptly to deliver to Landlord, upon request, documents verifying compliance with the Living Wage Ordinance, which include documents which evidence that each affected employee has been notified regarding the wages required to be paid pursuant to the Living Wage Ordinance. Such wages shall also be posted at the Premises. The requirements set forth in this Section shall survive the termination or expiration of this Agreement.

(2) Tenant's Contractor(s) and Subcontractors. Tenant may select a general contractor ("Contractor") for the Initial Improvements, subject to Landlord's consent and approval of the Contract and the Contract (as defined below), or, alternatively, may undertake such work as "owner/builder."

(c) Landlord's General Conditions for Subcontractors and Tenant Work. Construction of the Initial Improvements shall comply with the following: (A) the Initial Improvements shall be constructed in accordance with the Approved Working Drawings; (B) the procurement, prevailing wage and local employment requirements set forth in subsection (b)(1), above; and (C) Tenant shall submit estimated progress schedules of all work relating to the Initial Improvements to Landlord. This schedule shall be resubmitted no less frequently than every other month until the construction of the Initial Improvements has been completed, with actual progress shown. This submission (which may be transmitted via electronic mail) shall accompany a written report by Tenant citing any adjustments to the progress forecast, analyzing the causes thereof, and, where applicable, noting corrective efforts.

(d) Indemnity. Tenant's indemnity of Landlord as set forth in the Lease shall also apply with respect to any and all costs, losses, damages, injuries and liabilities related in any way to any act or omission of Tenant, Contractor, or subcontractors, or anyone directly or indirectly employed by any of them, or in connection with Tenant's non-payment of any amount arising out of the Initial Improvements. Such indemnity by Tenant, as set forth in the Lease, shall also apply with respect to any and all costs, losses, damages, injuries and liabilities related in any way to Landlord's performance of any ministerial acts reasonably necessary (1) to permit Tenant to complete the Initial Improvements, and (2) to enable Tenant to obtain any building permit or certificate of occupancy for the Premises, or the City of Richmond's response to such applications in its regulatory capacity.

(e) Requirements of Subcontractors. The Contractor and each subcontractor (which reference in this Agreement shall mean and include such contractors in direct contract with Tenant, in the event Tenant acts as "owner/builder") shall be duly licensed

and have experience reasonably appropriate to the scope of work same are to perform. The Contractor and each subcontractor shall guarantee to Tenant and for the benefit of Landlord that the portion of the Initial Improvements for which it is responsible shall be free from any defects in workmanship and materials for a period of not less than one (1) year from the date of completion thereof. Each subcontractor shall be responsible for the replacement or repair, without additional charge, of all work done or furnished in accordance with its contract that shall become defective within one (1) year after the completion of the work performed by such contractor or subcontractor. The correction of such work shall include, without additional charge, all additional expenses and damages incurred in connection with the removal or replacement of all or any part of the Initial Improvements, and/or the Premises and/or common areas that are damaged or disturbed thereby. All such warranties or guarantees as to materials or workmanship of or with respect to the Initial Improvements shall be contained in the contract between Tenant and Tenant's Contractor and shall be written such that such guarantees or warranties shall inure to the benefit of both Landlord and Tenant, as their respective interests may appear, and can be directly enforced by either. Tenant covenants to give to Landlord any assignment or other assurances as may be necessary to effect such right of direct enforcement.

(f) Insurance Requirements.

(1) General Coverages. Tenant's Contractor and all subcontractors shall carry employer's liability and workers' compensation insurance covering all of their respective employees, and shall also carry commercial general liability insurance, including personal and bodily injury, property damage and completed operations liability, all with limits, in form and with companies as may be reasonably required by Landlord. The City of Richmond's Risk Manager can provide Tenant with Landlord's current guidelines for insurance coverage to be maintained by subcontractors.

(2) Special Coverages. Tenant shall carry or shall require Tenant's Contractor to carry "Builder's All Risk" insurance in an amount standard in the construction industry and subject to reasonably approval by Landlord covering the construction of the Initial Improvements, and such other insurance as Landlord may reasonably require, it being understood and agreed that the Premises shall continue to be insured by Landlord prior to and upon completion of such work. The "Builder's All Risk" insurance shall be provided in an amount not less than one hundred percent (100%) of the completed insurable value of the work being performed by Contractor, including, to the extent not covered by other insurance, the structures upon and in which such work is being done and all work in progress including materials to be incorporated in the work. Such insurance shall cover the interests of Landlord, Tenant, and Tenant's Contractor in the Premises as their interests may appear.

(3) General Terms. Certificates for all of the foregoing insurance coverage shall be delivered to Landlord before the commencement of construction of the Initial Improvements and before the Tenant's Contractor's or any subcontractor's equipment is moved onto the site. Subcontractors shall maintain all of the foregoing insurance coverage in force until the Initial Improvements are fully completed and accepted by Landlord, except for any Products and Completed Operations Coverage insurance required by Landlord, which is to be maintained for one (1) year following completion of the work and acceptance by Landlord and Tenant. All policies carried hereunder shall insure Landlord and Tenant, as their interests

may appear, as well as subcontractors. All insurance, except Workers' Compensation, maintained by subcontractors shall preclude subrogation claims by the insurer against anyone insured thereunder. Such insurance shall provide that it is primary insurance as respects Landlord and Tenant and that any other insurance maintained by Landlord or Tenant is excess and noncontributing with the insurance required hereunder. The requirements for the foregoing insurance shall not diminish Tenant's obligation to indemnify Landlord under the Lease and/or this Work Letter Agreement.

(g) Governmental Compliance. The Initial Improvements shall comply in all respects with the following: (i) the applicable building codes and other federal, state, city and/or quasi-governmental laws, codes, ordinances and regulations, including the procurement, prevailing wage and local employment requirements set forth in subsection (b)(1), above, as each may apply according to the rulings of the controlling public official, agent or other person or entity; (ii) applicable standards of the American Insurance Association (formerly, the National Board of Fire Underwriters) and the National Electrical Code; and (iii) building material manufacturer's specifications.

(h) Updates. Tenant shall provide periodic updates (not less frequently than quarterly) to Landlord regarding the progress of the construction of the Initial Improvements and Timetable.

(i) Notice of Completion; Copy of Record Set of Plans. Within 15 days after completion of construction of the Initial Improvements, Tenant shall cause a Notice of Completion to be recorded in the office of the Recorder of Contra Costa County and shall furnish a copy thereof to Landlord upon such recordation, and shall timely give all notices required pursuant to the California Civil Code. If Tenant fails to do so, Landlord may execute and file such Notice of Completion and give such notices on behalf of Tenant as Tenant's agent for such purpose, at Tenant's sole cost and expense. Within 30 days following the completion of construction of the Initial Improvements:

(I) Tenant shall cause its architect and Contractor (A) to update the Approved Working Drawings as necessary to reflect all changes made thereto during the course of construction, (B) to certify to the best of their knowledge that the updated drawings are true and correct, which certification shall survive the expiration or termination of the Lease, (C) to deliver to Landlord such updated drawings in accordance with Landlord's then-current CAD Requirements, and (D) to certify to the best of their knowledge that the Tenant Work is substantially complete (meaning that said work has been duly and properly completed, all permits obtained in connection therewith have been "finalized" and closed, and any then remaining work constitutes minor defects or adjustments which can be completed after substantial completion (the "Punch List" items), which date of certification is hereby defined to be the date of "**Substantial Completion**"; and

(II) Tenant shall deliver to Landlord a copy of all warranties, guaranties, and operating manuals and information relating to the Initial Improvements and all improvements, equipment, and systems in the Premises.

(j) Letter of Credit or Guaranty.

(I) Tenant's obligations under to complete the Tenant Work shall be guaranteed by J.R. Orton III, pursuant to the Guaranty attached hereto as Exhibit B-3, or, alternatively, by that certain Letter of Credit (in the form attached hereto as Exhibit B-4, and pursuant to the terms set forth below). If Tenant does not deliver the Guaranty prior to the end of the Due Diligence Period, Tenant shall instead deliver to Landlord, as collateral for the full performance by Tenant of its obligations to timely complete the Tenant Work in accordance with the terms and conditions of this Agreement and for all losses and damages Landlord may suffer as a result of Tenant's failure to do so, an unconditional, irrevocable, transferable standby letter of credit (the "**Initial Letter of Credit**") in the form attached hereto as Exhibit B-3 in the amount of fifty percent (50%) of the amount of the Tenant Work costs currently estimated to be approximately \$5,051,292.50 based upon an initial estimate of \$10,102,585.00 as the currently contemplated Improvement Cost (the "**Letter of Credit Amount**"), issued by a financial institution (the "**Issuing Bank**") acceptable to Landlord, such acceptance not to be unreasonably withheld. The Letter of Credit shall be "callable" at sight, permit partial draws and multiple presentations and drawings, and be otherwise subject to the Uniform Customs and Practices for Documentary Credits (1993-Rev), International Chamber of Commerce Publication #500, or the International Standby Practices-ISP 98, International Chamber of Commerce Publication #590. Tenant shall cause the Letter of Credit to be continuously maintained in effect (whether through a Replacement Letter of Credit (defined below), amendment, renewal or extension) through the later of December 31, 2023, or the date that Landlord has approved in writing the Final Disbursement Documentation, as defined below (the "**Final Letter of Credit Expiration Date**").

(II) Drawing Under Letter of Credit. Without prejudice to any other remedy available to Landlord under the Lease or at law, Landlord may draw upon the Initial Letter of Credit or any Replacement Letter of Credit on or after the occurrence of either: (i) any uncured failure by Tenant to perform one or more of its obligations under the this Agreement (and the corresponding provisions of the Lease relating to the Tenant Work) to diligently prosecute and complete the Tenant Work within the time periods required hereunder; (ii) any failure by Tenant to deliver to Landlord a Replacement Letter of Credit as and when required; (iii) an uncured failure by Tenant to perform one or more of its obligations under this Agreement to diligently prosecute the Tenant Work and the existence of circumstances in which Landlord is enjoined or otherwise prevented by operation of law from giving to Tenant a written notice which would be necessary for such failure of performance to constitute an Event of Default, or (iv) the appointment of a receiver to take possession of all or substantially all of the assets of Tenant, or an assignment of Tenant for the benefit of creditors, or any action taken or suffered by Tenant under any insolvency, bankruptcy, reorganization or other debtor relief proceedings whether now existing or hereafter amended or enacted, or (v) without limiting (i) above, if Tenant fails to complete the Tenant Work within the time periods otherwise required by this Agreement. Landlord may, at Landlord's sole option, draw upon a portion of the face amount of the Initial Letter of Credit or any Replacement Letter of Credit, as applicable, as required (x) to complete the Tenant Work, and/or (y) to compensate Landlord for damages incurred to the extent Landlord has otherwise made payment to third parties in connection with any claim made against Landlord for such claim (with subsequent demands at Landlord's sole election as

Landlord incurs further damage to complete such work or otherwise settle any claim), and/or (z) to reimburse Landlord for the applicable, reasonable cost to enforce Landlord's right to the foregoing, including attorneys' fees. Tenant will not interfere in any way with payment to Landlord of the proceeds of the Letter of Credit, either prior to or following a draw by Landlord of any portion of the Letter of Credit, regardless of whether any dispute exists between Tenant and Landlord as to Landlord's right to draw upon the Letter of Credit. No condition or term of the Lease shall be deemed to render the Letter of Credit conditional to justify the issuer of the Letter of Credit in failing to honor a drawing upon such Letter of Credit in a timely manner.

(III) Delivery of Replacement Letter of Credit. Tenant shall deliver to Landlord a new letter of credit (a "**Replacement Letter of Credit**") (the Initial Letter of Credit and/or any Replacement Letter of Credit being referred to herein as a "**Letter of Credit**") at least thirty (30) days prior to the expiry date of the Initial Letter of Credit or of any Replacement Letter of Credit held by Landlord. Each Replacement Letter of Credit delivered by Tenant to Landlord shall: (i) be issued by a banking institution acceptable to Landlord; (ii) be in the same form as the letter of credit attached to this Agreement as Exhibit B-3; (iii) bear an expiry date not earlier than one (1) year from the date when such Replacement Letter of Credit is delivered to Landlord; and (iv) be in an amount not less than the Letter of Credit Amount. Upon the delivery to Landlord of a Replacement Letter of Credit, Landlord shall return to Tenant the Initial Letter of Credit or any previous Replacement Letter of Credit then held by Landlord.

(IV) Proceeds of Draw. Tenant acknowledges that (1) the Letter of Credit constitutes a separate and independent contract between Landlord and the Issuing Bank, (2) Tenant is not a third party beneficiary of such contract, (3) Tenant has no property interest whatsoever in the Letter of Credit or the proceeds thereof, and (4) in the event Tenant becomes a debtor under any chapter of the U.S. Bankruptcy Code (the "**Bankruptcy Code**"), neither Tenant, any trustee, nor Tenant's bankruptcy estate shall have any right to restrict or limit Landlord's claim and/or rights to the Letter of Credit and/or the proceeds thereof by application of Section 502(b)(6) of the Bankruptcy Code or otherwise. Landlord may immediately upon any draw permitted hereunder (and without notice to Tenant except as may be expressly provided in the Lease) apply or offset the proceeds of the Letter of Credit against all costs required directly or indirectly to complete the Tenant Work or payment of any claim ("**Allowable Costs**"). Tenant (1) agrees that the proceeds of any draw by Landlord will not be deemed to be or treated as a "security deposit" under the Security Deposit Laws (defined below), and (2) waives all rights, duties and obligations either party may now or, in the future, will have relating to or arising from the Security Deposit Laws. The amount of any proceeds of a draw upon the Letter of Credit received by Landlord may be applied against any Allowable Costs (including such amounts reasonably estimated by Landlord that it will incur as Allowable Costs).

(V) Landlord's Transfer. If Landlord conveys or transfers its interest in the Leased Premises and, as a part of such conveyance or transfer, Landlord assigns its interest in the Lease: (1) any Letter of Credit shall be transferred to Landlord's successor; (2) Landlord shall be released and discharged from any further liability to Tenant with respect to such Letter of Credit; and (3) any Replacement Letter of Credit thereafter delivered by Tenant shall state the name of the successor to Landlord as the beneficiary of such Replacement Letter of Credit and shall contain such modifications in the text of the Replacement Letter of Credit as are required to appropriately reflect the transfer of the interest of Landlord in the Premises.

(VI) Nature of Letter of Credit. Landlord and Tenant (1) acknowledge and agree that in no event or circumstance shall the Letter of Credit or any renewal thereof or substitute therefor or any proceeds thereof be deemed to be or treated as a “security deposit” under any law applicable to security deposits in the commercial context including Section 1950.7 of the California Civil Code (as now existing or hereafter amended or succeeded, “Security Deposit Laws”), (2) acknowledge and agree that the Letter of Credit (including any renewal thereof or substitute therefor or any proceed thereof) is not intended to serve as a security deposit, and the Security Deposit Laws shall have no applicability or relevancy thereto, and (3) waive any and all rights, duties and obligations either party may now or, in the future, will have relating to or arising from the Security Deposit Laws.

(VII) Reduction in Letter of Credit Amount. Provided that Tenant has not previously been in Default of this Work Letter Agreement or the construction provisions of the Lease relating thereto, prior to the effective date of the applicable reduction request and further provided that Tenant is not in Default of this Work Letter Agreement or the construction provisions of the Lease relating thereto at the time of such request, upon written request by Tenant, the Letter of Credit Amount may be reduced as follows: (1) to fifty percent (50%) of the Letter of Credit amount, at any time after the 50% of the Tenant Work has been completed, (2) twenty five percent (25%) of the Letter of Credit amount, at any time after 75% of the Tenant Work has been completed; and (3) the remainder of the Letter of Credit returned to Tenant and cancelled at any time after Landlord has approved in writing the Final Disbursement Documentation for the Tenant Work. Any reduction in the Letter of Credit Amount shall be accomplished by Tenant providing Landlord with a Replacement Letter of Credit or an amendment thereto in the reduced amount, in either case in form and substance satisfactory to Landlord. The “Final Disbursement Documentation” means that: (A) Tenant delivers to Landlord properly executed unconditional mechanics’ lien releases from all contractors, subcontractors, and materialmen in compliance with all applicable laws, as reasonably determined by Landlord, including, without limitation, compliance with both California Civil Code Section 3262(d)(2) and either Section 3262(d)(3) or Section 3262(d)(4) (or any successor statute); (B) Landlord has determined in good faith that no substandard work exists which adversely affects the mechanical, electrical, plumbing, heating, ventilating and air conditioning, life-safety or other systems of the Tenant Work, the structure or exterior appearance of the Premises; (C) Tenant’s Architect delivers to Landlord a certificate, in a form reasonably acceptable to Landlord, certifying that the construction of the Tenant’s Work in the Premises has been substantially completed; (D) Tenant supplies Landlord with evidence that all required governmental approvals required for Tenant to legally occupy the Premises have been obtained; and (E) Tenant has complied with Landlord’s reasonable “close out” requirements regarding city approvals, closeout tasks, closeout documentation regarding the Contractor, financial close-out matters, and tenant vendors.

(VIII) If the Improvement Cost increases as otherwise described in this Agreement, then the amount of the Letter of Credit shall similarly increase, with such increased amount being obtained to the Letter of Credit by Tenant within thirty (30) days of such increase in Improvement Cost being determined.

5. Final Improvement Cost.

The Budget, as attached hereto and subject to modification as provided in this Work Letter Agreement, sets forth the anticipated Improvement Cost. Upon Substantial Completion, Tenant shall assemble and provide to Landlord (within fifteen (15) days of such Substantial Completion) an accounting and reconciliation of the Tenant Work, including a detailed listing (in the form as presented in the Budget) of actual expenses incurred. The aggregate of all actual expenses incurred in connection with the Tenant Work shall constitute the "**Final Improvement Cost**" and shall be an amount not more than ten percent (10%) higher than the anticipated Improvement Cost. Any sums expended by Tenant in excess of ten percent (10%) higher than the anticipated Improvement Cost (absent said Improvement Cost being modified as otherwise provided in this Work Letter Agreement), shall not be included in the Final Improvement Cost.

Exhibit B-1

Detailed Proposed Budget

Exhibit B-1

Estimated Budget

Estimated Budget

Phase Description	Quantity	Unit	Per Unit Cost	Cost
Primary Terminal				
Negotiate Lease - Team Time	1	each	35,000	35,000
Plans, Architect, Engineering	1	each	65,000	65,000
City Permits	1	each	85,000	85,000
BCDC Permits	1	each	25,000	25,000
Legal - Negotiate Lease and other	1	each	130,000	130,000
Temp Facilities	24	month	1,500	36,000
Management	24	month	16,000	384,000
Site Grub and cleanup	1	each	45,000	45,000
Demolition - siding removal	1	Each	85,000	85,000
Sewer Connection	800	in ft	210	126,000
Onsite soils handling	25000	cyds	14	350,000
Soil Placement and compaction	9,800	yards	14	138,600
Concrete Slab	87,000	sq ft	8	696,000
Concrete Walls	1850	in ft	150	277,500
Ramps	4	ramp	22,500	90,000
Rough Carpentry	381	in ft	35	13,335
Dock Levelers	5	units	2,250	11,250
Fire Protection Alarms and Strobes	1	each	15,000	15,000
Metal Roofing Deck	500	squares	380	190,000
Metal Doors & Frames	10	doors	1,500	15,000
Insulation - Roof Decking	1	each	102,000	102,000
Structural Steel Corrosion Inhibitor	1	each	250,000	210,000
Rail-up Doors	5	doors	15,500	77,500
Dock Bumpers	5	bumpers	500	2,500
Metal Siding	36000	sq ft	18	648,000
ADA Bathroom Set	5	Bathrooms	45,000	225,000
Gas and Resistor Heating	1	each	205,000	145,000
Plumbing	1	each	285,000	285,000
Fire Protection	1	each	85,000	85,000
LED Lighting	1	each	475,000	475,000
New Electrical Switch Gear	1	Each	325,000	325,000
Electrical (rough)	87000	sq ft	7	609,000
Contingency		each	80,000	200,000
TOTAL			\$	6,288,085
Yard Restoration				
Permits	1	each	10,000	10,000
Engineering - Swale issues	1	each	35,000	35,000
BP Cap MGMT. legal	1	each	25,000	25,000
Project Management	1	each	45,000	45,000
Soil grading on large swale	15000	yards	15	225,000
Asphalt Pavers	250000	Slurry	1	125,000
Asphalt Paving	200000	Re-pave	3	600,000
Light Pole replacement	12	each	8500	102,000
Electrical restoration to docks	1	each	45000	45000
Subsurface Utilities repairs	1	each	95000	95000
Electrical to lights	1	each	30000	30000
Strapping	1	Each	25,000	25,000
Marine Fence	1300	in ft	65	84,500
Marine gates (manual)	5	each	5000	25,000
Contingency	15	each	10000	150,000
Dredging	1	each	1500000	1,500,000
Remove stadium Lights	2	each	45,000	90,000
TOTAL			\$	3,211,500
Admin Building				
Permits	1	each	8,000	8,000
Engineering	1	each	5,000	5,000
Project Management	3	months	15,000	45,000
Electrical	1	each	88,000	88,000
Life Safety	1	each	49,000	49,000
Plumbing Restoration	1	each	52,000	52,000
HVAC	1	each	85,000	85,000
Lighting	1	each	40,000	40,000
Drywall, tape, Paint	1	each	52,000	52,000
Truck scale restoration	1	each	26,000	26,000
Roof	1	each	48,000	48,000
ADA Bathroom Re-construct	2	each	38,000	76,000
Exterior Paint/Restoration	1	each	30,000	30,000
Contingency	3	each	35,000	100,000
TOTAL			\$	683,000
Total Project Costs			\$	10,102,585.00

*Final budget and individual line items subject to change based on further due diligence

Exhibit B-2

Schedule of Performance

TERMINAL 3 - SCHEDULE OF PERFORMANCE

Several principals apply to an effective understanding of this Schedule of Performance: (i) all terms used herein have the same meanings as provided in the Lease; (ii) the term "days" used herein means calendar days, not business days, (iii) in the event of an inconsistency between this Schedule of Performance and the Lease, the Lease shall prevail, including relevant force majeure provisions. References to "days" in this Schedule shall mean calendar days unless business days are specified.

<u>Action</u>	<u>Assign</u>	<u>Required Completion Date</u>
<u>Tenant shall deliver to Landlord certificates of insurance and true and complete copies of any and all endorsements (including, but not limited to, Tenant's notice of cancellation endorsement) required under this Lease. Tenant's policies shall provide for at least thirty (30) days' prior written notice of cancellation (and at least ten (10) days' written notice if cancellation is due to non-payment of premium) to Tenant.</u>	Terminal Three Partners	Prior to Landlord granting access to the Premises to Tenant or Tenant's agents.
<u>Tenant shall perform due diligence and necessary property investigations (such as environmental, soils, title, dredging, existing subtenants, structural, substructural, etc.) and during such time shall have and reserve the right to terminate Lease by providing written notice to Landlord.</u>	Terminal Three Partners	Notice must be provided no later than 90 days after the Lease Commencement Date, pursuant to Section 1.02(j) of Lease.
<u>Tenant shall provide Landlord with plans (the "Preliminary Plans") sufficient to permit third parties to submit bids or other proposals as may be desired for the performance of the Tenant Work, or portions thereof.</u>	Terminal Three Partners	No later than 45 days after the Lease Commencement Date, pursuant to Section 2(b) of Work Agreement.

<u>Action</u>	<u>Assign</u>	<u>Required Completion Date</u>
<u>Landlord shall approve Preliminary Plans.</u>	Port of Richmond	No later than 10 business days after receiving Tenant's Preliminary Plans, pursuant to Section 2(b) of Work Agreement. NOTE: Second Notice is required for deemed approval.
<u>Tenant shall obtain bids for all Tenant Work specified in Lease Exhibit B-2 and in the approved Preliminary Plans.</u>	Terminal Three Partners	No later than 45 days after the Preliminary Plans are approved by Landlord, pursuant to Section 2(b) of Work Agreement.
<u>Tenant shall prepare and deliver to Landlord final plans and specifications and working drawings for the construction of the Initial Improvements that will include (to the extent required) structural, fire protection, life safety, mechanical and electrical working drawings, and final architectural drawings for said improvements (collectively, the "Final Working Drawings").</u>	Terminal Three Partners	No later than 90 days after receiving the Landlord's approval of the Preliminary Plans, pursuant to Section 2(b) of Work Agreement.
<u>Landlord shall approve Final Working Drawings or set forth in writing any changes necessary to bring them into conformity with Preliminary Plans or changes otherwise desired by Landlord.</u>	Port of Richmond	No later than 10 business days after receipt of Final Working Drawings, pursuant to Section 2(b) of Work Agreement
<u>Tenant shall respond to any comments by Landlord on Final Working Drawings.</u>	Terminal Three Partners	No later than 15 days after receiving such comments.

<u>Action</u>	<u>Assign</u>	<u>Required Completion Date</u>
<u>City shall approve Final Working Drawings (to be known thereafter as "Approved Working Drawings").</u>	Port of Richmond	No later than 10 days after receiving Tenant response to comments. Failure of Landlord to deliver to Tenant written notice of disapproval and the required changes on or before the expiration of said 10 day period will constitute and be deemed approval of the Final Working Drawings.
<u>Tenant shall submit Approved Working Drawings to the appropriate governmental agencies for the issuance of a building permit.</u>	Terminal Three Partners	No later than 10 days after receiving Landlord's approval of Final Working Drawings.
<u>Appropriate governmental agencies shall issue building permit or plan check comments.</u>	Terminal Three Partners	Within 30 days after Tenant submittal of Approved Working Drawings (the parties acknowledging that the Lease does not impose any restrictions upon the City of Richmond in its independent regulatory capacity).
<u>Tenant shall respond to plan check comments, if any.</u>	Terminal Three Partners	Within 30 days of receiving plan check comments from appropriate governmental agencies, if any.

<u>Action</u>	<u>Assign</u>	<u>Required Completion Date</u>
<u>Appropriate governmental agencies shall issue building permit(s).</u>	Terminal Three Partners	Within 30 days of Tenant submittal of updated plans in response to plan check comments, if comments were given (the parties acknowledging that the Lease does not impose any restrictions upon the City of Richmond in its independent regulatory capacity).
<u>Tenant shall pick up all issued building permit(s).</u>	Terminal Three Partners	Within five (5) days of their issuance.
<u>Tenant shall deliver certificates for all of the foregoing insurance coverage to Landlord. City shall issue building permit or plan check comments.</u>	Terminal Three Partners	Prior to the commencement of construction and prior to the Tenant's Contractor's or any subcontractor's equipment is moved onto the site.
<u>Tenant shall provide Landlord with written notice of commencement of the work so as to enable Landlord to post and record appropriate notices of non-responsibility.</u>	Terminal Three Partners	No later than 10 days prior to the commencement of the work.
<u>Subject to Force Majeure Delay, Tenant shall commence construction.</u>	Terminal Three Partners	No later than 45 days after the issuance of building permit(s).

<u>Action</u>	<u>Assign</u>	<u>Required Completion Date</u>
<u>Tenant shall give written notice to Landlord in the event Tenant is delayed in its ability to achieve Substantial Completion by the target date (see Section 3(c) "Force Majeure" in Lease).</u>	Terminal Three Partners	No later than 15 days after Tenant is made aware of an impending delay.
<u>Tenant shall and/or shall cause Contractor to provide certified payroll records to Landlord each week.</u>	Terminal Three Partners or its Contractors	No later than 10 days after the end of a weekly pay period.
<u>Per Lease Exhibit B-2, Tenant shall execute all construction improvements until Substantial Completion.</u>	Terminal Three Partners	No later than 24 months after the commencement of construction.
<u>Upon Substantial Completion, Tenant shall assemble and provide to Landlord an accounting and reconciliation of the Tenant Work, including a detailed listing (in the form as presented in the Budget) of actual expenses incurred.</u>	Terminal Three Partners	No later than 15 days after Substantial Completion.
<u>Tenant shall cause a Notice of Completion of construction of the Initial Improvements to be recorded in the office of the Recorder of Contra Costa County and shall furnish a copy thereof to Landlord upon such recordation, and shall timely give all notices required pursuant to the California Civil Code.</u>	Terminal Three Partners	No later than 15 days after the completion of the Initial Improvements specified in Lease Exhibit B-2.

Action

Assign

Required Completion Date

Tenant shall cause its architect and Contractor (A) to update the Approved Working Drawings as necessary to reflect all changes made thereto during the course of construction, (B) to certify to the best of their knowledge that the updated drawings are true and correct, which certification shall survive the expiration or termination of the Lease, (C) to deliver to Landlord such updated drawings in accordance with Landlord's then-current CAD Requirements, and (D) to certify to the best of their knowledge that the Tenant Work is substantially complete (meaning that said work has been duly and property completed, all permits obtained in connection therewith have been "finaled" and closed, and any then remaining work constitutes minor defects or adjustments which can be completed after substantial completion.

Terminal Three
Partners

No later than 30 days after the completion of Initial Improvements specified in Lease Exhibit B-2.

Tenant shall deliver to Landlord a copy of all warranties, guaranties, and operating manuals and information relating to the Initial Improvements and all improvements, equipment, and systems in the Premises.

Terminal Three
Partners

No later than 30 days after the completion of Initial Improvements specified in Lease Exhibit B-2.

Exhibit B-3

Form of Completion Guaranty (Personal Guaranty)

GUARANTY OF COMPLETION OF CONSTRUCTION

THIS GUARANTY OF COMPLETION OF CONSTRUCTION (“Guaranty”), dated as of December ___, 20___ is executed and delivered by J.R. Orton III, an individual (“Guarantor”), in favor of the City of Richmond, a municipal corporation and charter city (“City” or “Landlord”), with reference to the facts set forth in the Recitals below. Guarantor and City are hereinafter sometimes referred to individually as a “party” and collectively as the “parties.” Unless otherwise defined herein, all capitalized terms used in this Guaranty shall have the same meanings set forth in the Lease (as defined in the first Recital below):

RECITALS

WHEREAS, Guarantor is willing to execute and deliver this Guaranty for the express and intended purpose of inducing City to enter into that certain Lease dated as of December ___, 2020, by and between City and Terminal Three Partners, LLC, a California limited liability company (“T3 Partners”) (as it may be amended from time to time in accordance therewith, the “Lease”), with respect to certain property described in the Lease and located in the City of Richmond, State of California (the “Property”), which Lease includes, as an obligation of T3 Partners, undertaking certain Tenant Work, as more specifically set forth in the Work Letter Agreement (the “WLA”) attached as Exhibit B to said Lease.

WHEREAS, as described in Paragraph 4(j) of the WLA, a condition to City’s entering into the Lease is the delivery by Guarantor of this Guaranty (or, alternatively, the Letter of Credit described therein).

NOW, THEREFORE, Guarantor, in order to induce City to execute the Lease and take actions pursuant thereto, and for other valuable consideration received by T3 Partners and Guarantor, the receipt and adequacy of which are hereby acknowledged, does hereby agree as follows:

GUARANTY

1. Guaranty. Guarantor hereby unconditionally, absolutely and irrevocably guarantees to City the full performance of T3 Partner’s obligations to complete the Tenant Work under the Lease including the WLA, subject to the terms and conditions thereof (including extensions for force majeure delay) (collectively, the “Guaranteed Obligations”).

2. Further Instruments. Guarantor shall execute and deliver to City such further documents, instruments, and agreements, upon such terms and conditions, as City may reasonably require, in order to further evidence Guarantor’s agreement to satisfy the Guaranteed Obligations as required hereunder.

3. Termination and Release. Following satisfaction in full of the Guaranteed Obligations, City agrees, upon the request of Guarantor, to deliver to Guarantor an instrument

evidencing the termination of this Guaranty and the release of Guarantor from any further liability hereunder.

4. Independent Obligations. Guarantor's obligations hereunder are independent of the obligations of T3 Partners or any assignee of their obligations under the Lease, and a separate action or actions may be brought and prosecuted against Guarantor whether or not action is brought against T3 Partners or any such assignee and whether or not T3 Partners or any such assignee is joined in any such action or actions.

5. Joint and Several. If there is more than one Guarantor hereunder, the obligations of each and all Guarantors hereunder shall be joint and several.

6. Guarantor Authorizations. Guarantor authorizes City, without notice or demand and without affecting Guarantor's liability hereunder, from time to time to: (a) extend, accelerate, or otherwise change the time for any performance or payment provided for in the WLA or any covenant, term, or condition of the WLA; (b) impair or suspend in any respect City's rights or remedies against T3 Partners in respect to the WLA; (c) consent to and effectuate any assignment, reassignment, or other transfer, in whole or in part, of the WLA or any payments, rights or obligations thereunder; (d) approve modifications to the Tenant Work; (e) amend or modify any terms and conditions of the Lease; (f) take and hold security for the performance of any covenant, term, or condition of the Lease or for any payment provided for in the Lease, or exchange, waive, or release any such security; (g) apply such security and direct the order or manner of sale thereof as City in its sole discretion may determine; and (h) assign this Guaranty in whole or in part.

7. Preferential Payments. Guarantor further agrees that to the extent T3 Partners or Guarantor makes any payment to City in satisfaction of any part of the Guaranteed Obligations, and all or any part of such payment is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid by City or paid over to a trustee, receiver or any other entity, under any applicable state or federal law, including, without limitation, laws pertaining to bankruptcy, insolvency or other proceeding (any such payment is hereinafter referred to as a "Preferential Payment"), then notwithstanding any prior revocation, termination, surrender, or discharge of this Guaranty in whole or part, this Guaranty shall continue to be effective or shall be reinstated, as the case may be, and, to the extent of such payment or repayment by City, the Guaranteed Obligations or part thereof intended to be satisfied by such Preferential Payment shall be revived and continued in full force and effect as if said Preferential Payment had not been made.

8. Waivers of Enforcement. Guarantor acknowledges and agrees that the liabilities created by this Guaranty are direct and are not conditioned upon pursuit by City of any remedy City may have against T3 Partners or any other person or any security. Guarantor further agrees that City may enforce this Guaranty upon the occurrence of any T3 Partners default under the WLA, notwithstanding the existence of any dispute between T3 Partners and City with respect to the existence of said default or performance of the Guaranteed Obligations or any counterclaim, set-off or other claim which T3 Partners may allege against City with respect thereto. Guarantor waives any right to require City to: (a) proceed against T3 Partners or any other person or entity; (b) proceed against or exhaust any security held from T3 Partners or Guarantor; (c) pursue any other remedy in City's power which Guarantor cannot itself pursue, and which would lighten its

burden; or (d) make any presentment. Guarantor waives any defense arising by reason of any disability or other defense of T3 Partners, or any assignee of the T3 Partner's obligations under the Lease, by reason of the cessation from any cause whatsoever of the liability of T3 Partners, or any assignee of their obligations under the Lease, or by reason of any lack of authority of any officer, director, partner, agent, or other person acting or purporting to act on behalf of T3 Partners, or any defect in the formation of T3 Partners. Guarantor waives all demands upon and notices to T3 Partners, or any assignee of the Lease, and to Guarantor other than as provided herein, including, without limitation, demands for performance, notices of non-performance, notices of non-payment and notice of acceptance of this Guaranty. Guarantor waives the benefit of any statute of limitations affecting its obligations hereunder or the enforcement thereof. Moreover, Guarantor agrees that Guarantor's obligations shall not be affected by any circumstances which constitute a legal or equitable discharge of a guarantor or surety.

9. WAIVERS OF STATUTES. WITHOUT LIMITING THE GENERALITY OF ANY OTHER WAIVER OR OTHER PROVISION SET FORTH IN THIS GUARANTY, GUARANTOR HEREBY WAIVES, TO THE MAXIMUM EXTENT SUCH WAIVER IS PERMITTED BY LAW, ANY AND ALL BENEFITS, DEFENSES TO PAYMENT OR PERFORMANCE, OR ANY RIGHT TO PARTIAL OR COMPLETE EXONERATION ARISING DIRECTLY OR INDIRECTLY UNDER ANY ONE OR MORE OF CALIFORNIA CIVIL CODE SECTIONS 2799, 2808, 2809, 2810, 2815, 2819, 2820, 2821, 2822, 2838, 2839, 2845, 2847, 2848, 2849, AND 2850.

10. Waivers of Subrogation. Until such time as the Guaranteed Obligations have been performed in full, Guarantor waives any and all rights to be subrogated to the position of City or to have the benefit of any lien, security interest, or other guaranty now or later held by City for the Guaranteed Obligations or to enforce any remedy which City now or later has against T3 Partners or any other person. Guarantor agrees that until such time as the Guaranteed Obligations have been performed in full and the period of time has expired during which any payment made by T3 Partners, any assignee of T3 Partners' obligations under the Lease, or Guarantor to City on account of the Guaranteed Obligations may be determined to be a Preferential Payment, any claim or other rights which Guarantor may now have or hereafter acquire against T3 Partners, any assignee of T3 Partners' obligations under the Lease, or any other guarantor of all or any of the Guaranteed Obligations that arise from the existence or performance of Guarantor's obligations under this Guaranty or any other document executed in connection with the Lease, and under any extensions, renewals or modifications thereof (all such claims and rights are referred to as "Guarantor's Conditional Rights"), including, without limitation, any right of subrogation, reimbursement, exoneration, contribution, or indemnification, any right to participate in any claim or remedy of City against T3 Partners or any assignee of T3 Partners' obligations under the Lease or any collateral which City now has or hereafter acquires, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, by any payment made hereunder or otherwise, including without limitation, the right to take or receive from T3 Partners or any assignee of T3 Partners' obligations under the Lease, directly or indirectly, in cash or other property or by setoff or in any other manner, payment or security on account of such claim or other rights, shall be subordinate to City's right to full performance of the Guaranteed Obligations, and Guarantor shall not enforce Guarantor's Conditional Rights during such period. If, notwithstanding the foregoing provision, any amount shall be paid to Guarantor on account of Guarantor's Conditional Rights and either (i) such amount is paid to Guarantor at any time when the Guaranteed Obligations shall not have been paid or performed in full, or (ii) regardless of when such amount is paid to Guarantor, any payments made by T3

Partners or any assignee of T3 Partners' obligations under the Lease to City on account of the Guaranteed Obligations is at any time determined to be a Preferential Payment, then such amount paid to Guarantor shall be held in trust for the benefit of the City and shall forthwith be paid to City to be credited and applied upon the Guaranteed Obligations, whether matured or unmatured, in such order as City in its sole and absolute discretion, shall determine. Guarantor represents, warrants and covenants that (a) there do not now exist any agreements between Guarantor and T3 Partners which are inconsistent with the waiver of subrogation contained herein, (b) Guarantor will not hereafter enter into any such agreements with T3 Partners, and (c) any such purported agreements are void.

11. Subordination. To the extent that any of the provisions of the immediately preceding Section hereof shall not be enforceable, Guarantor agrees that until such time as the Guaranteed Obligations have been paid and performed in full and the period of time has expired during which any payment made by T3 Partners, any assignee of T3 Partners' obligations under the Lease, or Guarantor to City on account of the Guaranteed Obligations may be determined to be a Preferential Payment, Guarantor's Conditional Rights to the extent not validly waived shall be subordinate to City's right to full performance of the Guaranteed Obligations, and Guarantor shall not enforce Guarantor's Conditional Rights during such period.

12. Obligations to Cure T3 Partners Defaults. Within thirty (30) days after Guarantor's receipt of written notice from City of a T3 Partners' default with respect to the WLA, Guarantor shall cure or cause T3 Partners to cure any such default (provided, however, that nothing herein shall be deemed to extend any period under the Lease for T3 Partners to cure any such default). If Guarantor does not cure or cause T3 Partners to cure such T3 Partners' default within such thirty (30)-day period, then City shall have the right, without having the obligation to do so, and without further notice to Guarantor and without waiving any other rights or remedies against T3 Partners or Guarantor, to take any actions it believes necessary to complete and/or pay the Guaranteed Obligations, but with the further right to suspend or terminate any such actions at any time. No such actions of City shall release or limit the liability of Guarantor or T3 Partners with respect to the Guaranteed Obligations, and Guarantor also shall promptly repay City all sums expended by City in its undertaking to complete and/or pay such Guaranteed Obligations.

13. Attorneys' Fees. Guarantor agrees to pay reasonable attorneys' fees (both fees for attorneys of the Office of City Attorney of the City of Richmond and private attorneys) and all other costs and expenses which may be incurred by City in the enforcement of this Guaranty or otherwise arising out of the subject matter of this Guaranty. For purposes of this Guaranty, the reasonable fees of attorneys of the Office of City Attorney of the City of Richmond shall be based on the fees then regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which such services were rendered who practice in San Francisco Bay Area law firms.

14. No Waiver. No right or power of City shall be deemed to have been waived by any act or conduct on the part of City, or by any neglect to exercise such right or power, or by any delay in so doing; and every right and power of City shall continue in full force and effect until such right or power is specifically waived by an instrument in writing executed by City.

15. No Assignment. Guarantor shall not assign or delegate, in whole or in part, any of its rights or obligations under this Guaranty. Subject to the preceding sentence, this Guaranty

shall bind Guarantor, its successors and assigns, and shall inure to the benefit of City, and its designees, successors and assigns.

16. Annual Confirmation. On or before April 1, July 1, October 1 and January 1 of each year until satisfaction in full of the Guaranteed Obligations, Guarantor shall provide to City reasonable and customary written evidence from one or more bona fide financial institutions, substantiating that the Guarantor then satisfies the financial requirements to be an Approved Guarantor (defined below). Guarantor further covenants and agrees to immediately notify City of any material adverse change in Guarantor's financial status. The term "Approved Guarantor" means an entity or person designated by Tenant that has an ownership interest in Tenant and is acceptable to the City in the City's reasonable discretion; provided, however, and without limiting such discretion, any Approved Guarantor shall, in any event and at a minimum, (i) be registered and qualified to transact business in California (if such guarantor is an entity); and (ii) shall have provided to the City reasonable and customary written evidence from one or more bona fide financial institutions, or otherwise reasonably acceptable to the City, substantiating that such person or entity has on hand (in the aggregate) cash, marketable securities and other liquid assets with a present value not less than one hundred twenty percent (120%) of the then outstanding amount of unpaid Project Costs for the applicable guaranteed Construction Phase (based on the Approved Final Financing Plan for the applicable Construction Phase) (the "Guarantor Liquidity Requirement") and a net worth of at least One Hundred Million Dollars (\$100,000,000.00) (the "Guarantor Net Worth Requirement"). The Guarantor (e.g. J.R. Orton III) shall be an Approved Guarantor provided that he satisfies the Guarantor Liquidity Requirement and the Guarantor Net Worth Requirement.

17. Bankruptcy. So long as any Guaranteed Obligations shall be owing to City, Guarantor shall not, without the prior written consent of City, commence or join with any other party in commencing any bankruptcy, reorganization or insolvency proceedings of or against T3 Partners. The obligations of Guarantor under this Guaranty shall not be altered, limited or affected by any case, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of T3 Partners or by any defense which T3 Partners may have by reason of the order, decree or decision of any court or administrative body resulting from any such case. City shall have the sole right to accept or reject any plan on behalf of Guarantor proposed in such case and to take any other action which Guarantor would be entitled to take, including, without limitation, the decision to file or not file a claim. Guarantor acknowledges and agrees that any interest on the Guaranteed Obligations which accrues after the commencement of any such proceeding (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on any such portion of the Guaranteed Obligations if said proceedings had not been commenced) shall be included in the Guaranteed Obligations because it is the intention of the parties that the Guaranteed Obligations should be determined without regard to any rule or law or order which may relieve T3 Partners of any portion of such Guaranteed Obligations. Guarantor hereby permits any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person to pay City, or allow the claim of City in respect of, any such interest accruing after the date on which such proceeding is commenced. Guarantor hereby assigns to City Guarantor's right to receive any payments from any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person by way of dividend, adequate protection payment or otherwise. If all or any portion of the Guaranteed Obligations is paid or performed by T3 Partners, the obligations of Guarantor hereunder shall continue and remain in full force and effect in the event

that all or any part of such payment(s) or performance(s) is avoided or recovered directly or indirectly from City as a preference, fraudulent transfer or otherwise in such case irrespective of payment or performance in full of all obligations under the Lease.

18. Governing Law. This Guaranty is entered into in the City of Richmond and each and every term and provision thereof shall be construed in accordance with the laws of the State of California, without reference to its conflict of laws provisions.

19. Guarantor Knowledge. Guarantor warrants and agrees that each of the waivers set forth in this Guaranty is made with Guarantor's full knowledge of its significance and consequences, and that under the circumstances, the waivers are reasonable and not contrary to public policy or law. If any of said waivers are determined to be contrary to any applicable law or public policy, such waivers shall be effective only to the maximum extent permitted by law.

20. Notice. Any notice to be given City hereunder shall be given in the manner set forth in Section 7.11 of the Lease. Any notice to be given Guarantor shall be given at the address set forth below Guarantor's signature and in the manner set forth in Section 7.11 of the Lease

21. Representations and Warranties. Guarantor represents, warrants and covenants that (i) any Guarantor that is not an individual is duly organized, validly existing and in good standing under the laws of the state of its formation and is qualified to transact business in the State of California; (ii) any financial statements of Guarantor heretofore delivered to City are true and correct in all respects. Such statements were prepared in accordance with generally accepted accounting principles, consistently applied, and fairly present the financial position of Guarantor as of the date thereof. Guarantor further warrants and represents that no material adverse change has occurred in Guarantor's financial position since the date of such statements; (iii) Guarantor has full power and authority to execute, deliver and perform its obligations under this Guaranty; (iv) the execution, delivery and performance has been duly authorized by all requisite action on its part; (v) this Guaranty constitutes the valid, legal and binding obligation of Guarantor; (vi) there are no actions, suits or proceedings pending, or to the knowledge of Guarantor threatened against or affecting Guarantor which could have a material adverse effect on the ability of Guarantor to honor its obligations hereunder, or involving the validity or enforceability of this Guaranty, at law or in equity; (vii) the consummation of the transaction hereby contemplated and performance of this Guaranty will not result in the breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or credit agreement, partnership agreement, corporate charter, bylaws or other agreement or instrument to which Guarantor is a party or by which it is or may be bound or affected; and (viii) Guarantor has no counterclaims, offsets or defenses with respect to this Guaranty.

22. Independent Investigation. Guarantor delivers this Guaranty based solely on its independent investigation of the financial condition and capabilities of T3 Partners and is not relying on any information furnished by City. Guarantor assumes full responsibility for obtaining any further information concerning T3 Partners financial condition and capabilities, the status of the WLA and T3 Partners' obligations thereunder or any other matter that Guarantor may deem necessary or appropriate from time to time. Guarantor waives any duty on the part of City, and agrees that it is not relying upon nor expecting City to disclose to Guarantor any fact now or later known by City, whether relating to the operations or condition of T3 Partners, the existence, liabilities or financial condition or capabilities of any other party, the occurrence of any breach or failure by T3 Partners or T3 Partners' default with respect to the WLA, or otherwise,

notwithstanding any effect these facts may have upon Guarantor's risk under this Guaranty or Guarantor's Rights against T3 Partners. Guarantor knowingly accepts the full range of risk encompassed by the scope of this Guaranty, including without limitation, the possibility that T3 Partners will incur obligations for which Guarantor will be liable under this Guaranty after T3 Partners' financial condition or ability to pay its lawful debts when they fall due has deteriorated. Guarantor agrees that no security now or later held by City for completion of the Guaranteed Obligations, whether from T3 Partners, any guarantor or surety, or otherwise, and whether in the nature of a security interest, pledge, lien, assignment, setoff, suretyship, guaranty, indemnity, insurance or otherwise, shall affect in any manner the unconditional obligation of Guarantor under this Guaranty, and City, in its sole discretion, without notice to Guarantor, may release, exchange, enforce and otherwise deal with any security without affecting in any manner the unconditional obligation of Guarantor under this Guaranty.

23. Review of WLA. Guarantor has received a copy of the WLA, as executed or in the form to be executed, and is satisfied with all of the terms and conditions thereof (to the extent that same are applicable to the Guaranteed Obligations). In executing and delivering this Guaranty, Guarantor has relied on its own review of the WLA and not on any representation or statement of City or any other person.

24. Jurisdiction and Venue. Guarantor hereby irrevocably submits to the jurisdiction and venue of any State court in Contra Costa County, California, in any action or proceeding brought to enforce or otherwise arising out of or related to this Guaranty and irrevocably waives to the fullest extent permitted by law any objection which Guarantor may now or hereafter have to the resting of such jurisdiction and venue in such forum, and hereby further irrevocably waives any claim that such forum is an inconvenient forum.

25. Entire Agreement/Amendment. Except as otherwise expressly set forth herein, this Guaranty, including all recitals, exhibits and schedules hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous understandings, correspondence, negotiations, representations, promises and agreements, oral or written, by or between the parties, with respect to the subject matter hereof. This Guaranty may be amended, modified, or supplemented only by a writing signed by both parties.

26. Counterparts. This Guaranty, and all amendments and supplements to it, may be executed in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. The parties shall be entitled to rely upon facsimile copies or electronic copies of a party's signature to this Guaranty and any instrument executed in connection herewith.

27. Severability. If any of the provisions contained in this Guaranty shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Guaranty, and this Guaranty shall be construed as if such invalid, illegal, or unenforceable provision had not been contained in this Guaranty.

28. Interpretation. Captions and headings in this Guaranty are for convenience of reference only and shall not affect the meaning or interpretation of any provision of this Guaranty. As used herein: (a) the singular shall include the plural (and vice versa) and the

masculine or neuter gender shall include the feminine gender (and vice versa) where the context so requires; (b) locative adverbs such as "herein," "hereto," and "hereunder" shall refer to this Guaranty in its entirety and not to any specific section or paragraph; (c) the terms "include," "including," and similar terms shall be construed as though followed immediately by the phrase "but not limited to;" (d) "shall," "will," "must," "agrees," and "covenants," are mandatory and "may" is permissive; and (e) "or" is not necessarily exclusive. The parties have jointly participated in the negotiation and drafting of this Guaranty, and this Guaranty shall be construed fairly and equally as to the parties, without regard to any rules of construction relating to the party who drafted a particular provision of this Guaranty.

29. No Third Party Beneficiaries. This Guaranty is made solely for the benefit of the parties to this Guaranty and their respective successors and permitted assigns, and no other person or entity shall have or acquire any rights or remedies under this Guaranty, except as otherwise expressly provided in this Guaranty.

30. Adequate Consideration. Guarantor represents and warrants that it has received adequate and sufficient consideration for the Guaranteed Obligations incurred under this Guaranty.

IN WITNESS WHEREOF, Guarantor has executed and delivered this Guaranty as of the date first set forth above.

GUARANTOR

[INSERT SIGNATURE BLOCK]

Address for Notices to Guarantor:

[INSERT NOTICE ADDRESS]

ACCEPTED BY

CITY OF RICHMOND,
a municipal corporation and charter city

By: _____
Name: _____
Its: _____

Exhibit B-4
Form of Letter of Credit

Irrevocable Standby Letter of Credit No. _____

Beneficiary:

Issuance Date:

City of Richmond

Attention: _____

Accountee/Applicant:

[Name of Tenant]

Attn: _____

Ladies and Gentlemen:

We hereby establish our Irrevocable Letter of Credit no. _____ in your favor for the account of _____ for an amount not to exceed in the aggregate _____ U.S. Dollars (\$ _____) in connection with that certain Lease dated as of _____, 2020 between Beneficiary, as landlord, and Accountee/Applicant, as tenant (the "Lease").

Funds under this credit are available against presentation of this original Letter of Credit and the attached Exhibit A, with the blanks appropriately completed.

This Letter of Credit expires and is payable at the office of _____ **[Issuing Bank's name, address, department, and fax number]**, on or prior to _____, 20__ **[enter the Expiration Date]**, or any extended date as hereinafter provided for (the "Expiration Date").

If the Expiration Date shall ever fall on a day which is not a Business Day, then such Expiration Date shall automatically be extended to the date which is the next Business Day. It is a condition of this Letter of Credit that the Expiration Date will be automatically extended without amendment for one (1) year from the Expiration Date hereof, or any future Expiration Date, unless at least sixty (60) days prior to any Expiration Date we notify you by certified mail, return receipt requested, or overnight courier service with proof of delivery to the address shown above, that we elect not to extend the Expiration Date of this Letter of Credit. Upon your receipt of such notification, you may draw against this Letter of Credit by presentation of this original Letter of Credit and the attached Exhibit B, with the blanks appropriately completed.

Demands presented by fax (to fax number _____) are acceptable; provided that if any such demand is presented by fax, the original Exhibit and Letter of Credit shall be simultaneously forwarded by overnight courier service to our office located at the address stated above; provided further that the failure of the courier service to timely deliver shall not affect the efficacy of the demand. Further, you shall give telephone notice of a drawing to the Bank, attention: _____ at _____, on the day of such demand, provided that your failure to provide such telephone notification shall not invalidate the demand.

Drawing(s) in compliance with all of the terms of this Letter of Credit, presented prior to 11:00 A.M., Pacific time, on a Business Day, shall be made to the account number or address designated by you of the amount specified, in immediately available funds, on the immediately following Business Day.

Drawing(s) in compliance with all of the terms of this Letter of Credit, presented on or after 11:00 A.M., Pacific time, on a Business Day, shall be made to the account number or address designated by you of the amount specified, in immediately available funds, on the second Business Day.

This Letter of Credit is transferable any number of times without charge to you. Any transfer must be requested in accordance with our transfer form, which is attached as Exhibit C, accompanied by the return of this original Letter of Credit and all amendments thereto for endorsement thereon by us to the transferee. This Letter of Credit is transferable provided that such transfer would not violate any governmental rule, order or regulation applicable to us.

We hereby engage with you that documents (including fax documents) presented in compliance with the terms and conditions of this Letter of Credit will be duly honored if presented to our bank on or before the Expiration Date of this Letter of Credit, which is _____, 20__.

Multiple and partial drawings are permitted.

This Letter of Credit is subject to the International Standby Practices 1998, International Chamber of Commerce Publication No. 590.

[Issuing Bank's name]

By: _____
Name: _____
Title: _____

Exhibit C

Insurance Requirements for Lessee

Beginning on the Lease Date and continuing until the expiration or earlier termination of the Term, Tenant shall at all times carry such liability, property, workers' compensation and other insurance coverage with respect to the Premises and any other insurable improvements, property and equipment therein or thereon (all of the above known as "**Insurable Property**") as may be required from time to time by Landlord in its reasonable discretion, but in no event shall Tenant carry less than the following:

(i) commercial general liability insurance (or equivalent) applicable to the Insurable Property for death and bodily and other personal injury with a combined single limit of \$50,000,000, and for property damage in the amount of \$10,000,000, any or all of which may be increased or decreased, as the case may be, from time to time to reflect changes in amounts of such insurance carried by institutional owners of comparable properties in the City (portions of which liability and property damage coverages may be provided under an umbrella policy);

(ii) workers' compensation insurance required by law and employer's liability insurance in respect of any work performed by Tenant's employees on or about the Premises;

(iii) demolition and debris removal insurance (if not included as part of the insurance carried pursuant to clause (d) below) payable in the event that the debris or demolition is occasioned by damage to or destruction of the Premises, its improvements or any portion thereof, or, to the extent such insurance is available, by condemnation hereof, in each case sufficient to pay for the removal of any portion of the Premises' improvements if required pursuant to the Lease;

(iv) causes of loss property insurance with extended coverage and additional risk insurance (or equivalent), such insurance to be in amounts sufficient to comply with any co-insurance clause applicable to the location and character of the Insurable Property and, in any event, in amounts not less than one hundred percent (100%) of the then repair and replacement cost of the Insurable Property, with an agreed upon value endorsement and commercially reasonable deductibles; and

(v) during any construction periods, builder's risk coverage in amounts reasonably determined by Landlord to be appropriate for the construction work undertaken; and

(vi) rent insurance to cover Base Rent to Landlord, including but not limited to periods of time when the Premises are unusable by reason of casualty.

All insurance policies required to be maintained by, or caused to be maintained by, Tenant under this Lease shall be issued by an insurance company qualified to do business in the state/commonwealth where the Premises are located for the issuance of such type of coverage

and shall have a Best's Financial Strength Rating of A or better and a Best's Financial Size Rating of XIII or better or a rating of A- or better by Standard and Poor's. Prior to Landlord granting access to the Premises to Tenant or Tenant's agents, Tenant shall deliver to Landlord certificates of insurance and true and complete copies of any and all endorsements (including, but not limited to, Tenant's notice of cancellation endorsement) required under this Lease. Tenant's policies shall provide for at least thirty (30) days' prior written notice of cancellation (and at least ten (10) days' written notice if cancellation is due to non-payment of premium) to Tenant. Tenant shall notify Landlord immediately upon receipt of any notice of cancellation or modification of Tenant's policies. Tenant shall, at least ten (10) days' prior to expiration of each policy, furnish Landlord with certificates of insurance evidencing renewal thereof. In addition, within ten (10) days after Landlord's request, Tenant shall provide redacted copies of all insurance policies and endorsements required under this Lease. The failure of Landlord to demand evidence of insurance or to identify any deficiency in any insurance coverage required in this Lease will not be construed as a waiver by Landlord of Tenant's obligation to comply with the insurance requirements of this Lease. Landlord may from time to time require reasonable increases in the types and/or limits of insurance to be maintained by Tenant if Landlord believes that additional coverage is necessary or desirable. If Tenant does not comply with the requirements of this Section, Landlord may, at its option and at Tenant's expense, purchase such insurance coverage. The cost of such insurance shall be paid to Landlord by Tenant, as additional rent, within ten (10) days after demand. Unless otherwise specified herein, the insurance required to be maintained, or caused to be maintained, by Tenant must: (i) be primary and non-contributory to any other insurance that may be available to Landlord; (ii) contain a waiver of subrogation in favor of Landlord, which must not contain any limitation or exclusion due to the requirement of contractual privity; (iii) not include defense costs within the limit of liability. The failure of Tenant to fully and strictly comply with the insurance requirements set forth herein may, at Landlord's election, constitute a material breach of this Lease. Should Tenant at any time maintain higher limits than the minimum limits required herein, such higher limits shall be deemed required by this Lease for so long as such higher limits are maintained. Landlord will not be responsible for any deductible or self-insured retentions under insurance policies maintained by Tenant in connection with this Lease, and in no event shall the limits of any insurance policy limit the liability of Tenant under this Lease.

In addition to the insurance Tenant is required to maintain under this Lease, Tenant shall require any Operator, subtenants, and any vendors, consultants and contractors entering the Premises to maintain such insurance as Landlord shall reasonably determine to be necessary, and satisfactory evidence of such insurance must be delivered to Landlord prior to entry into the Premises by any Operator, subtenants, licensees, vendors, consultants and contractors. Tenant shall have a written agreement with all subtenants, vendors, consultants and contractors in connection with their use and occupancy of the Premises, and work or services to be performed at the Premises. Said agreement shall require each subtenant, licensee, vendor, consultant, and contractor to provide true and complete copies of all insurance policies and endorsements to Tenant promptly after Tenant's request, and Tenant shall deliver the same to Landlord within five (5) business days after Landlord's request.

All such insurance shall contain such contingent liability endorsements as shall make such insurance congruent with the fire, extended coverage and demolition and debris removal insurance required by this Exhibit C.

The amount and types of coverages stated in this Section shall be reviewed annually by Landlord and shall be modified at such intervals if increases or changes are necessary to reflect inflation or changes in the nature or degree of risks insured, as determined by Landlord in its prudent judgment, or otherwise as may be required by Landlord's lenders from time to time. Without limiting the generality of the foregoing, the monetary limits of insurance set forth in this Exhibit C shall increase on each fifth anniversary of the Lease Date by the corresponding change in the Index over such period of time without the requirement for a separate justification.

2. **Insurance Provisions** Insurance maintained by Tenant pursuant to the requirements of this Exhibit C shall:

(i) be issued by standard policies, obtained from financially sound and responsible insurance companies authorized to do business in the State of California;

(ii) have attached thereto a clause making the loss payable to Tenant and Landlord as their respective interests may appear, in the case of property insurance, and naming Landlord, the City, as such other parties as Landlord may designate, as an additional insured, in the case of liability insurance;

(iii) be written to become effective at the time Tenant becomes subject to the risk or hazard covered thereby, and shall be continued in full force and effect for such period as Tenant is subject to such risk or hazard;

(iv) provide for waiver of subrogation and payment of losses to Tenant and Landlord, respectively, notwithstanding any act of negligence of Tenant or Landlord; and

(v) provide that any cancellation, change or termination thereof shall not be effective with respect to Landlord until after at least thirty (30) days' prior notice has been given to Landlord to the effect that such insurance policies are to be cancelled, changed, or terminated at a particular time.

Certified copies of such policies and renewals, showing the issuance and effectiveness of each such policy and the amount of coverage afforded thereby, shall be delivered to Landlord.

Exhibit D

Tenant's Right to Grant Security Interest(s)

Except as provided in this Exhibit D, Tenant shall not be permitted to encumber its interest in the Premises, the Lease or any portion thereof ("**Leasehold Estate**") with a Security Instrument. Any Security Instrument created, or attempted or purported to be created, by Tenant shall be null and void, and shall not create a lien on the Premises, the Lease, and improvements, or the Ownership Interests or any portion thereof, excepting and solely to the extent that such Security Instrument (i) constitutes a Qualified Security Instrument hereunder or (ii) is otherwise approved in writing by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed.

(a) Definitions.

(i) "**Affiliate**" shall mean any Person which owns or controls another person, is owned or controlled, directly or indirectly, by such other person, or is under common ownership with such other Person, and "**control**" shall mean the power and authority to direct the day-to-day operations of a Person, whether by beneficial ownership, agreement or otherwise.

(ii) "**Affiliate Assignee**" shall mean an Affiliate of a Qualified Security Interest Holder which satisfies the requirements contained in subsections (1) through (3) of the definition of "Qualified Security Interest Holder" (except that, as to the requirement in subsection (b) of such definition, the Affiliate Assignee may be a special purpose entity formed and controlled (as defined within the definition of "Affiliate," above) by any of the entities described in said clause (b) for the purpose of owning the Leasehold Estate and the Project and further (1) has, in the reasonable opinion of Landlord, the qualifications, experience and financial responsibility required to fulfill the obligations contained herein for the continued first class management and operation of the Improvements, or (2) engages a professional property management firm with the qualifications and experience required to fulfill the obligations contained herein for the continued first class management and operation of the Improvements.

(iii) "**First-Priority Security Instrument**" shall mean a first-priority Security Instrument granted to a Qualified Security Interest Holder.

(iv) "**Second-Priority Security Instrument**" shall mean a second-priority Security Instrument granted to a Qualified Security Interest Holder.

(v) "**Qualified First-Priority Security Interest Holder**" shall mean the holder, mortgagee or beneficiary under a First-Priority Security Instrument.

(vi) "**Qualified Second-Priority Security Interest Holder**" shall mean the holder, mortgagee or beneficiary under a Second-Priority Security Instrument.

(vii) "**Qualified Security Instrument**" shall mean a First-Priority Security Instrument and, if then in existence, a Second-Priority Security Instrument. For purposes of clarity, no Security Instrument shall be deemed a "Qualified Security Instrument"

hereunder unless it is a First-Priority Security Instrument or a Second-Priority Security Instrument.

(viii) “**Qualified Security Interest Holder**” shall mean the holder, mortgagee or beneficiary under a Qualified Security Instrument and such holder’s, mortgagee’s or beneficiary’s successors and assigns under such Qualified Security Instrument, provided that in each case:

(1) such Person is not an Affiliate of Tenant;

(2) such Person is a commercial bank, savings bank, savings and loan institution, insurance company, pension fund, investment bank, opportunity fund, mortgage conduit, real estate investment trust, commercial finance lender or other similar financial institution which ordinarily engages in the business of making, holding or servicing commercial real estate loans; and

(3) if such Person is chartered, or directly controlled by a Person chartered, in a country other than the United States of America, the transaction of business with such Person shall not violate or otherwise be in conflict with any law, regulation, order or decree of the government of the United States of America.

(ix) To be entitled to the rights set forth in this Exhibit D and elsewhere in this Lease, any transferee of a Qualified Security Interest Holder or other holder of a Qualified Security Instrument must also meet the foregoing requirements and be a Qualified Security Interest Holder.

(x) As used herein, “**Security Instrument**” shall mean any mortgage, deed of trust, collateral assignment or other agreement or instrument creating or evidencing a security interest in, encumbrance upon, or lien against (a) the Lease or any interest therein, including, without limitation, any income, rentals, revenue, profits or other proceeds derived from Tenant’s ownership, operation, leasing or sale of the Premises or any portion thereof or interests therein, or (b) any ownership interests in Tenant, whether in either case as security for the repayment of a loan or the performance of an obligation.

(b) Financing Tenant may, at any time during the Term, without Landlord’s consent except as otherwise hereinafter provided, encumber to a Qualified First-Priority Security Interest Holder by First-Priority Security Instrument, and a Qualified Second-Priority Security Interest Holder by Second-Priority Security Instrument, all or any portion of Tenant’s right, title and interest in and to the Leasehold Estate and/or all or any portion of the Ownership Interests; provided, however, that: (i) no Security Instrument incurred by Tenant pursuant to this Exhibit D shall, and Tenant shall not have the power to incur any encumbrance that will, constitute in any way a lien or encumbrance on Landlord’s reversionary interest in the Premises, Landlord’s fee title in the Project, or any interest of Landlord in the improvements; and (ii) the Security Instrument and all rights acquired under it shall be subject to each and all of the terms, covenants, conditions and restrictions stated in this Lease. Landlord and Tenant specifically agree that Landlord is not and shall not be obligated to subordinate its rights or ownership interest in the Premises or the Project to any Security Instrument and none of the Rent

provided for in this Lease shall be subordinate to any Security Instrument, such Rent being due and payable by Tenant throughout the Term regardless of any such Security Instrument.

(2) For purposes of clarity, if Tenant encumbers the Leasehold Estate and/or the Ownership Interests at any one time during the Term with more than two Security Instruments, only the First-Priority Security Instrument and the Second-Priority Security Instrument, if any, shall be Qualified Security Instruments hereunder. No holder of any Security Instrument other than the holders of the First-Priority Security Instrument and the Second-Priority Security Instrument shall be deemed a Qualified Security Interest Holder or shall have any rights of any nature whatsoever under this Lease. Nothing contained in this Section shall be deemed to permit Tenant to encumber the Leasehold Estate and/or the Ownership Interests with more than two Security Interests in the aggregate at any one time except to the extent that Landlord consents to such additional encumbrance(s) in accordance with this Exhibit D.

(c) Enforcement. A Qualified Security Interest Holder may enforce its Qualified Security Instrument and acquire title to the Leasehold Estate or the Ownership Interests, as appropriate, in any lawful way and, pending foreclosure of such Qualified Security Instrument, such Qualified Security Interest Holder may take possession of and operate the Project, performing all obligations of Tenant under this Lease arising from and after the date such Qualified Security Interest Holder takes possession of the Project, and upon foreclosure of such Qualified Security Instrument by power of sale, judicial foreclosure, Uniform Commercial Code sale or other lawful means, or upon acquisition of the Leasehold Estate or the Ownership Interests, as appropriate, by deed and/or assignment in lieu of foreclosure, the Qualified Security Interest Holder may, upon notice to Landlord, sell and assign the Leasehold Estate or the Ownership Interests, as the case may be, subject to the requirements of the Lease including this Exhibit D). Notwithstanding any such Qualified Security Instrument, Tenant shall in no event be released from any of its obligations during the Term (even in the event any Qualified Security Interest Holder or any successor acquires title to such Leasehold Estate or the Ownership Interests or otherwise takes possession of the Project).

(d) Request for Notice of Loan Default. Immediately after the recording of any Security Instrument executed by Tenant containing a "power of sale" as defined by California law, Tenant shall at Tenant's own cost and expense record in the office of the County Recorder of Contra Costa County, California, a written request executed and acknowledged by Landlord (for a copy of any notice of sale under such Security Instrument to be mailed to Landlord at the address specified in the request by Landlord). In addition, in the case of a Security Instrument that creates a lien on the Leasehold Estate or the Ownership Interests or any portion thereof, the holder, mortgagee or beneficiary under such Security Instrument shall deliver a copy of any notice of default under such Security Instrument to Landlord concurrently with the delivery of such notice to Tenant.

(e) Notices to Landlord.

(1) If Tenant shall execute and deliver to a Qualified Security Interest Holder a First-Priority Security Instrument or a Second-Priority Security Instrument, the holder of such Qualified Security Instrument shall provide Landlord with notice of such Qualified Security Instrument together with a true copy of such Qualified Security Instrument and the name and

address of the Qualified Security Interest Holder. On such occasion, if there shall then exist a Second-Priority Security Instrument, Tenant shall provide Landlord with a separate notice which shall include a list of the names and addresses of both Qualified Security Interest Holders, and set forth the order of priority of such Qualified Security Instruments. Landlord and Tenant agree that, following receipt of such notices by Landlord, the provisions of this Exhibit D shall apply with regard to both such Qualified Security Instruments.

(2) Landlord also agrees that, in addition to constituting provisions of this Lease, the provisions of this Section shall thereupon also constitute a separate and independent contract between Landlord and the Qualified Security Interest Holders upon which the Qualified Security Interest Holders will rely in extending credit to Tenant, and the provisions of such contract shall survive any termination, rejection or disaffirmance of this Lease and shall continue in full force and effect as a contract between Landlord and the Qualified Security Interest Holders (subject to the requirements of this Exhibit D). In the event of any assignment of a Qualified Security Instrument or in the event of a change of address of a Qualified Security Interest Holder or of an assignee, written notice thereof shall be promptly provided to Landlord, and Landlord shall have no obligations hereunder as to such transferee or any affected Qualified Security Interest Holder until such notice shall be provided to Landlord.

(f) No Termination or Modification. Except for Landlord's rights following an Event of Default by Tenant under this Lease or upon the expiration of the Term, or as otherwise set forth in this Lease, no action by Tenant or Landlord to voluntarily cancel, surrender, or materially modify the terms of this Lease shall be binding upon a Qualified Security Interest Holder without the prior written consent of the Qualified First-Priority Security Interest Holder, which consent shall not be unreasonably withheld, conditioned or delayed (it being understood that the Qualified First-Priority Security Interest Holder shall be deemed reasonable if it withholds consent to any cancellation, surrender or modification which in its reasonable judgment materially adversely affects its rights or remedies). The Qualified First-Priority Security Interest Holder will respond in writing to any request by Tenant or Landlord that the Qualified First-Priority Security Interest Holder consent to a cancellation, surrender, or modification of the Lease within thirty (30) days of the Tenant's or Landlord's request for such consent (which response shall include, in the case of any denial or withholding of consent by the Qualified First-Priority Security Interest Holder, the reason(s) that the Qualified First-Priority Security Interest Holder has denied or withheld such consent). In the event that neither Landlord nor Tenant receives a written response from the Qualified First-Priority Security Interest Holder to any such request within such thirty (30) day period, then Tenant or Landlord may deliver a second such written request. If neither Landlord nor Tenant receives a written response from the Qualified First-Priority Security Interest Holder to any such second request within ten (10) days after delivery thereof, the Qualified First-Priority Security Interest Holder shall irrevocably be deemed to have consented to the matters for which its consent was requested, and the Tenant and Landlord shall be free to enter into such transaction without further notice to the Qualified Security Interest Holders.

(g) Notice of Default or Breach. Landlord, concurrently with the delivery to Tenant of any notice pursuant to Section 6.07 of the Lease, shall provide a copy of such notice to the Qualified Security Interest Holders, so long as Landlord has previously been informed of the name and address of such Qualified Security Interest Holders in the manner and by the means

provided for in Section (d) of this Exhibit. No such notice by Landlord to Tenant shall be deemed to have been duly given unless and until a copy thereof has been so provided to the Qualified Security Interest Holders of which Landlord has notice. As used herein, “**Termination Notice**” shall mean a notice that expressly states that Landlord will terminate this Lease if the breach or default which is the subject of the notice is not cured pursuant to the terms of this Lease. Such Termination Notice may be combined into a single notice together with the notice described in the first sentence of this Section (g). Landlord, concurrently with the delivery to Tenant of any Termination Notice, shall provide a copy of such notice to the Qualified Security Interest Holders, so long as Landlord has previously been informed of the name and address of such Qualified Security Interest Holders in the manner and by the means provided for in Section (d) of this Exhibit. No such notice by Landlord to Tenant shall be deemed to have been duly given unless and until a copy thereof has been so provided to the Qualified Security Interest Holders of which Landlord has notice.

(h) **Limitation on Termination Rights for Event of Default.** Landlord shall have no right to terminate this Lease for an Event of Default by Tenant without first delivering a Termination Notice to Tenant and the Qualified Security Interest Holders, nor thereafter so long as:

(1) If the Event of Default is the failure to pay any rental, taxes, insurance premiums, utility charges or any other sum of money, within the thirty (30) day period following the date Landlord duly delivers its Termination Notice, a Qualified Security Interest Holder cures such Event of Default by paying or causing to be paid such sum of money, together with any late fee or interest payable thereon, and all rent and other payments which may become due during such thirty (30) day period; or

(2) If the Event of Default cannot be cured by the payment of money, but is otherwise curable, within the forty-five (45) day period following the date Landlord duly delivers its Termination Notice, a Qualified Security Interest Holder cures such Event of Default; provided, however, (i) if the curing of such Event of Default reasonably requires activity over a longer period of time, such forty-five (45) day period shall be extended for such additional time as may be reasonably necessary to cure such Event of Default, so long as a Qualified Security Interest Holder commences a cure within such forty-five (45) day period and thereafter continues to use due diligence to perform whatever acts may be reasonably required to cure such Event of Default, or (ii) if the curing of such Event of Default reasonably requires a Qualified Security Interest Holder to be in possession of the Project, such forty-five (45) day period shall be extended to include the reasonable period of time required by the applicable Qualified Security Interest Holder to obtain such possession with due diligence, so long as such Qualified Security Interest Holder commences obtaining such possession within such forty-five (45) day period and thereafter continues to use due diligence to obtain such possession and perform whatever acts may be reasonably required to cure such Event of Default, provided further that, in the instance of either (i) or (ii) above, a Qualified Security Interest Holder makes payments of Base Rent and additional rent in accordance with the terms and within the time frames set forth in this Lease; or

(3) If the Event of Default cannot be cured by the payment of money, a Qualified Security Interest Holder notifies Landlord within the thirty (30) day period following the date Landlord duly delivers its Termination Notice of its intent to commence foreclosure of

its interest (or, in the case of an encumbrance on the Ownership Interests, to exercise other appropriate remedies to realize upon and acquire title to or to sell such Ownership Interests), and within such thirty (30) day period, such Qualified Security Interest Holder actually commences foreclosure proceedings (or such other appropriate remedies) and prosecutes the same thereafter with due diligence, provided that if the Qualified Security Interest Holder is prevented from commencing or continuing foreclosure proceedings (or such other appropriate remedies) by any bankruptcy stay, or any order, judgment or decree of any court or regulatory body of competent jurisdiction, the Qualified Security Interest Holder diligently seeks release from or reversal of such stay, order, judgment or decree, provided, further, that, in the instance of either (i) or (ii) above, a Qualified Security Interest Holder makes payments of Base Rent and any other monetary payments to Landlord in accordance with the terms and within the time frames set forth in this Lease.

(i) **Right to Cure; Continuance of Foreclosure or Other Enforcement Proceedings; Effect of Cure.** Each Qualified Security Interest Holder shall have the right, but not the duty, to cure or cause to be cured any act, event or condition which, with or without notice, the passage of time or both, would be an Event of Default under this Lease or a breach of any obligation of Tenant to Landlord which could affect the continued existence of this Lease, and Landlord shall accept such performance from a Qualified Security Interest Holder as if it had been done by Tenant. Nothing herein shall be construed to require a Qualified Security Interest Holder to continue or to discontinue foreclosure or other enforcement proceedings after a default has been cured. If a default is cured, this Lease shall continue in full force and effect as if no default by Tenant had occurred.

(j) **Qualified Security Interest Holder's Rights To New Lease.**

(1) In case of termination of this Lease by Landlord for any reason, including any Event of Default, any breach of Tenant's obligations of any kind to Landlord, or any rejection or disaffirmance of this Lease by Tenant or any trustee or other successor to Tenant pursuant to bankruptcy or other law affecting creditors' rights, Landlord shall give prompt notice thereof to the Qualified Security Interest Holders, so long as Landlord has previously been informed of the name and address of such Qualified Security Interest Holders in the manner and by the means provided for in Section (d) of this Exhibit. Landlord shall, on written request of any Qualified Security Interest Holder made at any time within thirty (30) calendar days after its receipt of such notice from Landlord, promptly enter into a new lease covering the Premises with such Qualified Security Interest Holder or an Affiliate Assignee (a "New Lease"), provided that, on or prior to the execution and delivery of such New Lease (i) the applicable Qualified Security Interest Holder or such Affiliate Assignee pays (or, in the case of a Foreclosure Purchaser who acquires the Ownership Interests, causes to be paid) to Landlord all Base Rent and Additional rent payable by Tenant under this Lease and due as of the date of termination of this Lease, plus all Base Rent and additional rent payable by the Qualified Security Interest Holder or such Affiliate Assignee under the New Lease and due for the period from the date of termination of this Lease until the date of entry into the New Lease, but expressly excluding amounts relating to Tenant's indemnification obligations under this Lease, and (ii) the Qualified Security Interest Holder or such Affiliate Assignee agrees (or, in the case of a Foreclosure Purchaser who acquires the Ownership Interests, causes to be agreed) in writing that promptly following delivery of the New Lease, the Qualified Security Interest Holder or such Affiliate Assignee (or, in the case of a

Foreclosure Purchaser who acquires the Ownership Interests, Tenant) will perform or cause to be performed all other covenants of Tenant under this Lease to be performed to the extent that Tenant fails to perform the same to the date of delivery of the New Lease, except such covenants which are not reasonably susceptible of cure or performance by the Qualified Security Interest Holder or such Affiliate Assignee. The New Lease shall be for a term equal to the then-remaining Term had termination not occurred, be effective at the date of termination, and be in the form of this Lease, including, but not limited to, at the Base Rent and on all of the covenants, agreements, conditions, provisions, restrictions and limitations contained in this Lease, but subject to the rights of the Qualified Security Interest Holder or such Affiliate Assignee as a Foreclosure Purchaser under Section (l), if applicable. Any New Lease made pursuant to this Section (j), and any renewal lease entered into with a Qualified Security Interest Holder or an Affiliate Assignee hereof, shall confer upon and to the Qualified Security Interest Holder or such Affiliate Assignee the same right, title and interest in and to this Lease, the Project, and the Improvements thereon as Tenant had under this Lease, including, without limitation, Tenant's ownership of the Improvements.

(2) Except as set forth in Section (j)(1), the tenant under a New Lease who was a Qualified Security Interest Holder or is an Affiliate Assignee (for purposes of this Section (j)(2)), the "New Tenant") shall be liable to perform the obligations imposed on the "tenant" under such New Lease only during the period that New Tenant has ownership of the Leasehold Estate. Accordingly, from and after the assignment by New Tenant of all of its right, title and interest in and to such New Lease in accordance with the applicable provisions hereof, New Tenant shall have no liability to perform any obligations imposed on the "tenant" under such New Lease to the extent such obligations accrue from and after the date of such assignment, provided that the assignee of New Tenant's right, title and interest in and to such New Lease assumes such obligations pursuant to a written assignment and assumption agreement reasonably acceptable to Landlord.

(3) After any termination of this Lease after which a Qualified Security Interest Holder or an Affiliate Assignee has the right to obtain a New Lease, Landlord shall, pending such Qualified Security Interest Holder's election whether or not to request a New Lease in accordance with the terms hereof, receive all rent and other payments due from all subtenants as agent of the Qualified Security Interest Holder, and shall deposit such amounts in a segregated account in trust for the Qualified Security Interest Holder, and upon execution of a New Lease, shall account to the tenant thereunder for such amounts and shall cooperate with such tenant to transfer all such amounts, all subleases and all operational contracts (if any) entered into by Landlord with respect to the Project to such Qualified Security Interest Holder or such designee. Such collection of such amounts by Landlord shall not be deemed an acceptance by Landlord for its own account of the attornment of any subtenant. In the event a New Lease is so entered into, all subtenants shall attorn to the new tenant thereunder. All rights and obligations of Landlord and a Qualified Security Interest Holder provided under this Exhibit D with respect to a New Lease following the termination of this Lease shall survive the termination of this Lease.

(4) No Qualified Security Interest Holder or Affiliate Assignee shall be required, as a condition of the exercise of any rights hereunder or in order to comply with the provisions of this Exhibit D, to cure any nonmonetary default of Tenant not reasonably susceptible of being cured by the Qualified Security Interest Holder or Affiliate Assignee.

(5) If a Qualified Security Interest Holder or Affiliate Assignee timely requests a New Lease in conformity with the conditions and requirements of this Lease, including, without limitation, Section (j)(1) hereof, then from and after the date of receipt by Landlord of such written request for a New Lease required by Section (j)(1) hereof through the date of the execution and delivery of such New Lease, Landlord shall not, without the prior written consent of such Qualified Security Interest Holder or Affiliate Assignee, terminate any sublease or enter into any new sublease, excepting any lease or sublease affecting the residential units within the Project.

(k) Multiple Security Instruments.

(1) If there shall be two Qualified Security Interest Holders and both Qualified Security Interest Holders shall make a written request upon Landlord for a New Lease in accordance with the provisions of Section (j)(1), then such New Lease shall be entered into pursuant to the request of the Qualified Second-Priority Security Interest Holder or its Affiliate Assignee; provided, however, if such Qualified Second-Priority Security Interest Holder shall accept the New Lease, the priority of the First-Priority Security Instrument shall be restored in accordance with all terms and conditions of such First-Priority Security Instrument. If the Qualified Second-Priority Security Interest Holder does not elect to accept the New Lease within thirty (30) days of receipt of notice from Landlord, the right to enter into a New Lease shall be provided to the Qualified First-Priority Security Interest Holder, under the terms and conditions described herein, and such Qualified First-Priority Security Interest Holder shall have thirty (30) days of receipt of notice from Landlord to elect to accept a New Lease. From and after the effective date of the New Lease, if any, the applicable Qualified Security Interest Holder (or its Affiliate Assignee) shall have the same rights to a single transfer that are provided in Section (l) below, and shall enjoy all of the other rights and protections that are provided to a Foreclosure Purchaser in this Exhibit D. Any other subsequent transfer or assignment of such New Lease shall be subject to all of the requirements of the restrictions upon assignment and subletting found in the Lease.

(2) Without limiting the foregoing, Landlord shall have no liability to any Qualified Security Interest Holder or any other Person in the event of any dispute among the Qualified Security Interest Holders regarding which Qualified Security Interest Holder is entitled, pursuant to the provisions of this Exhibit D, to enter into such New Lease with Landlord, and such dispute shall be resolved in accordance with this Section (k).

(3) In the event of any dispute as to the respective senior and junior priorities of any Qualified Security Instruments, the following rules and procedures shall apply:

a. If Tenant executes two Qualified Security Instruments that encumber the Leasehold Estate, the certification of priorities by a title company doing business in the State of California shall be conclusively binding on all parties concerned.

b. If Tenant executes two Qualified Security Instruments, one of which encumbers the Leasehold Estate and one of which encumbers the Ownership Interests, then absent a written agreement executed by Tenant and both Qualified Security Interest Holders, to the contrary, the Qualified Security Instrument that encumbers the Leasehold Estate

shall be conclusively deemed the First-Priority Security Instrument and the Qualified Security Instrument that encumbers the Ownership Interests shall be conclusively deemed the Second-Priority Security Instrument.

c. If Tenant executes two Qualified Security Instruments that encumber the Ownership Interests, then:

i. if the Ownership Interests have been certificated pursuant to Article 8 of the Uniform Commercial Code as in effect at the time in the relevant jurisdiction (the “UCC”), the Qualified Security Interest Holder who is the holder of the certificate of membership interest relating to the Ownership Interests shall be conclusively deemed the holder of the First-Priority Security Instrument; and

ii. if the Ownership Interests have not been certificated pursuant to Article 8 of the UCC, then absent a written agreement executed by Tenant and both Qualified Security Interest Holders to the contrary, the Qualified Security Interest Holder who files the first (*i.e.*, earliest in time) UCC financing statement shall be conclusively deemed the holder of the First-Priority Security Instrument.

(l) **Foreclosure Purchasers** For purposes of this Section (l), a “**Foreclosure Transfer**” shall mean any transfer of the entire Leasehold Estate or of all of the Ownership Interests in Tenant pursuant to any judicial or nonjudicial foreclosure or other enforcement of remedies under or with respect to a Qualified Security Instrument, or by voluntary deed or other transfer in lieu thereof. A “**Foreclosure Purchaser**” shall mean any transferee (including without limitation a Qualified Security Interest Holder) which acquires title to the entire Leasehold Estate or to all of the Ownership Interests pursuant to a Foreclosure Transfer or Subsidiary Transfer (as defined below), as applicable. The consent of the Landlord shall not be required with respect to any Foreclosure Transfer or, following a Foreclosure Transfer in which the Foreclosure Purchaser was a Qualified Security Interest Holder, to any subsequent transfer of this Lease or the Ownership Interests in Tenant to a wholly-owned subsidiary of such Qualified Security Interest Holder who is an Affiliate Assignee (a “**Subsidiary Transfer**”). With respect to a single subsequent transfer of this Lease or the Ownership Interests in Tenant to any third party following a Foreclosure Transfer in which the Foreclosure Purchaser was a Qualified Security Interest Holder or following a Subsidiary Transfer, the consent of the Landlord shall not be required, provided that the transferee satisfies the requirements contained in subsections (a) and (c) of the definition of “Qualified Security Interest Holder,” and further (1) has, in the reasonable opinion of Landlord, the qualifications, experience and financial responsibility required to fulfill the obligations contained herein for the continued first class management and operation of the Improvements, or (2) engages a professional property management firm with the qualifications and experience required to fulfill the obligations contained herein for the continued first class management and operation of the Improvements. In any event, any such transferee shall (a) assume the obligations of Tenant under this Lease arising from and after the date of transfer to such transferee, and expressly confirm in writing in a form reasonably acceptable to Landlord that this Lease and all such obligations are in full force and effect; (b) agree to use the Project in accordance with Section 5; and (c) otherwise satisfy the requirements of this Section and all other provisions of this Lease concerning an assignment hereof, excluding, however, the requirement to obtain Landlord’s consent pursuant to Section 13. Upon such single subsequent

sale or assignment, the Foreclosure Purchaser shall be relieved of all obligations under this Lease accruing from and after the date of such transfer.

Following a Foreclosure Transfer with respect to all of the Ownership Interests, any and all rights, privileges and/or liability limitations afforded to Foreclosure Purchasers in this Section 6 or any other provision of this Lease shall also be afforded to Tenant from and after such Foreclosure Transfer, to the same extent as if the Foreclosure Purchaser had acquired the leasehold interest of Tenant directly and became the Tenant under this Lease.

(m) **Protection of Landlord's Estate.** Despite anything in this Lease to the contrary, the foregoing provisions of this Exhibit D do not give to any person whatsoever the right to mortgage, hypothecate or otherwise to encumber or to cause any liens to be placed against the fee estate of Landlord, nor shall said provisions be construed as resulting in a subordination in whole or in part of the fee estate of Landlord to any indebtedness of Tenant.

(n) **Mortgagee Clauses.** A standard mortgagee clause naming the Qualified Security Interest Holders may be added to any and all insurance policies required to be carried by Tenant hereunder on condition that the insurance proceeds are to be applied in the manner specified in this Lease.

(o) **Notice of Proceedings.** Landlord shall give the Qualified First-Priority Security Interest Holder whose name and address for notice has been given to Landlord, prompt notice of any legal proceedings between Landlord and Tenant involving the enforcement or declaration of obligations under this Lease. The Qualified First-Priority Security Interest Holder shall have the right to intervene in any such proceedings and be made a party to such proceedings, and the Parties hereto do hereby consent to such intervention. In the event that the Qualified First-Priority Security Interest Holder shall not elect to intervene or become a party to any such proceedings, Landlord shall give the Qualified First-Priority Security Interest Holder notice of, and a copy of, any award or decision made in any such proceedings, which shall be binding on the Qualified First-Priority Security Interest Holder not intervening after receipt of such notice of such proceedings.

(p) **No Merger.** In the event the ownership of the fee title estate and the Leasehold Estate of the Project becomes vested in the same person or entity, such occurrence shall not result in a merger of title or interest. Rather, this Lease and the Security Instrument lien thereon shall remain in full force and effect, and no such merger shall occur unless or until all persons having any interest in the Leasehold Estate and the fee estate in the Land, including the Qualified Security Interest Holder, expressly waive this "no merger" provision in a writing recorded in the official records of the Contra Costa County Recorder's office.

(q) **Removal of Collateral.** "**Personal Property**" shall mean any and all moveable fixtures (unless a part of the Tenant Work), furniture, equipment, apparatus and other similar personal property that may be removed without damage to the Improvements, and any and all renewals, replacements or, additions to and substitutions therefor, owned by Tenant and located in, attached or affixed to and used in connection with the Tenant Work. Landlord agrees that any Qualified Security Interest Holder or other individual, person or entity providing financing to Tenant secured by the Personal Property ("**Other Party**") shall have the right to file and/or record

one or more financing statements against, and to take security interests in, any and all Personal Property of Tenant at any time located at the Project and the proceeds of such Personal Property, and further that such Qualified Security Interest Holder or Other Party may enter upon the Project to remove the same from the Project, whenever such Qualified Security Interest Holder or Other Party elects to enforce such security interest, if given by Tenant; provided, however, the Qualified Security Interest Holder or Other Party shall repair any damage to the Project caused by the removal of any such Personal Property to the reasonable satisfaction of Landlord. Such rights will continue for a period of thirty (30) days after such Qualified Security Interest Holder or Other Party receives notice in writing from Landlord that Tenant no longer is in lawful possession of the Project. Landlord hereby disclaims any title to or rights in such Personal Property of Tenant (or the proceeds thereof) and subordinates to the security interest of any and all Qualified Security Interest Holders and Other Parties, if any, Landlord may have pursuant to any Landlord's lien, encumbrance or other interest which Landlord may now or hereafter acquire in such Personal Property, whether acquiring the same pursuant to this Lease or pursuant to Applicable Law.

(r) Tenant Bankruptcy.

(1) If Tenant rejects this Lease pursuant to the Federal Bankruptcy Code, Title 11 U.S.C. ("**Bankruptcy Code**"), then, within thirty (30) days following Tenant's rejection of the Lease, a Qualified Security Interest Holder shall have the right to deliver written notice to Landlord requesting that Landlord inform such Qualified Security Interest Holder of the sums then owing by Tenant under this Lease and any and all other defaults of Tenant under this Lease, and Landlord shall, within twenty (20) days following Landlord's receipt of such notice, deliver written notice to such Qualified Security Interest Holder of the sums then known by Landlord as being owed by Tenant and the other defaults of Tenant under the Lease then known by Landlord. Such Qualified Security Interest Holder shall have the right, but not the obligation, to serve on Landlord within twenty (20) days after such Qualified Security Interest Holder's receipt of the notice provided in the preceding sentence, a notice ("**Notice of Assumption**") that such Qualified Security Interest Holder elects to (i) assume this Lease, and (ii) cure all defaults of Tenant outstanding thereunder, except such defaults which are not reasonably susceptible of cure or performance by such Qualified Security Interest Holder. If a Qualified Security Interest Holder fails to serve the Notice of Assumption within such twenty (20) day period, such Qualified Security Interest Holder shall be deemed to have waived the rights to assume the Lease pursuant to this Section (r). If a Qualified Security Interest Holder serves such Notice of Assumption to Landlord, then, as between the Landlord and such Qualified Security Interest Holder (A) the rejection of this Lease by Tenant shall not constitute a termination of this Lease, (B) such Qualified Security Interest Holder shall be deemed to have assumed the obligations of Tenant under this Lease without any instrument or assignment of transfer from Tenant being necessary, (C) this Lease shall be deemed in full force and effect as a direct Lease between such Qualified Security Interest Holder and Landlord, (D) such Qualified Security Interest Holder's rights under this Lease shall be subject to the rights of parties in possession, and (E) such Qualified Security Interest Holder shall consummate the assumption of this Lease and the payment of the amounts payable by or to Landlord pursuant to this Section within ten (10) days after such Qualified Security Interest Holder shall have served the Notice of Assumption. Such Qualified Security Interest Holder may assign this Lease to a single subsequent transferee pursuant to the provisions

of Section (I) hereof, to the same extent as if such Qualified Security Interest Holder were a Foreclosure Purchaser under such Section. Upon a subsequent assignment of this Lease by such Qualified Security Interest Holder in accordance with Section (I)1 hereof and the transferee's assumption of all Tenant obligations under this Lease arising from and after the date of transfer, such Qualified Security Interest Holder shall be relieved of all obligations and liabilities arising from and after the date of such transfer. Effective upon the entry of an order for relief with respect to Landlord under the Bankruptcy Code, or any comparable federal or state statute or law, Landlord hereby assigns and transfers to the Qualified Security Interest Holders a non-exclusive right to apply to the applicable bankruptcy court under Section 365 of the Bankruptcy Code (or any other applicable section), or any comparable federal or state statute or law, for an order extending the period during which this Lease may be rejected or assumed for a reasonable period in order to consummate the assumption contemplated by this Section. Nothing contained in this Section shall affect, limit, modify or supersede the rights of any Qualified Security Interest Holder to obtain a New Lease under Section (j).

(2) If there shall be two Qualified Security Interest Holders and both Qualified Security Interest Holders deliver a Notice of Assumption to Landlord, then such Qualified Security Interest Holders shall have the right to assume the obligations of Tenant under this Lease in accordance with the priorities and the procedures contemplated above. Without limiting the foregoing, if the Qualified Second-Priority Security Interest Holder assumes the obligations of Tenant under this Lease, then the priority of the First-Priority Security Instrument shall be restored in accordance with all terms and conditions of such First-Priority Security Instrument.