

**SAN DIEGO UNIFIED PORT DISTRICT  
AMENDED AND RESTATED LEASE TO  
CP KELCO U.S., INC.,  
a Delaware corporation  
OF PROPERTY LOCATED AT  
2145 EAST BELT STREET,  
SAN DIEGO, CALIFORNIA**

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## AMENDED AND RESTATED LEASE

THIS AMENDED AND RESTATED LEASE (this "**Lease**") is entered into as of \_\_\_\_\_, 2024 (the "**Effective Date**") by and between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, and, where applicable, acting through the Board of Port Commissioners of the San Diego Unified Port District ("**Landlord**") and CP KELCO U.S., INC., a Delaware corporation, and its predecessors, successors and assigns ("**Tenant**").

WHEREAS, Landlord and Tenant entered into that certain Lease dated January 10, 2006, for the Premises (defined below), which is comprised of certain tidelands in the City of San Diego, California, located at 2145 East Belt Street, San Diego, portions of which Premises have been in the sole and continuous possession of Tenant and its Sublessees since at least November 1, 1943, which Lease is on file in the Office of the Clerk of Landlord as Document No. 50028 ( the "**Current Lease**"); and

WHEREAS, on February 21, 2017, Landlord and Tenant entered into that certain Agreement for Amendment of Lease Amendment No. 1 on file in the Office of the Clerk of Landlord as Document No. 66186 ("**Amendment No. 1**," and together with the Current Lease, collectively, the "**Original Lease**"); and

WHEREAS, Tenant currently subleases a portion of the Premises (the "**Staite Sublet Premises**") to R.E. Staite Engineering, Inc. ("**Staite Subtenant**"), pursuant to that certain Sublease Agreement dated November 18, 2005 (the "**Original Sublease**"), as amended by that certain First Amendment to Sublease Agreement dated November 19, 2009 (the "**Sublease Amendment No. 1**," and together with the Original Sublease, collectively, the "**Staite Sublease**"); and

WHEREAS, Landlord consented to the Staite Sublease pursuant to Resolution 2006-14, adopted on January 10, 2006, and Resolution 2010-26, adopted on February 2, 2010, and, as of the Effective Date, Staite Subtenant continues to occupy the Staite Sublet Premises pursuant to the Staite Sublease; and

WHEREAS, J. M. Huber Corporation, a New Jersey corporation ("**Existing Guarantor**"), is the parent company of Tenant and a guarantor of Tenant's obligations under the Original Lease, and Tenant has requested Landlord's consent to Tenant's proposed transfer of its ownership interests from Existing Guarantor to Tate & Lyle PLC, a United Kingdom public limited company ("**Additional UK Guarantor**"), which requires Landlord's consent under the Original Lease (such transaction, the "**Transfer of Ownership Interest**");

WHEREAS, as part of the Transfer of Ownership Interest, Tenant has agreed to provide an additional guaranty to secure Tenant's obligations under this Lease by Additional UK Guarantor as Tenant's new corporate parent, and by TLHUS, Inc., a Delaware corporation ("**Additional US Guarantor**"), as a domestic affiliate of Additional UK Guarantor, while leaving Existing Guarantor's existing guaranty in place, which existing guaranty shall continue to apply with equal force with respect to this Lease; and

WHEREAS, substantially contemporaneously with and as a condition to the effectiveness of the Transfer of Ownership Interest, Tenant and Landlord are mutually desirous of amending and restating the Original Lease;

NOW THEREFORE, for good and valuable consideration, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the Term and upon the terms and conditions hereinafter set forth, the Premises described in Section 1.2 below, and Landlord and Tenant hereby agree as follows:

## 1. BASIC LEASE PROVISIONS

The following basic lease terms are referred to in other provisions of this Lease and constitute a part of this Lease and are to be read together with and constitute a part of the terms of this Lease.

### 1.1 Term (See Article 3):

The Term of this Lease shall total twenty (20) years and be divided into the rental periods set forth below.

November 1, 2006 - October 31, 2011

November 1, 2011 - October 31, 2016

November 1, 2016 - October 31, 2017

November 1, 2017 - October 31, 2021

November 1, 2021 - October 31, 2026

"Commencement Date": November 1, 2006

"Expiration Date": October 31, 2026

### 1.2 Premises:

The "**Premises**" consist of the real property more particularly described in Exhibit A attached hereto and depicted in Exhibit B attached hereto consisting of approximately 399,059 square feet of land area (the "**Land Area**") and approximately 358,820 square feet of water area (the "**Water Area**") located at 2145 East Belt Street in the City of San Diego, California.

### 1.3 Permitted Use (See Article 4):

The Premises shall only be used as follows and for no other purpose (the "**Permitted Use**"): (i) the manufacture and sale of marine products, hydrocolloids and other related products, and byproducts and products used in such manufacture, electrical co-generation (the "**Primary Use**"), (ii) parking spaces serving the foregoing uses, (iii) all uses which are normally and customarily ancillary or incidental to the Primary Use including warehouse and general office uses and (iv) any other use of the Premises approved by the Landlord (in its sole and absolute discretion) in writing provided such use is not restricted by the **CDP**, any Laws or the certified Port Master Plan ("**PMP**"). Notwithstanding the foregoing, Tenant shall maintain maritime uses on a majority of the Premises throughout the term, whether through its operations or through the operations of Sublessees as consented to by the District.

**1.4 Monthly Rent (See Article 5):**

The "**Rent Commencement Date**" shall be November 1, 2006.

Monthly Rent shall be payable as set forth in the following rent schedule, which amounts shall be inclusive of rent for use of the Landlord-owned improvements identified in Article 7 below:

<b>Year of Lease</b>	<b>Rent Per Month</b>
November 1, 2006 to October 31, 2007	\$47,500.00
November 1, 2007 to October 31, 2008	\$52,000.00
November 1, 2008 to October 31, 2009	\$56,500.00
November 1, 2009 to October 31, 2010	\$61,000.00
November 1, 2010 to October 31, 2016	\$64,500.00
November 1, 2016 to October 31, 2017	\$70,900.00
November 1, 2017 to October 31, 2018	\$72,899.00
November 1, 2018 to October 31, 2019	\$75,720.00
November 1, 2019 to October 31, 2020	\$77,969.00
November 1, 2020 to October 31, 2021	\$79,544.00
November 1, 2021 to October 31, 2022	\$82,726.00
November 1, 2022 to October 31, 2023	\$86,035.00
November 1, 2023 to October 31, 2024	\$88,900.00
November 1, 2024 to October 31, 2025	\$130,000.00
November 1, 2025 to October 31, 2026	\$135,200.00

In addition to Monthly Rent, Tenant shall pay Additional Rent in accordance with the terms of Article 5 below.

**1.5 Insurance (See Article 18):****1.5.1 Marine General Liability:**

Not less than Four Million Dollars (\$4,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage. The general aggregate shall be not less than Four Million Dollars (\$4,000,000) unless a Two Million Dollars (\$2,000,000) per location aggregate limit is provided by separate endorsement.

**1.6 Notice Addresses (See Article 27):**To Tenant:

CP Kelco U.S., Inc.  
Attention: Plant Manager  
2025 East Harbor Drive  
San Diego, CA 92113

To Landlord:

Executive Director

San Diego Unified Port District  
 Post Office Box 120488  
 San Diego, CA 92112-0488

### **1.7 Consent to New Corporate Parent; Existing Guaranty; Additional Guaranties:**

Tenant's performance of all its obligations under this Lease shall continue to be guaranteed by Existing Guarantor pursuant to that certain Guaranty dated December 21, 2005 (the "**Existing Guaranty**"), which Existing Guaranty is attached as Exhibit D hereto and reaffirmed by Existing Guarantor therein.

Landlord hereby consents to Tenant's proposed transfer of its ownership interests to Tenant's new corporate parent, Additional UK Guarantor. In consideration of such consent by Landlord and Landlord's execution of this Lease, Tenant hereby agrees that its performance of all its obligations under this Lease shall also be guaranteed by Additional UK Guarantor and Additional US Guarantor, and Tenant shall cause (i) Additional UK Guarantor to execute and deliver to Landlord, concurrently with Tenant's execution and delivery of this Lease, a guaranty in the form and substance of Exhibit H-1 attached hereto (the "**Additional UK Guaranty**"), and (ii) Additional US Guarantor to execute and deliver to Landlord, concurrently with Tenant's execution and delivery of this Lease, a guaranty in the form and substance of Exhibit H-2 attached hereto (the "**Additional US Guaranty**"). Tenant hereby expressly waives any and all of the benefits under the second sentence of California Civil Code Section 2822(a) with respect to the Additional UK Guaranty, and agrees that Landlord (not Tenant) may designate the portion of Tenant's Lease obligations that are satisfied by a partial payment by Tenant.

## **2. GENERAL DEFINITIONS**

Certain initially capitalized terms used in this Lease are more particularly defined or are cross-referenced in the Definitions Addendum attached to this Lease. The definitions set forth in the Definitions Addendum are incorporated herein by this reference.

## **3. TERM**

### **3.1 Term.**

The "**Term**" of this Lease shall be the period commencing on the Commencement Date and ending on the Expiration Date as described in Section 1.1, unless sooner terminated or extended as provided in this Lease. The Term is set forth in Section 1.1.

### **3.2 Prior Agreements.**

Any and all existing entry agreements, permits, licenses, leases, or rental agreements between Landlord and Tenant relating to the Premises which have not already expired or terminated, are hereby terminated as of the Effective Date of this Lease; provided that, and notwithstanding the foregoing: (1) any obligations of Tenant under such agreements (including any and all obligations assigned to Tenant by any predecessors-in-interest) accruing or arising on or prior to such termination, or which are otherwise required to be performed in connection with such termination or surrender of the Premises, or which by their terms survive such termination (including, without limitation, all maintenance, repair, demolition, remediation, and indemnity requirements), shall remain enforceable by Landlord, and (2) all obligations of Existing Guarantor under the Original Lease shall remain enforceable by Landlord. Nothing herein is intended nor shall be construed as a waiver of any such rights, or as a release of any such duties or obligations, whether known

or unknown at the time or upon the Effective Date of this Lease, including, without limitation, all maintenance, repair, demolition, remediation, and indemnity requirements.

## **4. USE**

### **4.1 Permitted Use.**

Tenant agrees that the Premises shall be used only and exclusively for the Permitted Use described in Section 1.3 and for no other purpose whatsoever. This restriction on use of the Premises absolutely prohibits a change in use by Tenant to a use that is not a Permitted Use. Tenant acknowledges that the only parking it has a right to utilize in connection with the Permitted Use is the parking located on the Premises. Tenant acknowledges and agrees that with respect to any public parking located adjacent or proximate to the Premises, Tenant has only the rights of a member of the public and Tenant shall use commercially reasonable efforts to ensure that Tenant Parties do not utilize public parking adjacent to or proximate to the parking located on the Premises. As part of such efforts, Tenant shall provide sufficient parking for all Tenant Parties and shall inform Tenant Parties not to park in the public parking spaces located at Cesar Chavez Park and/or surrounding areas.

#### **4.1.1 Within Premises.**

Tenant further agrees that all in-water barriers, security equipment, and other property used in connection with Tenant's or Subtenant's use of the Premises shall be located within the bounds of the Premises and no barriers, equipment, improvements or property used in connection with Tenant's or Subtenant's operations at the Premises shall be located partially or totally outside of the Premises. In no event shall Tenant encroach onto neighboring leasehold properties.

#### **4.1.2 Specific Prohibited Uses.**

Furthermore, among the other prohibited uses under this Lease, commercial sport fishing, and operations, activities and/or services involving commercial passenger cruises and/or excursions, such as sightseeing on San Diego Bay or harbor excursions (whether or not said cruises are regularly-scheduled, advertised to the general public, or include "open party" ticket sales), are specifically prohibited uses, operations, activities, and/or services which shall not be conducted on and/or from the Premises.

#### **4.1.3 No Use Other Than Permitted Use.**

Except as expressly described in Section 4.1, Tenant shall not use or permit the Premises to be used for any other uses or purposes whatsoever. These restrictions on use of the Premises absolutely prohibit a change in use by Tenant to a use that is not a Permitted Use.

### **4.2 Continuous Operations.**

From and after the Commencement Date, Tenant shall actively and continuously use and operate the Premises and Improvements for the Permitted Use, except to the extent unable to do so by reason of a Force Majeure Event and except for temporary interruptions reasonably and directly related to Major Alterations permitted under Section 6.1.1 (provided an interruption in use and operation related to a Major Alteration shall not exceed one (1) year in the aggregate). Without limitation of the foregoing, at a minimum, the Premises shall be continuously open for business, appropriately staffed with personnel, on such days and for such hours as is customary for similar



business operations in San Diego County, California. Tenant acknowledges and agrees that said active and continuous use and operation enhances the value of the lands within Landlord's jurisdiction; provides needed public service; and provides additional employment, taxes, and other benefits to the general economy of the area.

#### **4.3 Compliance with Laws.**

Tenant agrees that, in all activities on or in connection with the Premises, and in all uses thereof, including without limitation the Permitted Use and any construction of Improvements or the making of any Alterations, it will abide by and comply with, and cause Tenant Parties to abide by and comply with, all applicable Laws at Tenant's sole cost and expense, and Landlord shall not have any obligations or responsibilities to comply with any applicable Laws as to the Premises or any use thereof by Tenant; provided that Landlord shall comply with all applicable Laws as to the Premises in connection with Landlord's entry to or activities on the Premises in exercising its rights and obligations under this Lease during the Term. In particular and without limitation, Tenant shall have the sole and exclusive obligation and responsibility, at Tenant's sole cost and expense, to comply with the requirements of: (i) the San Diego Unified Port District Code, including without limitation, Article 10 (Stormwater Management and Discharge Control), (ii) the ADA, including but not limited to regulations promulgated thereunder, (iii) applicable federal, state and local laws and regulations regarding employment and labor practices, including, without limitation, the provisions of Section 6.6 and Article 17 below, (iv) any Coastal Development Permit ("**CDP**") applicable to the Premises or the activities thereon and/or issued to Tenant (including any conditions of approval or mitigation measures or project changes pursuant to the environmental review under the California Environmental Quality Act ("**CEQA**") or any other California Coastal Commission ("**CCC**") regulations or local, state or Federal requirements now or hereafter affecting the Premises or the Improvements including the use or development thereof, and (v) any other development permits or approvals accepted by Tenant and/or applicable to the Premises or the activities thereon.

In addition, Tenant shall comply with and abide by such guidelines and requirements established by Landlord from time to time pursuant to the terms of the Lease upon written notice by Landlord to Tenant provided such guidelines and requirements do not unreasonably interfere with Tenant's use and enjoyment of the Premises. Without limitation of the foregoing, any failure of Tenant to satisfy and fulfill the requirements and conditions under any CDP applicable to the Premises or the activities thereon that is issued to Tenant (including any conditions of approval or mitigation measures or project changes pursuant to the environmental review under CEQA) or any other CCC regulations or local, state or Federal requirements now or hereafter affecting the Premises or the Improvements including the use or development thereof shall constitute a default under this Lease, subject to applicable notice and cure rights under Article 12 of this Lease.

#### **4.4 Green/Sustainable Leasing**

Among other things, when Tenant is replacing equipment, Tenant shall replace it with the most energy efficient equipment that is reasonably feasible and California Energy Star rated or the environmental equivalent.

#### **4.5 Waste or Nuisance.**

Tenant shall not use, or fail to maintain, the Premises in a manner that constitutes waste or nuisance.

#### 4.6 Reservations.

Subject to the terms of this section, Landlord reserves the right and power to grant easements and licenses on, over, under and across the Premises to others, and the right and power for Landlord or the grantee to enter the Premises, for purposes of constructing, installing, maintaining, repairing, replacing and removing utility systems and equipment and public improvements within the Premises, provided that such access shall be during normal business hours and upon at least two (2) days' prior notice to Tenant (except in the case of an emergency in which case no prior notice shall be required but each of Landlord and such grantee shall notify Tenant's on site manager thereof by phone prior to entering the Premises) and Landlord shall, and shall cause each of such grantee to: (a) comply with all applicable and reasonable security and safety procedures of Tenant of which Tenant informs Landlord in writing and with which Landlord and each such grantee can reasonably comply, and (b) use commercially reasonable efforts to minimize any interference with Tenant's operation and use of the Premises and the Improvements while on the Premises. Should Landlord so request, Tenant shall, at no cost to Tenant (other than de minimis expense) promptly join with Landlord in the execution of such documents as may be reasonably requested by Landlord to create or accommodate such grant of easement or license. Landlord agrees to use all reasonable efforts to require that grantees locate future easements, licenses, and rights-of-way, and to have such grantees install associated public facilities, so as to produce a minimum amount of interference with Tenant's business. Further, Tenant shall not be entitled to any monetary payment or other remuneration for any such future easements and rights-of-way; but nothing herein is a waiver of any rights or remedies that Tenant may have at law or in equity for Landlord's breach of this Section 4.6.

### 5. RENT

Tenant agrees to pay to Landlord Monthly Rent and Additional Rent (collectively "**Rent**") in accordance with this Article 5, in advance on or before the first (1<sup>st</sup>) day of each month, or if not a business day, then on the next following business day. All payments of Rent and other sums due Landlord hereunder shall be paid in legal tender of the United States, without notice, invoice, setoff, deduction or demand, except as otherwise expressly provided herein. No payment by Tenant or receipt or acceptance by Landlord of a lesser amount than the Rent shall be deemed to be a waiver of any current or preceding breach by Tenant of any provision hereof. No endorsement or statement on any check or any letter accompanying any check or payment as Rent shall be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy in this Lease, at law or in equity. Tenant waives all rights that it may have under present or future Laws to designate the items of Rent to which any payments made by Tenant are to be credited. Tenant agrees that Landlord may apply any payments made by Tenant to such items of Rent as Landlord designates, irrespective of any designation or request by Tenant as to the items of Rent to which such payments should be credited.

All payments of Rent shall be delivered to Landlord's Treasurer. Checks shall be made payable to the San Diego Unified Port District and mailed to the San Diego Unified Port District, Finance Department, Post Office Box 120488, San Diego, California 92112-0488, or delivered to the San Diego Unified Port District, Finance Department, 3165 Pacific Highway, San Diego, California 92101. All payments of Rent by electronic wire transfer or ACH transfer, including by automatic draft, shall be directed to the following account (or such other location as Landlord may instruct by notice from time to time):

Beneficiary Bank: Wells Fargo Bank, N.A.

Bank Location: 420 Montgomery, MAC: A0112-102, San Francisco, CA 94104

ACH/Wire Routing Number: 121000248

Beneficiary: San Diego Unified Port District

Beneficiary Account Number: 4944983881

Type of Account: Deposit

Reference Required: Email or Fax remittance information to:

Email: [ARinvoices@portofsandiego.org](mailto:ARinvoices@portofsandiego.org)

Fax: (619) 686-6279 Finance Dept -A/R Landlord may change the designated place of payment or filing at any time upon ten (10) days' written notice to Tenant. Tenant assumes all risk of loss and responsibility for Late Charges and interest at the Default Rate for late payments, as hereinafter described.

### **5.1 Monthly Rent**

Monthly Rent due by Tenant during the Term is set forth in Section 1.4.

### **5.2 Late Charges.**

Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent will cause Landlord to incur costs not contemplated by this Lease. Accordingly, in the event Tenant is delinquent in payment of the Rent on date due in accordance with the provisions of this Lease, Tenant shall pay, in addition to the unpaid Rent, five percent (5%) of the Rent due. If Rent is still unpaid at the end of ten (10) days after the date due, Tenant shall pay an additional five percent (5%) (collectively, "**Late Charges**"). The parties hereby agree that said Late Charges are Additional Rent and are not interest and that the Late Charges apply whether or not Tenant receives notice of its failure to pay Rent, and that said Late Charges are appropriate to compensate Landlord for loss resulting from rent delinquency including, without limitation, lost opportunities and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the Late Charges for late payment of Rent be less than One Hundred Dollars (\$100). Acceptance by Landlord of such Late Charges and any portion of the late payment by Landlord shall in no event constitute a waiver of Tenant's Event of Default with respect to such overdue amount, nor prevent Landlord from exercising any of its other rights and remedies. In addition to the application of a Late Charge, if Tenant fails to pay any Rent when due, the unpaid Rent amount shall accrue interest at the Default Rate from the date due until paid and such interest shall itself be Additional Rent.

### **5.3 Net Lease.**

Tenant acknowledges that the Rent will be absolutely net of any costs or expenses to Landlord relating to Premises or any Improvements and acknowledges and agrees that Landlord shall not be responsible for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the Premises or any Improvements during the Term, whether foreseen or unforeseen and whether or not within the contemplation of the parties at the commencement of the Term, except as shall be otherwise expressly provided in this Lease. Without limitation of the

foregoing, Landlord shall not be required to construct, install, provide or arrange for any utilities, roadway, docks, tide walls, drainage or other improvements of any nature on, in, under or above the Premises or any other location.

#### **5.4 Reimbursement.**

If under the terms of this Lease an amount expended by Landlord is to be reimbursed by Tenant, then Tenant shall reimburse Landlord for the subject amount within thirty (30) days of Tenant's receipt of an invoice or statement from Landlord for the subject amount and, if applicable, copies of any applicable third-party invoices, work description and/or other reasonable evidence of the work performed for or by, and costs incurred by, Landlord. This procedure shall be referred to herein as the "**Reimbursement Procedure.**" Any amounts owed to Landlord pursuant to the Reimbursement Procedure shall constitute Additional Rent and shall accrue interest at the Default Rate from the date due until paid if not paid within the time period permitted under the Reimbursement Procedure.

### **6. ALTERATION OF IMPROVEMENTS**

#### **6.1 Alterations.**

##### **6.1.1 Major Alterations.**

The term "**Major Alterations**" means all Alterations other than Minor Alterations (as such term is defined in Section 6.1.2 below). Tenant shall comply with all Laws, at its sole cost and expense, including without limitation, obtaining any governmental permits and approvals required to be obtained for the Major Alterations. Tenant may not make any Major Alterations without the prior written consent of Landlord in each instance, which consent may be granted or withheld in Landlord's sole discretion. Landlord may condition its approval of a Major Alteration on compliance with Laws and Tenant obtaining insurance coverages in addition to those required under Article 18 if such additional coverage is customarily obtained in connection with work similar in scope to the Major Alteration. All Major Alterations shall be in accordance with plans and specifications, including but not limited to working drawings (collectively, "**Alteration Plans**") submitted to and approved in writing by Landlord prior to the commencement of the Major Alterations. Following approval by Landlord, any changes in the Alteration Plans are subject to Landlord's approval, in Landlord's sole discretion. Provided Landlord approves the Alteration Plans, if Tenant elects to proceed with the Major Alterations, Tenant must construct and complete all of the Major Alterations set forth in the Alteration Plans in one (1) integrated construction project with all due diligence, unless otherwise approved by Landlord in its sole discretion.

##### **6.1.2 Minor Alterations.**

The term "**Minor Alterations**" means Alterations that satisfy all of the following requirements: (i) do not result in any substantial change to the exterior appearance of the Improvements; (ii) no discretionary permit or approval is required from any Government Agency to perform the Alteration and no CEQA review is needed in connection with the permits that are to be issued in connection with the Alteration; (iii) they do not require or involve structural modifications or affect in any material way the building systems within the Improvements; (iv) they do not trigger any stormwater construction BMP permit or permanent structural BMP permit or alterations to existing permanent structural BMPs; (v) they are consistent with the Permitted Use; and (vi) following the Completion of the Alterations, the Premises and Improvements have a fair market value, quality and utility that is not less than the fair market value, quality and utility of the

Premises and Improvements immediately prior to the commencement of the Alterations. Tenant may make Minor Alterations without Landlord's written consent provided that Tenant gives Landlord at least thirty (30) days' prior written notice of the Minor Alterations, which notice describes the Minor Alterations in sufficient detail in order for Landlord to confirm that such Minor Alterations satisfy the requirements of this Section 6.1.2 and within such thirty (30) day period Landlord does not object to Tenant's determination that the subject Alterations are Minor Alterations.

### **6.1.3 Diligent Construction; Continuous Operations.**

Once construction of any Alteration is commenced, Tenant shall diligently prosecute construction of the Alterations to Completion. Tenant shall continue to operate the Premises and Improvements for the Permitted Use during the course of construction of the Major Alterations to the greatest extent feasible and subject to the terms of Section 4.2.

### **6.1.4 Construction Requirements.**

In constructing any Alterations, Tenant shall comply with all Construction Requirements and all Laws, including, without limitation, any PMP requirements, mitigation measures or conditions of approval under the terms of any of the governmental approvals of the Project, including any CDP applicable to the Premises or the use or development thereof and any conditions of approval or mitigation measures or project changes pursuant to any environmental review under CEQA.

## **6.2 Cost Reporting.**

With respect to any Major Alterations, within sixty (60) days following Completion of such Major Alterations, Tenant shall furnish Landlord with an itemized statement of the construction costs incurred and paid by Tenant. The statement shall be sworn to and signed, under penalty of perjury, by Tenant or its authorized representative. Tenant shall maintain true, accurate, and complete records to support said itemized statement. Such records shall include, but are not limited to a general ledger, vendor invoices, cancelled checks, construction loan documentation, agreements with third-party contractors, and contractor progress payment billings. Additionally, should Tenant perform any construction with its own personnel, Tenant shall substantiate the actual work performed by maintaining the following records: a payroll journal, copies of cancelled payroll checks, and timecards or other payroll documents which show dates worked, hours worked, and pay rates. Books and records herein required shall be maintained and made available either at the Premises or at such other location in San Diego County, California as is agreeable to Landlord. Further, Landlord shall have the right at any and all reasonable times to examine and audit said books and records without restriction for the purpose of determining the accuracy thereof, and the accuracy of the aforesaid statement. In the event Tenant does not make available the original books and records at the Premises or within the limits of San Diego County, Tenant agrees to pay all expenses incurred by Landlord Parties in conducting an audit at the location where said books and records are maintained. Any records delivered hereunder will constitute Proprietary Information and shall be subject to the confidentiality provisions of Section 28.11.

## **6.3 Force Majeure Event.**

**"Force Majeure Event"** means an event that causes actual interference with Tenant's ability to operate or to timely complete any maintenance and repair obligations under this Lease or any

Alterations to be completed by Tenant in accordance with the terms of this Lease actually caused by: (a) a strike, work stoppage or labor dispute other than a strike, work stoppage or dispute which would have been avoided had Tenant complied with Laws and any agreements it has entered into with the striking union or parties; (b) inclement weather (that causes a suspension of work) in excess of the ten (10) year average for the area within Landlord's jurisdiction during the month or months when work was suspended; (c) a fire, an earthquake, explosion or other natural disaster resulting in suspension of work or causing material damage to previously constructed Improvements; (d) inability to procure or general shortage of labor, equipment, materials, or supplies in the open market, or failure of transportation (but, in each case, not attributable to a mere increase in price or Tenant's acts or failure to act); (e) acts of a public enemy, acts of war or armed conflict, insurrections, riots, mob violence, sabotage, acts of terrorism, and malicious mischief or, with respect to any of the foregoing, any threat thereof; (f) casualty causing material damage to previously constructed Improvements or access to the Premises; (g) an act of God; (h) embargoes or blockades; or (i) delays in the issuance of any governmental approvals or authorizations from any Government Agency other than Landlord necessary to proceed with development or operation of any required maintenance and repair obligations under this Lease or any Alterations (provided that Tenant has timely and properly filed all applications, submitted all required documents and fees and taken all other actions necessary to obtain such governmental approvals or authorizations and that Tenant is not responsible in any way for the delay in the issuance of such governmental approvals or authorizations); provided that, notwithstanding the foregoing, in no event shall a Force Majeure Event be attributable to an increase in the price of performance and/or Tenant's failure to act. In order to claim an excuse of failure to operate or to timely complete any maintenance and repair obligations under this Lease or any Alterations, Tenant must notify Landlord in writing within twenty (20) days of the commencement of any Force Majeure Event and describe in such notice the Force Majeure Event creating delay or interference, why such delay or interference is occurring, the expected duration of such delay or interference and the commercially reasonable efforts Tenant is taking to minimize the period of delay or interference. Tenant covenants to make best efforts to minimize and otherwise overcome the impact on Tenant's operation caused by any Force Majeure Event and, in addition to Tenant's initial notice described above, on Landlord's request from time to time, shall provide Landlord with a report on the status of the Force Majeure Event, its expected duration, and Tenant's commercially reasonable efforts to minimize and otherwise overcome the impact on Tenant's operation or ability to perform any maintenance and repair obligations or any Alterations caused by any Force Majeure Event.

#### **6.4 Signs and Flags.**

All signs visible from outside the Improvements must be expressly approved by Landlord prior to installation. All signage in the Landlord's jurisdiction is subject to San Diego Unified Port District Code Section No. 8.30, BPC Policy No. 770 and Tenant Signage Guidelines. If Landlord hereafter adopts any other ordinance or policy governing signage, Tenant shall also comply with such ordinance or policy subject to any grandfathering terms thereof. Tenant agrees that no banners, balloons, inflatables, pennants, flags, signs, digital displays, spinners, or other advertising devices, nor any temporary signs, shall be flown, installed, placed, or erected on the Premises in a manner or location clearly visible from outside the Premises without Landlord's prior written consent.

## **6.5 Tenant Percent for Art.**

Tenant acknowledges and agrees that any requests for proposed Alterations during the Term may be conditioned on the payment of additional commissions or purchases of artwork and/or in-lieu contributions in accordance with BPC Policy 608.

## **6.6 Prevailing Wage.**

### **6.6.1** Tenant acknowledges and agrees that:

(a) Landlord makes no representation concerning the applicability of any wage laws, including, but not limited to California Labor Code §§ 1720 through 1815, et seq. ("**PWL**"). To the extent Tenant intends to perform any construction, alteration, demolition, installation or repair work ("**Construction**") on the Premises, Tenant warrants and acknowledges that: (1) Landlord is not paying for or subsidizing, in whole or in part, any such Construction; and (2) Tenant shall make its own determination regarding the applicability of any PWL to such Construction. Landlord is not responsible for Tenant's failure to comply with any applicable provisions of the PWL. Tenant assumes any and all risk in connection with the application of PWL to any Construction performed on the Premises on behalf of Tenant.

(b) Tenant's violations of PWL shall constitute a default under this Lease, and Tenant agrees at its sole cost and expense and with counsel approved by Landlord in Landlord's sole discretion to indemnify, defend, and hold harmless the Landlord Parties from any claims, demands, actions, causes of action, suites, and Related Costs arising out of any violation of PWL by Tenant or any of the Tenant Parties. The Landlord may, in its sole and absolute discretion, participate in the defense of any claims, demands, actions and causes of action, suits and Tenant shall reimburse the Landlord for all reasonable costs of defense incurred by the Landlord (whether with in-house or outside counsel or both), including, without limitation reimbursement for attorneys' fees, experts' fees and other costs.

## **6.7 Historical Designation.**

Neither Landlord nor Tenant shall designate, cause anyone to designate, submit or support any application to designate, the Premises or any Improvements on the Premises as a federal, state or local historical landmark or as a historical resource, without the other party's prior written consent, which may be withheld by such party in its sole and absolute discretion. The terms of this Section 6.7 shall survive the expiration or earlier termination of this Lease.

## **7. TITLE TO AND REMOVAL OF ALTERATIONS AND IMPROVEMENTS**

### **7.1 Title.**

On the Commencement Date of this Lease, all existing structures, buildings, installations and improvements located on the Premises are owned by and title thereto is vested in Tenant. Except as set forth below, all Improvements which are now or may be installed or placed in, on, over or under the Premises, from time to time by Tenant as permitted by the terms of this Lease or with Landlord's prior written consent, (i) shall be so installed or constructed at the sole cost of Tenant, (ii) shall remain Tenant's property during the Term, and (iii) at the expiration or earlier termination of the Term, those Improvements which are to remain on the Premises pursuant to Section 7.2, shall automatically become the property of Landlord without additional compensation from Landlord; provided that, subject to Section 7.3 below, Tenant's trade fixtures (fixtures relating

uniquely to Tenant and which are removable without non-repairable damage to the other Improvements), furnishings and moveable equipment shall remain the property of Tenant and shall be removed by Tenant as provided in Section 7.3. Upon Landlord's request, following the Expiration Date or earlier termination of this Lease, Tenant covenants and agrees to execute and deliver (at no cost or expense to Landlord) a quitclaim deed as provided in Article 23 to confirm Landlord's ownership of the Improvements which are to remain on the Premises pursuant to Section 7.2, which covenant shall survive the expiration or earlier termination of this Lease. Notwithstanding the foregoing, if title to artwork in fulfillment of the tenant percent for art requirement created in compliance with Section 6.5 is governed by a separate agreement between Tenant and the artist, such agreement shall govern over this Lease relative to the title to the artwork following the expiration or termination of this Lease.

## **7.2 Removal of Improvements.**

At any time during the Term of this Lease, Landlord may notify Tenant in writing of what Improvements Landlord requires (in its sole discretion) to be removed from the Premises at the end of the Term (such election is referred to herein as the "**Landlord End of Term Election**"). Unless Landlord has previously delivered to Tenant the Landlord End of Term Election, then no sooner than six (6) years and no later than one (1) year before the Expiration Date, or within ten (10) days after the earlier termination of this Lease, Tenant shall request in writing from Landlord the Landlord End of Term Election. If Landlord has not provided the Landlord End of Term Election within thirty (30) days thereafter, and/or if Tenant fails to timely request in writing from Landlord the Landlord End of Term Election, the same shall be deemed to be an election by Landlord for Tenant to remove all Improvements from the Premises. If Landlord shall elect (or shall be deemed to elect) to have Tenant remove any or all of the Improvements and/or Tenant is required to perform remedial work in connection therewith pursuant to Section 21.1.4 and/or Section 21.3, (i) the Term of this Lease shall be extended as provided in Section 7.5, (ii) to the greatest extent possible, Tenant shall obtain all permits required to perform such work in advance of the end of the Term and, if not possible, as promptly as possible after the end of the Term (meaning prior to extension pursuant to Section 7.5), and (iii) subject to terms of Section 7.5 requiring such work to commence sooner, as promptly as possible after the end of the Term (meaning prior to extension of the Term pursuant to Section 7.5), Tenant shall remove such Improvements and perform and complete any remedial work that may be required by Section 21.1.4 and/or Section 21.3 in connection therewith. Tenant acknowledges that demolition of the Improvements and razing the Premises and/or the remediation work in connection therewith pursuant to Section 21.1.4 and/or Section 21.3 may require Tenant to obtain permits, certain of which may be discretionary. Tenant shall repair any damage to the Premises (and the Improvements which Landlord is not requiring Tenant to remove) caused by such removal, and, unless such requirement is waived by Landlord, Tenant shall surrender the portion of the Premises to be demolished to Landlord in a razed and buildable condition. For this purpose, a "**buildable condition**" means the removal of any subsurface Improvements (including foundations and pilings, pipelines and conduits, and public and private utilities unless otherwise agreed to by Landlord), removal of any Hazardous Materials pursuant to Section 21.1.4 and/or Section 21.3, demolition of the Improvements and removal of any debris resulting from demolition and leaving the areas affected by the demolition in a smooth graded condition with soils compacted pursuant to specifications and in compliance with a stormwater site stabilization plan reasonably acceptable to Landlord so that such areas are suitable for subsequent construction of improvements thereon. In addition, and without limitation of Landlord's other remedies, if any Improvements are not in full compliance with Article 6 or Article 15, Landlord may require, at Tenant's sole cost and expense, that such Improvements be modified to a state and condition which complies with Article 6 and Article 15 as determined by Landlord. If Tenant fails to complete



such removal and remediation and/or to repair any damage caused by the removal of any Improvements or to perform modifications required pursuant to the preceding sentence within the period allowed under Section 7.5, Landlord may do so and may charge the cost thereof to Tenant pursuant to the Reimbursement Procedure, together with Additional Rent for estimated administrative costs in the amount of ten percent (10%) of such cost, and interest on all such sums at the Default Rate from the date incurred until paid. Nothing contained in this Section 7.2 shall be interpreted to limit Tenant's obligations under Section 21.1.4 and/or Section 21.3.

### **7.3 Removal of Personal Property.**

Except as provided below, all of Tenant's personal property including machines, appliances and equipment, floating dry docks (even though it may be moored or affixed to one location at the Premises, and unless otherwise agreed or as set forth herein), and trade fixtures (even though not personal property), located at or on the Premises shall be removed from the Premises by Tenant by the Expiration Date or earlier termination of this Lease. Notwithstanding the foregoing, unless Landlord expressly elects at least ninety (90) days before the Expiration Date or, in the case of sooner termination of this Lease, within ten (10) days after the termination, to require Tenant to remove the same, (i) any fixtures, equipment, or personal property installed by Tenant and considered by Landlord under BPC Policy No. 355 in connection with an extension of the Term (any such extension to be granted within Landlord's sole and absolute discretion) shall remain located on the Premises, and (ii) any artworks that constitute personal property of Tenant that were provided to comply with Laws or Landlord's own requirements but which are not governed by a separate agreement between Tenant and the artist relating to the removal of the artwork at the end of the Lease Term, such artworks shall not be removed and shall remain located on the Premises. If requested by Landlord, Tenant shall deliver to Landlord Tenant's signed bill of sale in a form reasonably acceptable to Landlord for such left in place personal property. Without limitation of the foregoing, Tenant hereby appoints Landlord as Tenant's attorney-in-fact to execute such bill of sale for such personal property in the name and on behalf of Tenant if Tenant shall fail to do so after Landlord's request. Tenant shall repair any damage to the Premises (and the Improvements which Landlord is not requiring Tenant to remove) caused by the removal of such personal property. If such personal property required to be removed is not removed by Tenant in accordance with this Section 7.3, the same may be considered abandoned and, at the option of Landlord, shall thereupon become the property of Landlord, without cost to Landlord and without any payment to Tenant, except that Landlord shall have the right to have such personal property removed and to repair any and all damage occasioned by their removal, all at the expense of Tenant pursuant to the Reimbursement Procedure.

### **7.4 Security for Cost of Demolition and Remediation Work.**

#### **7.4.1 Demolition and Remediation Report.**

Within one hundred and eighty (180) days of the date Landlord provides (or is deemed to provide) the Landlord End of Term Election pursuant to Section 7.2, Tenant, at its own cost and expense, shall obtain and deliver to Landlord a report which details and estimates the current cost and time period for completion of (i) all removal and demolition work required by Section 7.2 and (ii) all remedial and other work required by Section 21.1.4 and/or Section 21.3 ("**Demolition and Remediation Report**"). The contractor who prepares the Demolition and Remediation Report may engage one or more subcontractors to assist in preparation of the Demolition and Remediation Report, so long as the contractor and all such subcontractors are licensed in the State of California and collectively possess expertise in demolition and remediation. The contractor who prepares the Demolition and Remediation Report is referred to herein as the

**"Demolition and Remediation Contractor"** and the time period for completion of the removal and demolition work required by Section 7.2 and the remedial and other work required by Section 21.1.4 and/or Section 21.3 is referred to herein as the **"Removal Period"**.

#### 7.4.2 Demolition and Remediation Security Funding.

The terms of this Section 7.4.2 will have no application and may be disregarded if both of the following have occurred: (i) Landlord has provided a Landlord End of Term Election requiring all of the Improvements to remain in place; and (ii) any required Demolition and Remediation Report and any reports required under the terms of Article 21 establishes that there is no known condition requiring remedial work. For the purpose of funding the cost of the demolition and remediation work that may be required under Section 7.2, Section 21.1.4 and/or Section 21.3, then commencing in the month following the receipt of the Demolition and Remediation Report and continuing on the same day Monthly Rent for each month thereafter is due until such day of the last calendar month prior to the end of the Term (the **"Demolition and Remediation Security Funding Period"**) Tenant shall deposit with Landlord, or at Landlord's election, into an escrow account (with an escrow holder, and pursuant to escrow instructions, acceptable to Landlord in its sole discretion) a level sinking fund monthly dollar amount which will fully fund the Demolition and Remediation Security Amount by the end of the Demolition and Remediation Security Funding Period. The **"Demolition and Remediation Security Amount"** shall be the Estimated Demolition and Remediation Cost annually compounded at three percent (3%) over the Demolition and Remediation Security Funding Period. The **"Estimated Demolition and Remediation Cost"** shall be the total of (i) the demolition and remediation cost amount estimated by the Demolition and Remediation Report, and (ii) the product of (x) the number of months in the Removal Period and (y) the Monthly Rent at the time the first monthly deposit is to be made. The determination of the monthly deposit amount shall be calculated by dividing the Estimated Demolition and Remediation Amount by the number of months in the Demolition and Remediation Security Funding Period. If the Demolition and Remediation Security Amount is held in escrow, any interest earned on the Demolition and Remediation Security Amount shall be added to the escrow fund, but shall not be treated as a credit against the Demolition and Remediation Security Amount deposits required to be made by Tenant pursuant to this Section 7.4.2. If Landlord holds the Demolition and Remediation Security Amount, Landlord shall not be required to keep the Demolition and Remediation Security Amount in trust, segregate it or keep it separate from Landlord's general funds, and Tenant shall not be entitled to payment of interest on the Demolition and Remediation Security Amount but such interest, if any, shall be applied toward the Demolition and Remediation Security Amount. In lieu of deposit of cash funds as required above, Tenant may propose a letter of credit, bond or other form of security in form and amount, and from an issuer, satisfactory to Landlord in Landlord's sole discretion. In no event shall Tenant's obligations under Section 7.2, Section 21.1.4 and/or Section 21.3 or to pay Rent during the Removal Period be limited to the amount of the Demolition and Remediation Security Amount.

(a) *Update.* If a Landlord End of Term Election requiring Tenant to remove any or all of the Improvements is provided to Tenant on or prior to the date that is twenty-four (24) months before the end of the Term and/or Tenant is required to perform remedial work pursuant to Section 21.1.4 and/or Section 21.3, at least twelve (12) months prior to the expiration of the Term Tenant shall deliver to Landlord a report prepared by a Demolition and Remediation Contractor, which report updates any prior Demolition and Remediation Report for the purpose of providing a current estimate of the projected cost at the end of the Term of the demolition and remediation work required by Section 7.2 above (**"Demolition and Remediation Report Update"**). If the current balance of the Demolition and Remediation Security Amount is less than the cost projected in the Demolition and Remediation Report Update, then, within thirty (30) days

after delivering the Demolition and Remediation Report Update to Landlord, Tenant shall deposit in the escrow account or with Landlord, as applicable, additional funds so that the total Demolition and Remediation Security Amount is no less than the estimated cost of the demolition and remediation work as set forth in the Demolition and Remediation Report Update. If the current balance of the Demolition and Remediation Security Amount is more than the cost projected in the Demolition and Remediation Report Update, then, within sixty (60) days after Landlord's receipt of the Demolition and Remediation Report Update, Landlord shall refund the Tenant, as applicable, funds so that the total Demolition and Remediation Security Amount is no more than the estimated cost of the demolition and remediation work as set forth in the Demolition and Remediation Report Update.

(b) *Disbursement To Tenant.* If Landlord provides (or is deemed to provide) an End of Term Election for Tenant to remove any or all of the Improvements and/or Tenant is required to perform remedial work pursuant to Section 21.1.4 and/or Section 21.3, then Landlord will release (or authorize the escrow holder to release, as applicable) the Demolition and Remediation Security Amount to fund the cost of the demolition and remediation work pursuant to customary construction draw procedures, including a ten percent (10%) retainage which will be paid upon completion of such work as evidenced by a certificate of completion from the Demolition and Remediation Contractor and a copy of final lien releases in statutory form from the Demolition and Remediation Contractor and all of its subcontractors. However, Tenant shall remain responsible for the actual costs of the demolition and remediation work in excess of the Demolition and Remediation Security Amount. If Landlord provides (or is deemed to provide) an End of Term Election for Tenant to remove any or all of the Improvements and Landlord decides to keep any or all of the Improvements, Landlord will release to Tenant (or authorize the escrow holder to release, as applicable) the unused portion of the Demolition and Remediation Security Amount.

(c) *Disbursement to Landlord.* If Tenant fails to perform the demolition and remediation work as and when required by the terms of Sections 7.2, Section 21.1.4 and/or Section 21.3, if Landlord elects to enforce Tenant's obligation, then in addition to all other remedies Landlord may have as a result of such failure, without limitation of Tenant's cost responsibility for the same, Landlord shall have the right to apply the Demolition and Remediation Security Amount to pay for the cost of performing the demolition and remediation work on Tenant's behalf or, if Landlord determines not to perform the demolition and remediation work and not to enforce Tenant's obligation, and Tenant's failure has continued following the notice and cure period set forth in Article 12, then Landlord may retain the Demolition and Remediation Security Amount as liquidated damages for Tenant's failure to perform the demolition and remediation work.

(d) *Landlord Security Interest.* Tenant grants to Landlord a security interest in the Demolition and Remediation Security Amount, and shall execute such documents as Landlord may reasonably request in order to perfect such security interest.

(e) *Demolition and Remediation Security Funding Tolling.* Landlord shall have the right, in its sole and absolute discretion as it sees fit, and upon providing written notice to Tenant, to toll collection of the Demolition and Remediation Security Amount within the last five years of the Term in order to consider a plan of redevelopment submitted by Tenant. The length of any tolling period shall be determined by Landlord in its sole and absolute discretion and as it sees fit.

## 7.5 Removal Extension.

If the Landlord End of Term Election requires Tenant to remove any or all of the Improvements and/or Tenant is required to perform remedial work pursuant to Section 21.1.4 and/or Section 21.3, then subject to the terms of this Section 7.5, solely for the purpose of completing such work and during such extension, the Term shall be extended until the earlier of (i) six (6) months, and (ii) the completion of such work as evidenced by a certificate of completion from the Demolition and Remediation Contractor and copy of final lien releases in statutory form from the Demolition and Remediation Contractor and all of its subcontractors. The period of such extension is referred to herein as the "**Removal Extension**". During the Removal Extension, the Premises and Improvements shall not be used by Tenant for any purpose other than the performance of the demolition and/or remediation work unless permitted by Landlord in writing in its sole discretion. During the Removal Extension, Tenant shall continue to pay the full Rent to Landlord in accordance with this Lease. If Tenant's removal and remediation work is not completed within the Removal Extension, the terms of Article 26 regarding Rent payable during holdover shall apply. Without relieving Tenant from its obligations under this Lease respecting the condition of the Premises at the end of the Term, all of the Tenant's obligations under this Lease (including Tenant's indemnification and insurance obligations but excluding any obligation to be open or operate) and Tenant's right to enter onto the Premises and perform the demolition and remediation work shall continue in full force and effect during the Removal Extension. Notwithstanding the foregoing, if the Landlord End of Term Election requires Tenant to remove any or all of the Improvements and/or Tenant is required to perform remedial work pursuant to Section 21.1.4 and/or Section 21.3 and any Demolition and Remediation Report indicates that the Removal Period is estimated to be greater than six (6) months, then Tenant shall commence such work sufficiently prior to the end of the Term (*i.e.*, prior to extension as provided in this Section) so that such work is anticipated to be completed no later than six (6) months after the end of the Term (*i.e.*, prior to expiry of the Removal Extension) (*e.g.*, if the estimated Removal Period is ten (10) months, Tenant shall commence such work at least four (4) months prior to the end of the Term (prior to extension pursuant to this Section 7.5).

## 7.6 Survival.

The terms of this Article 7 shall survive the expiration or termination of this Lease.

# 8. ENTITLEMENTS

## 8.1 Entitlement Costs.

If any discretionary approval, permit, or entitlement, including without limitation environmental analysis under CEQA, the PMP, a Port Master Plan Amendment ("**PMPA**"), a CDP and/or a Coastal Act exclusion, are necessary in Landlord's sole and absolute determination in connection with any Improvements, Alterations, demolition or remediation work or other projects undertaken by Tenant on or at the Premises (collectively, the "**Discretionary Project**"), Tenant agrees to enter into agreements with the third party consultants preparing the reports and other materials required to process the Discretionary Project making Tenant directly responsible for the costs of such services and to reimburse Landlord pursuant to the Reimbursement Procedure for all costs and expenses incurred by Landlord in obtaining the necessary approval for the Discretionary Project, including but not limited to, the preparation and certification of any required CEQA document by the Landlord, the preparation and approval of the PMPA by the Landlord and the CCC, the preparation and approval or issuance of a CDP by the Landlord or, if appealed, the CCC, or the Coastal Act exclusion by the Landlord and any other costs and expenses arising out

of the entitlement process in Landlord's sole and absolute determination. If Tenant fails to reimburse Landlord for such reasonable costs pursuant to the Reimbursement Procedure, in addition to any other remedies Landlord may have, Landlord may, following three (3) business days' prior written notice to Tenant, thereafter discontinue the processing of the Discretionary Project and Tenant shall be responsible for any reasonable costs and expenses incurred by Landlord related to such discontinuance as Additional Rent and such failure shall be a default of Tenant. Nothing herein shall obligate Landlord to seek, process or obtain any approvals or entitlements for the benefit of Tenant and Landlord makes no warranty or representation to Tenant that Tenant will obtain the entitlements and approvals required for Tenant's Discretionary Project.

## **8.2 Entitlements Indemnity.**

Without limitation of Tenant's other obligations under this Lease, Tenant agrees at its sole cost and expense and with counsel reasonably acceptable to Landlord to indemnify, defend and hold harmless the Landlord Parties from any third-party claims, demands, actions, causes of action, suits and Related Costs, arising out of Landlord's approval(s) of the Discretionary Project including without limitation any third party challenges to the approval of the Discretionary Project and any CEQA review, CCC review for a PMPA or appealable CDP or Coastal Act exclusion. The Landlord may, in its sole and absolute discretion, participate in the defense of any claims, demands, actions and causes of action and suits, and Tenant shall reimburse the Landlord for all reasonable costs of defense incurred by the Landlord (whether with in-house or outside counsel or both), including, without limitation reimbursement for attorneys' fees, experts' fees and other costs. The Landlord's participation shall not relieve the Tenant of any of its obligations under this Section 8.2. The foregoing indemnity obligations of Tenant are in addition to, and not in limitation of, any other indemnity obligations of Tenant contained in this Lease.

## **8.3 Reservation of Discretion.**

Tenant acknowledges and agrees that, notwithstanding the terms and conditions of this Lease, Landlord reserves its discretion to approve or disapprove all actions, which require by Laws the exercise of discretion, including without limitation all legislative and quasi-judicial actions and which Landlord cannot lawfully be committed to by contract (collectively, "**Discretionary Action**") and that nothing in this Lease will be construed as circumventing or limiting Landlord's discretion with respect to environmental review required by CEQA, approval of a PMPA, CDP, CDP exclusion, or other permits and entitlements, the exercise of eminent domain, code enforcement and the making of findings and determinations required by Law. Tenant acknowledges and agrees that any and all Discretionary Actions may be approved or denied by the Landlord, in its sole and absolute determination, and accepts the risk that the Landlord may deny any and all Discretionary Actions, and hereby waives any claims, demands, actions, causes of action, and suits against the Landlord for said denial.

# **9. LIENS**

## **9.1 No Right to Bind Landlord.**

Neither Tenant, nor any Tenant Party, shall have any power or authority to do any act or thing, or to make any contract or agreement which will bind Landlord in any way whatsoever, and Landlord shall have no responsibility to Tenant, Tenant Party or other Person who performs, causes to perform, engages in or participates in any construction of any Improvements, Alterations or any other work on the Premises at the request of Tenant or Tenant Party or other Persons. Landlord

shall not be required to take action to satisfy any such contract or agreement or to remove or satisfy any lien resulting therefrom.

## **9.2 Notice of Non-Responsibility.**

Tenant shall give written notice to all contractors, subcontractors and materialmen of Landlord's non-responsibility in connection with any Improvements or Alterations or other work on the Premises, and shall immediately provide Landlord with true copies of such notices not less than ten (10) days prior to the commencement of any work on the Premises.

## **9.3 Mechanic's Liens.**

Tenant shall timely pay or cause to be paid all costs for work, labor, services or materials supplied to or performed on the Premises. Tenant will keep the Premises free and clear of all mechanic's liens and other liens on account of work done, materials or supplies furnished, or Tenant obligations incurred for or at the Premises. Tenant shall indemnify, defend, release and save Landlord free and harmless from and against any and all claims of lien of laborers or materialmen or others for work performed, or materials or supplies furnished, or Tenant obligations incurred for or at the Premises, and all Related Costs.

## **9.4 Contest of Lien.**

If Tenant in good faith wishes to contest the amount or validity of any claim of lien, Tenant shall be entitled to do so, provided that Tenant first records a surety bond sufficient to release the lien from the Premises.

## **9.5 Landlord's Right to Pay.**

If Tenant shall be in default in paying any charge for which a lien claim has been filed, and if Tenant shall not have recorded a surety bond as required under Section 9.4 above, Landlord may, but shall not be so obliged to, pay said lien claim and any costs incurred in connection therewith, and the amount so paid, together with reasonable attorneys' fees (whether with in-house or outside counsel or both) incurred in connection therewith, shall be immediately due and owing from Tenant to Landlord, and Tenant shall pay the same to Landlord pursuant to the Reimbursement Procedure (except that such amount shall be immediately due and payable) together with interest on the full amount thereof at the Default Rate from the dates of Landlord's payments until paid.

## **9.6 Notice of Liens.**

Should any claims of lien be filed against the Premises or any action affecting the title to the Premises be commenced, the party receiving notice of such lien or action shall give the other party written notice thereof within five (5) business days of receipt.

## **9.7 Right of Entry/ Notices of Non-Responsibility.**

Nothing herein shall imply any consent on the part of Landlord to subject Landlord's estate to liability under any mechanic's or other lien. Without limiting Tenant's responsibilities under Section 9.2 above, Landlord and the Landlord Parties shall have the right to enter upon and inspect portions of the Premises where the construction of any Alterations thereto is ongoing, during normal business hours and upon twenty-four (24) hours prior notice to Tenant (except in

the case of an emergency in which case no prior notice shall be required but each of such Landlord Parties shall notify the onsite manager of the Premises thereof by phone prior to entering the Premises) and Landlord shall, and shall cause each of such Landlord Parties to: (a) comply with all applicable and reasonable security and safety procedures of Tenant of which Tenant informs Landlord in writing and with which such Landlord Party can reasonably comply, and (b) use commercially reasonable efforts to minimize any interference with Tenant's operation and use of the Premises while on the Premises and at the Improvements. Notwithstanding the foregoing, nothing herein shall limit the Landlord's right to enter the Premises and Improvements at any time to exercise its police powers. Landlord and the Landlord Parties shall have the right to post and keep posted thereon notices of non responsibility, or such other similar notices which Landlord may deem to be proper for the protection of Landlord's interest in the Premises. Tenant shall, before the commencement of any work which is reasonably likely to result in any such lien, give Landlord written notice of its intention to commence such work in sufficient time (which in no event shall be less than the statutory period for posting notices of non-responsibility prior to the commencement of work) to give Landlord adequate opportunity to post and record such notices.

## **10. LEASE ENCUMBRANCE**

### **10.1 Restrictions on Encumbrance.**

#### **10.1.1 Landlord's Consent.**

Tenant shall not encumber or hypothecate this Lease, Tenant's leasehold interest herein, or the leasehold interest in the Improvements thereon, or any part thereof or interest therein (such encumbrance or hypothecation being referred to herein as a "**Financing Transaction**"), without Landlord's prior written consent to the Financing Transaction in each instance, which consent, subject to the terms of Section 10.1.2, shall not be unreasonably withheld. Tenant shall submit its request for consent to the Financing Transaction in writing to Landlord, together with the required minimum documentation required pursuant to BPC Policy No. 355, or any other BPC policy then in effect governing Landlord's consent to a Financing Transaction. Within ten (10) days of receiving Tenant's request, Landlord may request from Tenant additional information regarding the lender and/or the proposed Financing Transaction. Landlord shall provide its response to Tenant's request for approval of the Financing Transaction within forty-five (45) days following Landlord's receipt of Tenant's request and all information reasonably requested by Landlord from Tenant. As a condition of approval, Tenant shall provide to Landlord a copy for review (but not to copy) of the final loan documents for the Financing Transaction which conform in all material respects to the terms set forth in the loan application or commitment or comparable summary of loan terms delivered pursuant to Section 10.1.2(e) below, when such documents are available. Tenant shall reimburse Landlord pursuant to the Reimbursement Procedure for all Landlord's reasonable costs and expenses associated with its review of the Financing Transaction. Said costs shall include, without limitation, Landlord's reasonable legal fees (whether with in-house or outside counsel or both) and disbursements relating to or arising out of Landlord's review of any such Financing Transaction, regardless of whether such Financing Transaction is consummated or approved, and Landlord's reasonable transaction processing fees charged by Landlord for Landlord's analysis and processing of Tenant's request. Any information delivered hereunder is Proprietary Information and shall be subject to the confidentiality provisions of Section 28.11 of this Lease.

#### **10.1.2 Conditions.**

Landlord's consent to any Financing Transaction may be conditioned upon, among other things, the following conditions and/or requirements (and Tenant acknowledges that the conditions in clauses (a) through (e) are reasonable given the context and terms and conditions of this Lease):

(a) the lender shall be a Financial Institution;

(b) a Lease amendment shall be executed to reflect updated or additional lease provisions for the purpose of conforming this Lease to Landlord's then standard leasing terms, practices and policies; provided no such changes would result in any material adverse effect on Tenant's obligations, liabilities or rights under this Lease or under Law, and such terms have been and are included in substantially all similar leases or amendments entered into by Landlord at or around the time of the proposed modification, or in the case of a newly adopted term, practice or policy, such terms will be included in future similar leases or amendments entered into by Landlord;

(c) the maximum loan proceeds secured by the encumbrance shall not be in excess of the greater of (i) seventy five percent (75%) of the then fair market value of the Improvements (or the as-completed value if the subject loan is being used to finance the cost of an Alteration) as determined by a third party appraisal reasonably approved by Landlord (which may be the Permitted Lender's appraisal if so approved by Landlord), or (ii) the amount required to repay the outstanding principal balance of the existing financing that encumbers the leasehold under a Permitted Encumbrance previously consented to by Landlord;

(d) the loan secured by the encumbrance shall have a payment term that provides for the full repayment of the loan prior to the Expiration Date of the then current Term of this Lease; and

(e) Tenant shall have provided to Landlord pursuant to Section 10.1.1: (i) the Financing Transaction term sheet, application or commitment or comparable summary of loan terms, (ii) a recent appraisal supporting the Financing Transaction, (iii) certified financial statements of Tenant for not less than the past two (2) years to the extent Tenant is in existence for two (2) years and has separate financial statements (or, in lieu thereof or in addition thereto, financial statements of any guarantor of Tenant's obligations under this Lease for not less than the past two (2) years), (iv) the draft and, to the extent available, final loan documents and (v) such other documents, information and materials relating to the Financing Transaction as Landlord may reasonably request in accordance with the timing and conditions of Section 10.1.1.

## **10.2 Definition of "Permitted Lender" and "Permitted Encumbrance".**

The term "**Permitted Lender**" as hereinafter used in this Lease means the lender under the Financing Transaction holding a mortgage, deed of trust or other similar security interest constituting a first lien on Tenant's interest in this Lease which has been consented to in writing by Landlord as provided above ("**Permitted Encumbrance**").

## **10.3 Rights of Permitted Lender.**

### **10.3.1 Voluntary Lease Surrender.**

If Tenant owes the Permitted Lender any amounts under the Permitted Encumbrance, Landlord will not accept the voluntary surrender, cancellation, or termination of this Lease by



Tenant before the Term expires unless the Permitted Lender provides prior written consent. Nothing in this Section 10.3.1 shall impair Landlord's right to terminate this Lease as a result of Tenant's Event of Default or by reason of Landlord's other rights to terminate as set forth in this Lease, subject to the Permitted Lender's notice and cure rights pursuant to Section 10.3.2 below, if applicable.

### 10.3.2 Right to Cure/New Lease.

(a) *Notice of Default.* So long as the loan secured by the Permitted Encumbrance remains unsatisfied, Landlord hereby agrees to concurrently provide the Permitted Lender a copy of any written notice of any default which Landlord gives to Tenant, whereupon the Permitted Lender shall have the right, but not the obligation, to cure such default or Event of Default by Tenant within (i) thirty (30) days after the expiration of the period in which Tenant may cure any Event of Default in the payment of Rent, or (ii) subject to the terms of this Section 10.3.2, within ninety (90) days after the expiration of the period in which Tenant may cure any other Event of Default under this Lease.

(b) *Possession Required.* If an Event of Default as specified in part (ii) of Section 10.3.2(a) cannot be cured until the Permitted Lender has obtained possession of the Premises through foreclosure or otherwise, and if the Permitted Lender has delivered to Landlord within the ninety (90) day cure period specified above Permitted Lender's written commitment (in form acceptable to Landlord in its reasonable discretion) to use commercially reasonable efforts to cure such default with due diligence upon obtaining possession of the Premises through foreclosure or otherwise, then the Permitted Lender shall have such additional time (but in no event to exceed 180 days from the date of obtaining possession of the Premises) as is reasonably necessary to cure such Event of Default; provided, however, that the Permitted Lender: (a) unless judicially stayed, commences the judicial or other foreclosure of the Permitted Encumbrance within ninety (90) days from receipt of written notice of the occurrence of any event which constitutes, or which would constitute, upon the expiration of an applicable cure period, an Event of Default under this Lease; (b) prosecutes said foreclosure with due diligence; and (c) cures, during said period, all monetary Events of Default and, during the period of said stay and/or foreclosure, continues to pay and perform during said period of stay and/or foreclosure all other monetary obligations of Tenant in a timely manner, including, without limitation, payment of all Rent, taxes, assessments, utility charges, insurance premiums and all other amounts required to be paid by Tenant under this Lease. Notwithstanding anything herein to the contrary, nothing herein shall require a Permitted Lender who has taken possession of the Premises to cure any non-monetary Event of Default that, by its nature, is not capable of being cured by the Permitted Lender, such as a Bankruptcy Event (an "**Incurable Default**"), and such Incurable Default shall be deemed to be waived following the Permitted Lender's taking possession of the Premises and provided that Permitted Lender has timely cured all monetary Events of Default and, following taking possession all other non-monetary Events of Default that are of a continuing nature. In no event shall Tenant's waste or failure to maintain be an Incurable Default.

(c) *No Termination by Landlord.* Landlord will not terminate this Lease by reason of a default or Event of Default by Tenant provided that the Permitted Lender (A) has cured and continues to cure all Events of Default under the Lease in the payment of Rent in a timely manner as provided in Section 10.3.2(a)(i) above, and (B) has cured all other Events of Default in a timely manner as provided in Sections 10.3.2(a)(ii) and 10.3.2(b) above, other than any Incurable Default.

(d) **New Lease.** In the event of a termination of this Lease by reason of a surrender, cancellation, or termination by Tenant, or as a result of the rejection or disaffirmance of this Lease pursuant to bankruptcy law or other Laws affecting creditors rights, or as a result of a termination of this Lease by Landlord in violation of Section 10.3.2(c) above, then Landlord shall deliver notice to Permitted Lender that the Lease has been terminated. The notice shall include a statement of all amounts that would be due under this Lease but for the termination, and all other defaults then known to Landlord. The Permitted Lender shall then have the option, to be exercised within thirty (30) days following receipt of such notice of termination to enter into a new lease ("**New Lease**") with Landlord, on the following terms and conditions:

(i) The New Lease shall commence as of the date of the termination of this Lease and shall be for the remainder of the Term, and at the Rent, terms, covenants and conditions as this Lease (but excluding any right to extend the Term).

(ii) Upon execution of the New Lease, the Permitted Lender as tenant shall pay any and all sums that would at the time of execution thereof be due under this Lease, but for termination, and shall pay all expenses, costs, attorneys' fees (whether with in-house or outside counsel or both), court costs, and disbursements incurred by Landlord in connection with any Event of Default and termination, recovery of possession of the Premises, and the execution, preparation and delivery of the New Lease.

(iii) Upon execution of the New Lease, the Permitted Lender as tenant shall cure all other Events of Default under this Lease, which have not yet been cured (other than any Incurable Default), with due diligence in a timely manner in accordance with the cure periods under the Lease assuming such cure periods commence with the execution of the New Lease and without additional notice (provided that Landlord has already provided such notice of such Event of Default to Permitted Lender).

(iv) Nothing herein shall be construed to require Landlord to deliver possession of the Premises to Permitted Lender. Upon execution and delivery of the New Lease, Permitted Lender may take any and all appropriate action as may be necessary to remove parties in possession from the Premises. Landlord shall not grant any real property interest in the Premises during the thirty (30) day period set forth in Section 10.3.2(d).

Should the Permitted Lender fail to accept said offer for such New Lease in writing within said thirty (30) day period, or, having so accepted said offer, should it fail promptly to execute the New Lease or satisfy the requirements of (ii) and (iii) above in a timely manner, then the termination of this Lease shall be effective as to the Permitted Lender and the Permitted Lender shall have no further rights hereunder.

### 10.3.3 Loan Default.

If a Permitted Encumbrance is in default at any time, and the Permitted Lender is complying with the cure requirements described in Section 10.3.2 above, the Permitted Lender shall, as provided by law, have the right, without Landlord's prior consent, to:

- (a) Accept an Assignment of this Lease in lieu of foreclosure; or
- (b) Cause a foreclosure sale to be held pursuant to either judicial proceedings or power of sale as provided in its Permitted Encumbrance. Provided, however, no Assignment to the successful bidder (a "**Foreclosure Purchaser**") other than the Permitted Lender or a

designee of the Permitted Lender who is **Controlled** by or is under common Control with the Permitted Lender shall be effective without Landlord's prior written consent in accordance with Section 10.4 below.

#### **10.3.4 Assume Lease Obligations.**

Before the Permitted Lender, or any Foreclosure Purchaser, acquires the leasehold interest or concurrently therewith, it shall, as an express condition precedent, agree in writing to be bound by all provisions of, and assume each and every obligation of Tenant, under this Lease. A Permitted Lender that has: (i) acquired the leasehold interest and assumed the Tenant's obligations, or (ii) entered into a New Lease pursuant to Section 10.3.2(d) above, shall be released from all obligations under this Lease first arising after it assigns the leasehold interest to an assignee consented to by Landlord, in accordance with Section 10.4.

### **10.4 Landlord's Consent to Assignment or Transfer.**

#### **10.4.1 Landlord's Consent to Assignment.**

Landlord's prior written consent pursuant to Article 11 shall be required for the following: (i) an Assignment of this Lease to a Foreclosure Purchaser other than the Permitted Lender or a designee of the Permitted Lender who is Controlled by or is under common Control with the Permitted Lender, or (ii) an Assignment of this Lease or Sublease of all or substantially all of the Premises by the Permitted Lender or a designee of the Permitted Lender who is Controlled by or is under common Control with the Permitted Lender should the Permitted Lender or such designee become the tenant by reason of: (a) being the successful bidder upon said foreclosure, or (b) an Assignment in lieu of foreclosure, or (c) a New Lease entered into pursuant to Section 10.3.2(d) above.

#### **10.4.2 Notice of Foreclosure Sale.**

Permitted Lender shall include a statement in any notice of foreclosure sale covering the requirements under Section 10.4.1 for Landlord's consent to an Assignment upon said foreclosure.

#### **10.4.3 Assignment of Security Interest.**

(a) *Consent.* Neither Permitted Lender nor assignees or any subsequent holder of Permitted Lender's security interest in the Premises shall assign or transfer its security interest in the Premises in whole or in part without Landlord's prior written consent, in each instance. Such consent shall not be unreasonably withheld, conditioned or delayed. Although such holder shall be required to obtain Landlord's express written consent, Landlord shall not withhold such consent (and such assignee or holder will for all purposes of this Lease be deemed to be a Permitted Lender) if the Assignment is to one of the following entities and a copy of the Assignment, in a form reasonably acceptable to Landlord, is furnished to Landlord:

(i) A Financial Institution in good legal standing under the laws of its jurisdiction of incorporation having a tangible net worth exceeding One Billion Dollars (\$1,000,000,000) (which sum shall be adjusted to Constant Dollars at the beginning of each Rental Period); or

(ii) A designee of the Permitted Lender who is Controlled by or is under common Control with the Permitted Lender and that qualifies as a Financial Institution;

(iii) The United States of America or any state thereof, or any agency thereof; or

(iv) An assignee by operation of law; e.g., a state insurance department engaged in supervising the liquidation or rehabilitation of an insurance company lender.

### **10.5 Landlord's Participation in Refinance Proceeds.**

Upon each Financing Transaction, Tenant shall pay to Landlord a fee (the "**Financing Participation Fee**") in an amount equal to Two and One-half percent (2.5%) of the **Net Proceeds** of such transaction. Prior to Landlord's consent to any Financing Transaction, Tenant shall deliver to Landlord a written statement showing the calculation of the Financing Participation Fee owed to Landlord from Tenant based on the terms of the contemplated Financing Transaction (but subject to adjustment for actual, final expenses). The statement of the calculation of the Financing Participation Fee shall contain such detail as may be reasonably requested by Landlord to verify the calculation of the Financing Participation Fee. The Financing Participation Fee due Landlord shall be payable in full to Landlord concurrent with the completion of the Financing Transaction. When owed, the Financing Participation Fee shall constitute Additional Rent.

For the purposes of this Section 10.5, the term "**Net Proceeds**" shall mean with respect to a Financing Transaction, the difference between (a) the loan amount made pursuant to such Financing Transaction and (b) the sum of (i) the total of the outstanding indebtedness being paid off or refinanced by the Financing Transaction, (ii) proceeds (if any) that reimburse the Tenant for documented equity investment, and/or (iii) any portion of the debt under the Financing Transaction to be expended on improving the Premises or any District-owned land or water, less any reasonable costs or fees of the Financing Transaction payable by Tenant.

## **11. ASSIGNMENT/SUBLEASE**

### **11.1 Consent Required.**

Subject to the terms of Section 11.9, (i) no Assignment (ii) Sublease or (iii) Change in Entity of Tenant (collectively, "**Transfer**") shall be made or permitted without in each instance the prior written consent of Landlord, which consent shall not be unreasonably withheld. It is mutually agreed that Landlord is a Government Agency holding title to the Premises in trust for the citizens of California and acting as a prudent steward of the Premises and that the personal qualifications of the parties Controlling Tenant are a part of the consideration for granting this Lease. As such, a Change in Entity of Tenant is as relevant to Landlord as an Assignment of this Lease. For purposes of this Article 11, the term Sublease shall not include the rental of boat slips and dock lockers to tenants not operating a business on or from the Premises.

### **11.2 Request for Consent.**

If a Transfer is proposed, Tenant shall notify Landlord in writing, which notice (the "**Transfer Notice**") shall include (i) the proposed effective date of the Transfer, which shall not be less than sixty (60) days nor more than one hundred eighty (180) days after the date of delivery of the Transfer Notice (provided that if Tenant has not received Landlord's consent or denial of the proposed Transfer within 150 days from receipt of the Transfer Notice, the period shall

automatically be extended for thirty (30) days beyond the date on which any consent to the Transfer is provided by Landlord), (ii) with respect to a Sublease, a completed Sublease Questionnaire form District Form 317 or 320 depending on the term of the Sublease, the current forms of which are available upon request including, among other information, a description of the portion of the Premises which is proposed to be Subleased, (iii) (w) all of the terms of the proposed Transfer, (x) the name and address of the proposed transferee with respect to an Assignment or Sublease ("**Transferee**"), (y) if the Transfer is a result of a Change in Entity of Tenant, a complete description of the direct and indirect ownership and Control of Tenant just before and just after the Transfer and (z) a copy of all existing and/or proposed documentation pertaining to the proposed Transfer, including all existing operative documents to be executed to evidence such Transfer and the agreements incidental or related to such Transfer, in each case, as the same become available, (iv) a statement of any current litigation or litigation which was resolved within the prior five (5) years affecting the proposed Transferee or persons or entities acquiring an interest resulting in a Change in Entity of Tenant or a Tenant Parent, (v) current financial statements of the proposed Transferee certified by a reputable, certified public accountant to the extent available (which shall be audited if that is the customary practice of the Transferee) and if not then available due to lack of operating history, of any proposed guarantor or parent of the Transferee, and (vi) such other information as Landlord may reasonably require and request within twenty (20) days after receipt of the notice of Transfer from Tenant or the Transferee. Any Transfer made without Landlord's prior written consent shall, at Landlord's option, be null, void and of no effect, and shall, at Landlord's option, constitute a default by Tenant under this Lease upon written notice thereof to Tenant. Whether or not Landlord shall grant consent, Tenant shall pay Landlord's reasonable legal fees (whether with in-house or outside counsel or both) and other fees and costs incurred by Landlord pursuant to the Reimbursement Procedure, regardless of whether such transaction is consummated. Any Transfer shall be subject to the terms and provisions of this Lease. Notwithstanding anything to the contrary in this Lease, if Tenant claims that Landlord has unreasonably withheld or delayed its consent under this Article 11 or otherwise has breached or acted unreasonably under this Article 11, Tenant's sole remedies shall be a declaratory judgment and an injunction for the relief sought without any monetary damages, and Tenant hereby waives the provisions of § 1995.310 of the California Civil Code, or any successor statute, and all other remedies. The burden of producing evidence and the burden of proof showing Landlord that a prospective Transferee meets each and all of the aforesaid qualifications and standards shall be on the Tenant.

### **11.3 Consent Factors.**

If Landlord consents to any Transfer, Tenant may within one hundred eighty (180) days after the date of delivery of the Transfer Notice (or such longer period as referenced in Section 11.2 above), enter into such Transfer of Tenant's interest in the Premises or portion thereof, upon the same terms and conditions as are set forth in the Transfer Notice furnished by Tenant to Landlord, provided that if there are any material adverse changes to the financial condition of the Transferee or any other material changes to any proposed Transfer terms specified in the Transfer Notice, Tenant shall again submit the Transfer to Landlord for its approval and other action under this Article 11.

Without limitation of Landlord's right to withhold its consent for other reasonable reasons, the parties hereby agree that it shall be reasonable under this Lease and under any applicable Laws for Landlord to withhold consent to any proposed Transfer where Landlord determines in its reasonable discretion that one or more of the following apply (it being understood that for the purposes of this Sections 11.3 and 11.5 in the case of a Change in Entity of Tenant, references to "Transferee" shall mean Tenant following the Change in Entity):

**11.3.1 Insufficient Experience.**

The Transferee is not experienced in the ownership or management of similar projects or the proposed Transferee lacks sufficient business reputation and experience to operate a successful business of the type and quality contemplated under this Lease;

**11.3.2 Inconsistent Use.**

The Transferee's proposed use of the Premises following the proposed Transfer will not be for the Permitted Use or the quality of the use is not of the quality contemplated under this Lease;

**11.3.3 Reputation.**

The Transferee (i) is not reputable (a reputation for dishonesty, criminal conduct or association with criminal elements), (ii) is of a character or reputation or engaged in a business which is not consistent with the quality or reputation of the Project, or may reflect adversely on the quality or reputation of the business conducted from the Premises or (iii) has a history of, or a reputation for, either discriminatory employment practices which violate any Laws or non-compliance with Environmental Laws;

**11.3.4 Financial Stability.**

The Transferee (or any proposed guarantor of all of Transferee's obligations under this Lease) is not a party of sufficient financial worth and financial stability in light of the Tenant obligations under this Lease;

**11.3.5 Default.**

At the time of request or Transfer, there has been an Event of Default under this Lease or any other lease between Landlord and Tenant or an entity that is Controlled by or under common Control with Tenant or which Controls Tenant (after applicable notice and cure periods) of its lease with Landlord;

**11.3.6 Other Grounds.**

Any other reasonable grounds considering the unique nature and interests of the Landlord including the fact that Landlord holds the Premises in trust for the people of the State of California and Landlord's duty of care in administering a valuable public resource.

Tenant acknowledges and agrees that each of the grounds set forth in Section 11.3 above in the event of proposed Transfer is a reasonable restriction on Transfer for purposes of California Civil Code § 1951.4. The burden of producing evidence and the burden of proof showing Landlord that a prospective Transferee meets each and all of the aforesaid qualifications and standards shall be on the Tenant.

**11.4 Effect of Transfer.**

If Landlord consents to a Transfer, (i) the terms and conditions of this Lease shall in no way be deemed to have been waived or modified, (ii) such consent shall not be deemed consent to any further Transfer by either Tenant or a Transferee, (iii) Tenant shall deliver to Landlord, within ten

(10) days after execution, an original executed copy of all documentation pertaining to the Transfer, and any document evidencing a Transfer shall be in form reasonably acceptable to Landlord, and (iv) no Transfer relating to this Lease or agreement entered into with respect thereto, whether with or without Landlord's consent, shall relieve Tenant or any guarantor of the Lease from liability under Articles 19, 21, and/or 22.

### **11.5 Transfer Conditions.**

In the event Landlord consents to any Transfer (other than for a Sublease for less than twenty-five percent (25%) of the floor area of the Improvements computed in the aggregate for one or a series of transactions), then at Landlord's election said consent shall be conditioned upon the following: (i) the Transferee (other than a Subtenant under a Sublease of less than all or substantially all of the Premises) shall agree to be bound by all provisions, and assume each and every obligation, under this Lease (including those obligations arising or pertaining to periods prior to the effective date of the Transfer), or in the case of a Subtenant under a Sublease of less than all or substantially all of the Premises, such Subtenant shall execute a document reasonably acceptable to Landlord acknowledging that all rights of the Subtenant are subject to all terms and conditions of this Lease as the same relate to the space subject to the Sublease; (ii) if deemed necessary by Landlord, a Lease amendment shall be executed to reflect updated or additional reasonable lease provisions; (iii) if as of the proposed effective date of the Transfer, the Rent being paid under this Lease is less than market rent (as reasonably determined by Landlord), the Rent payable hereunder as of the effective date of the Transfer shall be increased to the then applicable market rate; (iv) Transferee shall comply with other conditions and qualifications reasonably determined by the BPC; and (v) in the case of a Sublease, the Subtenant shall execute an attornment agreement as provided in Section 11.6 below.

### **11.6 Subtenant Attornment.**

Every Sublease hereunder is subject to the express condition, and by accepting a Sublease hereunder each Subtenant shall be conclusively deemed to have agreed, that if this Lease terminates or if Landlord succeeds to Tenant's estate in the Premises, the Subtenant shall, at the option of Landlord, attorn to and recognize Landlord as the Subtenant's landlord under the Sublease, provided that Landlord shall not (i) be liable for any act or omission or negligence of Tenant, (ii) be subject to any counterclaim, offset or defense which theretofore accrued to such Subtenant against Tenant, (iii) be bound by any payment of Rent or other sums of money for more than one (1) month in advance or any security deposit (unless actually received by Landlord), (iv) be obligated to perform any work in the sublet space, (v) in the event of a casualty, be obligated to repair or restore Improvements, (vi) in the event of a partial Taking, be obligated to repair or restore Improvements, (vii) be obligated to make any payment to such Subtenant, or (viii) be bound by any obligations that Landlord lacks the capacity to perform; provided, however, that, if Subtenant is not in default of its obligations under the Sublease (including any repair and/or restoration obligations) and Landlord elects not to perform any of the obligations set forth in clause (v) to the extent that (a) the Subtenant has not caused such casualty, (b) such casualty affects the entirety of Subtenant's operations on the Premises and/or the Improvements, as applicable, and (c) in such case, Subtenant has a right to terminate the Sublease, or clause (vi) to the extent that such partial Taking affects the Subtenant's operations in their entirety on the Premises and/or the Improvements, as applicable, and in such case Subtenant has a right to terminate the Sublease, then Subtenant shall have the right to terminate the applicable Sublease, in its reasonable discretion, by providing notice thereof to Landlord. Any Subtenant shall promptly execute and deliver any instrument Landlord may reasonably request to evidence such attornment. Upon early termination of this Lease, Tenant shall pay over to Landlord all sums held

by Tenant for the benefit of Subtenants or as security under the provisions of the existing Subleases. In addition, at Tenant's request, Landlord may agree, in its sole and absolute discretion and without incurring any liability whatsoever and with no obligation to Tenant or Subtenant, to negotiate a non-disturbance agreement with a Subtenant with a Sublease in excess of 50% of the Premises if Landlord has previously approved the Sublease in writing to such Subtenant pursuant to which such non-disturbance agreement Landlord would agree not to disturb the possession of such Subtenant in the event this Lease is terminated.

#### **11.7 Sublease Rent Requirements.**

Subject to the terms of any Permitted Encumbrance, each Sublease shall require the Subtenant thereunder to make all payments of Rent and other sums of money to Landlord during the existence of a default hereunder and following written notice of the same from Landlord, and Landlord shall apply said payments made to all Rent that is due and payable to Landlord pursuant to this Lease, and any remaining amounts will be held and applied to future Rent payable under this Lease.

#### **11.8 Reporting of Sublease Information.**

If Tenant has entered into any Subleases, then within thirty (30) days of request from Landlord and within sixty (60) days after the end of each calendar year, Tenant shall submit to Landlord a rent roll in the form of Exhibit F attached hereto containing the information described therein for each Sublease then in effect, along with a site plan showing locations of any Subleases.

#### **11.9 Permitted Lender and Foreclosure Purchasers.**

The foregoing provisions of this Article 11 shall not apply to the following Transfers, which are governed by Sections 10.3 and 10.4: (i) a Transfer to a Permitted Lender or a designee of the Permitted Lender who is Controlled by or is who is under common Control with the Permitted Lender pursuant to the foreclosure of the Permitted Encumbrance or an Assignment in lieu of foreclosure or (ii) a Transfer to a Foreclosure Purchaser.

#### **11.10 Landlord Participation Fee.**

Upon each (i) Assignment of this Lease pursuant to this Article 11 to a Third Party (as defined below) , (ii) a sale of substantially all of the assets of Tenant (whether through one transaction or a series of transactions) to a Third Party or a Change in Entity of Tenant or (iii) Sublease of all or substantially all of the Premises to a Third Party (any of the transactions in clauses (i), (ii) or (iii), a "**Fee Generating Transfer**"), Tenant shall pay to Landlord a fee (the "**Assignment Participation Fee**") in an amount equal to (x) in the event the Fee Generating Transfer is a result of a Change in Entity of the Approved Parent, the amount of \$400,000 and (y) in the event of any other Fee Generating Transfer, Two and One-half percent (2.5%) of the Gross Proceeds of such transaction (for the avoidance of doubt, this clause (y) shall not apply to any Change in Entity of Tenant that arises from a Change in Entity of Approved Parent). Prior to Landlord's consent to any transaction subject to an Assignment Participation Fee, Tenant shall deliver to Landlord a written statement showing the calculation of the Assignment Participation Fee owed to Landlord from Tenant based on the terms of the contemplated transaction (but subject to adjustment for actual, final expenses). The statement of the calculation of the Assignment Participation Fee shall contain such detail as may be reasonably requested by Landlord to verify the calculation of the Assignment Participation Fee for such transaction. The Assignment Participation Fee due Landlord shall be payable in full to Landlord concurrent with the completion of the Fee Generating



Transfer transaction and shall be a joint and several obligations of the transferee and transferor. When owed, the Assignment Participation Fee shall constitute Additional Rent.

For the purposes of this Section 11.10, the term "**Third Party**" shall mean any Person other than (i) (w) Additional UK Guarantor and Additional US Guarantor (collectively, the "**Approved Parent**"), (x) a wholly owned, direct or indirect, subsidiary of Approved Parent, (y) the partners, members, or shareholders, as the case may be, of Approved Parent, as of the date of this Lease (the "**Existing Owners**"), or (z) to an entity that is Controlled (which for purposes hereof must satisfy both prongs (i) and (ii) of the definition of Controlled), directly or indirectly, by one or more of the Existing Owners, (ii) a Permitted Lender (or a designee of the Permitted Lender who is Controlled by or is under common Control with the Permitted Lender), (iii) an assignee of a Permitted Lender (or a designee of the Permitted Lender who is Controlled by or is under common Control with the Permitted Lender) (whether the Permitted Lender acquires the leasehold interest under this Lease by foreclosure or deed-in-lieu of foreclosure or pursuant to a new lease); provided, however, that if the Gross Proceeds paid by the assignee exceed the Aggregate Debt Amount (as defined below), then such assignee of the Permitted Lender (or a designee of the Permitted Lender who is Controlled by or is under common Control with the Permitted Lender) shall be a Third Party. The term "**Aggregate Debt Amount**" shall mean the aggregate amount of the outstanding principal, interest and other amounts secured by the applicable Permitted Encumbrance at the time of acquisition by the Permitted Lender of the leasehold interest in the Premises.

For the purposes of this Section 11.10, with respect to any Fee Generating Transfer, the term "**Gross Proceeds**" shall mean the purchase price or other consideration paid (either in cash or by an assumption of debt or other consideration and, if paid over time, the present value of the total consideration using the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%)) to the Tenant and/or holders of direct or indirect interests in Tenant in connection with such Fee Generating Transfer less the sum of (x) any prorations, brokerage fees, closing costs or other customary deductions to the purchase price for which the seller is responsible (and provided such amounts are reasonable), and (y) if the Third Party is the assignee of a Permitted Lender (or a designee of the Permitted Lender who is Controlled by or is under common Control with the Permitted Lender), the Aggregate Debt Amount.

Upon the request of Landlord from time to time (which request shall be no more frequent than once per year), Tenant shall provide Landlord with a schedule listing the names and mailing address of all holders of a Controlling interest (direct or indirect (at all levels) interests) in Tenant other than holders of interests traded on a recognized public exchange and excluding any limited partners in fund investment vehicles that do not Control such investment vehicles. In the event that such shareholder, partner, member or other interest holder is a trust, Tenant shall include in such schedule the name and mailing address of each trustee of said trust, together with the names and mailing addresses of each beneficiary of said trust.

## 12. DEFAULTS AND REMEDIES

### 12.1 Defaults.

In addition to any terms hereof expressly providing for a default hereunder, the occurrence of any one (1) or more of the following events shall constitute an "**Event of Default**" by Tenant hereunder:

**12.1.1 Abandonment of the Premises.**

"Abandonment" is herein defined to include, but is not limited to, any absence by Tenant from the Premises for ten (10) consecutive days or longer other than due to a Force Majeure Event.

**12.1.2 Failure to Pay.**

Failure by Tenant to pay, when due, any Rent, other payment, and/or charge herein, is where such failure continues for a period of five (5) days after written notice from Landlord; provided that such notice period shall be in lieu of, and not in addition to, any notice periods required by Law.

**12.1.3 Failure to Perform.**

Failure by Tenant to perform any express or implied covenants or conditions in this Lease (other than as provided in the other subsections in this Section 12.1), should such failure continue for thirty (30) days after written notice thereof is given to Tenant; provided that if the nature of such failure is such that the same cannot reasonably be cured within such thirty (30) day period, Tenant shall not be deemed to be in default if it diligently commences such cure within such period and thereafter diligently proceeds to rectify and cure such failure, but in no event exceeding a period of time in excess of ninety (90) days after written notice thereof from Landlord to Tenant.

**12.1.4 Bankruptcy Event.**

The occurrence of a Bankruptcy Event.

**12.1.5 Specified Defaults.**

The occurrence of any event expressly stated to constitute a default under the Lease.

**12.1.6 Other Agreements.**

Tenant or an entity that is Controlled by or under common Control with Tenant or which Controls Tenant is in default (after applicable notice and cure periods) under any other agreement between Landlord and Tenant or such entity.

**12.2 Remedies.**

Upon any Event of Default, Landlord may, in addition to all other rights and remedies afforded Landlord hereunder or by law or equity, take any one or more of the following actions:

**12.2.1 Termination of Lease.**

Terminate this Lease by giving Tenant written notice thereof, in which event Tenant shall immediately surrender the Premises to Landlord. In the event that Landlord shall elect to so terminate this Lease, then Landlord may recover from Tenant:

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

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

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

(d) Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, without limitation, the cost of recovering possession of the Premises, expenses of reletting (including necessary repair, renovation and alteration of the Premises), reasonable attorneys' fees (whether with in-house or outside counsel or both), and any other reasonable costs; plus

(e) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable California law.

**AS USED IN SUBSECTIONS (A) AND (B) ABOVE, THE "WORTH AT THE TIME OF AWARD" IS COMPUTED BY ALLOWING INTEREST AT THE DEFAULT RATE. AS USED IN SUBSECTION (C) ABOVE, THE "WORTH AT THE TIME OF AWARD" IS COMPUTED BY DISCOUNTING SUCH AMOUNT AT THE DISCOUNT RATE OF THE FEDERAL RESERVE BANK OF SAN FRANCISCO AT THE TIME OF AWARD PLUS ONE PERCENT (1%).**

Failure by Landlord to enforce one or more of the remedies herein provided upon an Event of Default shall not be deemed or construed to constitute a waiver of such Event of Default. Tenant hereby waives for Tenant and for all those claiming under Tenant all rights now or hereafter existing to redeem by order or judgment of any court or by any legal process or writ, Tenant's right of occupancy of the Premises after any termination of this Lease.

#### **12.2.2 Continue Lease in Effect.**

Landlord shall have the remedy described in California Civil Code § 1951.4 (Landlord may continue this Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due if Tenant has the right to sublet or assign this Lease, subject only to reasonable limitations).

#### **12.2.3 Perform Acts on Behalf of Tenant.**

Perform any act Tenant is obligated to perform under the terms of this Lease (and enter upon the Premises in connection therewith if necessary) in Tenant's name and on Tenant's behalf, without being liable for any claim for damages therefor, and Tenant shall reimburse Landlord on demand for any expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease (including, but not limited to, collection costs and legal expenses, whether with in-house or outside counsel or both), plus interest thereon at the Default Rate.

#### **12.2.4 Payment by Tenant.**

Require Tenant to pay to Landlord all costs incurred by Landlord (including court costs and reasonable attorneys' fees (whether with in-house or outside counsel or both) and expenses and staff time) in: (1) obtaining possession of the Premises; (2) removing and storing Tenant's or

any other occupant's property; (3) repairing, restoring, altering, remodeling, or otherwise putting the Premises into condition acceptable to a new tenant; (4) performing Tenant's obligations which Tenant failed to perform; and (5) enforcing, or advising Landlord of, its rights, remedies, and recourses arising out of the Event of Default.

#### **12.2.5 Assignment of Plans and Other Matters.**

If this Lease is terminated or Landlord otherwise takes possession of the Premises by reason of Tenant's Event of Default, Tenant hereby agrees that, if Landlord so requests, (i) Tenant, at Tenant's sole cost and expense, shall assign and transfer to Landlord all of Tenant's right, title and interest in and to all plans, drawings, specifications, permits, approvals, warranties, entitlements, and other similar property and instruments relating to the Premises, free and clear of liens and claims by third parties, and (ii) Tenant shall execute and deliver to Landlord, within five (5) business days of Landlord's request, in a form provided by and acceptable to Landlord, an instrument confirming the Assignment and transfer of such property and interests to Landlord and shall, within such five (5) business day period, deliver the originals of such plans, drawings, specifications, permits, approvals, warranties, entitlements, and other similar property and instruments relating to the Premises to Landlord. Tenant agrees to reasonably cooperate with Landlord at no cost or expense to Landlord in seeking any consent from the preparer of any plans, drawings, specifications, permits, approvals, warranties, entitlements, and other similar property and instruments relating to the Premises, to the extent assignable, to this Assignment which may be required for Landlord to rely on such plans, drawings, specifications, permits, approvals, warranties, entitlements, and other similar property and instruments relating to the Premises.

### **13. BANKRUPTCY**

#### **13.1 Bankruptcy Event.**

Upon occurrence of a Bankruptcy Event, Landlord shall have all rights and remedies available pursuant to Article 12. After the commencement of a Bankruptcy case: (i) the Tenant shall perform all post-petition obligations of Tenant under this Lease; and (ii) if Landlord is entitled to damages (including unpaid Rent) from and after any order for relief pursuant to the terms of this Lease, then all such damages shall be entitled to administrative expense priority pursuant to the Bankruptcy Code. Tenant acknowledges that this Lease is a lease of nonresidential real property and therefore Tenant, as the debtor in possession, or the trustee shall not seek or request any extension of time to assume or reject this Lease or to perform any obligations of this Lease which arise from or after the order of relief.

#### **13.2 Assignment/Assumption.**

Any Person to which this Lease is assigned pursuant to the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of Assignment, and any such assignee shall upon request by Landlord execute and deliver to Landlord an instrument confirming such assumption in a form acceptable to Landlord. If the Tenant desires to assume and assign this Lease under the Bankruptcy Code to any Person who shall have made a bona fide offer, then the Tenant shall give Landlord written notice of such proposed Assignment (which notice shall set forth the name and address of such Person, all of the terms and conditions of such offer, and the adequate assurance to be provided Landlord to assure such Person's future performance under this Lease) prior to the date Tenant shall make application to the appropriate court for authority and approval to enter into such Assignment and assumption. Landlord shall thereupon have the prior right and option, to be exercised by notice

to the Tenant given at any time prior to the effective date of such proposed Assignment, to accept an Assignment of this Lease upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such Person, less any brokerage commissions which may be payable out of the consideration to be paid by such Person for the Assignment of this Lease. If the Tenant fails to assume or assume and assign this Lease in accordance with the requirements of the Bankruptcy Code within the period provided by the Bankruptcy Code or allowed by the Bankruptcy Court, then the Lease shall be deemed rejected and the Landlord shall have all rights and remedies available to it pursuant to Section 12.2. At any time during the Term, upon not less than ten (10) business days' prior written notice, Tenant shall provide Landlord with audited financial statements for Tenant for not less than the past two (2) years (or such shorter period of time as Tenant has existed if such financial statements have been created for less than two (2) years) or, in lieu thereof or in addition thereto, financial statements of any guarantor of Tenant's obligations under this Lease for not less than the past two (2) years. Such statements are to be certified by an authorized representative of Tenant (or Guarantor, as applicable) to be true, correct and complete in all material respects, prepared in accordance with generally accepted accounting principles and audited by any independent certified public accountant. Any financial statements delivered hereunder shall be Proprietary Information and shall be subject to the confidentiality provisions of Section 28.11 of this Lease.

### **13.3 Adequate Assurances.**

In the event Tenant or proposed assignee under Section 13.2 proposes under the Bankruptcy Code to cure any default under this Lease or to assume or assign this Lease and is obliged to provide adequate assurance to Landlord that (a) a default shall be cured, (b) Landlord shall be compensated for its damages arising from any breach of this Lease and (c) future performance of Tenant's obligations under this Lease shall occur, then such adequate assurances shall include all of the following, as designated by Landlord in its sole and absolute discretion:

- (a) Those acts specified in the Bankruptcy Code or other applicable laws as included within the meaning of "adequate assurance";
- (b) A prompt cash payment to compensate Landlord for any monetary defaults or actual damages arising directly from a breach of this Lease;
- (c) A cash deposit in an amount at least equal to the then-current amount of the Security Deposit; and
- (d) The assumption or Assignment of all of Tenant's interest and obligations under this Lease.

## **14. EMINENT DOMAIN**

### **14.1 Eminent Domain.**

If all or any portion of the Premises shall be condemned pursuant to exercise of the power of eminent domain, or acquired under an actual threat of the exercise of such power (collectively, "**Condemnation**") the rights and obligations of Landlord and Tenant with respect thereto shall be as set forth in this Article 14. Nothing in this Article 14 shall be interpreted to prevent Landlord from exercising its power of eminent domain as to Tenant's leasehold interest and/or Premises in accordance with applicable Laws.

**14.2 Notice of Condemnation.**

If either party hereto receives notice of any Condemnation or intended Condemnation (including, without limitation, service of process), within five (5) business days of receipt, the party in receipt thereof shall deliver to the other party an exact copy of such notice of or relating to any intended Condemnation and the date such notice was received.

**14.3 Representation of Interest.**

Landlord and Tenant shall each have the right to represent its respective interests in such proceeding or negotiation with respect to a Condemnation or intended Condemnation and to make full proof of its claims. Landlord and Tenant each agrees to execute and deliver to the other any instrument which may be required to effectuate or facilitate the provisions of this Article 14.

**14.4 Early Termination.**

In the event of a Condemnation of all of the Premises or such portion of the Premises so that Tenant cannot reasonably and economically use the remainder of the Premises for the purposes permitted under this Lease (as reasonably determined by Tenant and approved by Landlord in its reasonable discretion), this Lease shall terminate as of the date of such Condemnation. A termination of this Lease pursuant to this section shall act to relieve Tenant from any further liability under this Lease except as to obligations accruing or arising on or prior to termination or which are otherwise required to be performed in connection with such termination or surrender of the Premises or which otherwise expressly survive termination. Tenant shall deliver the Premises to Landlord in the condition required for the surrender of the Premises under this Lease.

**14.5 Partial Condemnation.**

If only a portion of the Premises is subject to Condemnation and this Lease is not terminated pursuant to Section 14.4 above, then this Lease shall continue in full force and effect upon the same terms and conditions as set forth herein, and the Monthly Rent shall be reduced in proportion to the reduction in the value of the Premises after the Condemnation as compared to the value of the Premises immediately prior to the Condemnation (as reasonably determined by Landlord and approved by Tenant in its reasonable discretion).

**14.6 Temporary Condemnation.**

If any portion of the Premises, including the entirety thereof, is subject to a temporary Condemnation, then this Lease shall continue in full force and effect and there shall be no adjustment or abatement in Rent during the term of such temporary Condemnation unless the term of such Condemnation extends beyond sixty (60) days. Any portion of an award, settlement or other compensation or damages which may be given for such temporary Condemnation attributable to the Term shall be the property of Tenant and any portion attributable to any period following the expiration of the Term shall be the property of Landlord. As used herein, a "temporary Condemnation" shall mean any taking which is not intended by the condemning authority to be permanent at the time such Condemnation initially occurs.

## 14.7 Award.

### 14.7.1 Leasehold Award.

In the event of any Condemnation of all or any portion of the Premises (other than a temporary Condemnation), Landlord shall be entitled to any and all awards and/or settlements or other compensation or damages which may be given for (a) any "bonus value" respecting this Lease (i.e., the excess value of the leasehold arising from the fact that the scheduled rent is less than the market rent for the Premises), and (b) the land (and water, if applicable) comprising the Premises and any Existing Improvements. Any and all other awards and/or settlements or other compensation or damages (collectively, "**Leasehold Award**") for Improvements constructed by Tenant and the leasehold estate created by this Lease (excluding any bonus value thereof) shall be paid as follows:

(a) Provided this Lease is not terminated pursuant to Section 14.4 above, the portion of the Leasehold Award determined by Landlord to be reasonably necessary to repair and restore the Premises shall be payable in trust to any Permitted Lender that is a Financial Institution, if any, and shall be disbursed for the payment of the costs of repairing and restoring the remaining portion of the Premises to substantially its value, condition and character prior to such Condemnation to the extent the same may be feasible. If there is no Permitted Lender that is a Financial Institution or if there is but the Permitted Lender declines to act as a trustee for the disbursement of funds as provided above, then such Leasehold Award shall be payable in trust to a bank or trust company doing business in the County of San Diego agreed upon by the parties, or if the parties fail to agree, to Bank of America, N.A., or its successor, and shall be disbursed by such trustee as provided above. If the Permitted Lender is the trustee, the Permitted Lender may disburse the progress payments in accordance with its normal loan disbursement procedures (e.g. upon receipt of appropriate mechanics lien releases, invoices, etc.) so long as such disbursement procedures are reasonably acceptable to Landlord and ensure that the Leasehold Award is applied to the costs of repairing and restoring the Premises.

(b) If this Lease is terminated pursuant to Section 14.4, or if there are excess proceeds available after completion of the repair and restoration of the Premises as provided above, then any portion of the Leasehold Award not used for the repair and restoration of the remaining portion of the Premises pursuant to subsection (a) above, or used to place the Premises in the condition required for the surrender of same to Landlord, shall be divided between Landlord and Tenant, with Landlord to receive a sum computed by multiplying such excess funds awarded with respect to such Improvement by a fraction, the numerator of which shall be the number of years (or portion thereof) of the Term that have, at the time of such Condemnation, expired, and the denominator of which shall be the total number of years in the full Term. The remaining amount shall be paid to Tenant, subject to the Permitted Lender's rights under subsection (c) below.

(c) Any portion of the Leasehold Award relating to Improvements and not used as described in subsection (a) and (b) and which is payable to Tenant pursuant to subsection (b) shall be paid to the Permitted Lender to be applied against the indebtedness that is secured by its Permitted Encumbrance to the extent such payment is required to be made by Tenant pursuant to the terms of the Permitted Encumbrance held by the Permitted Lender.

(d) Any remaining portion of the Leasehold Award after payment as described above shall be paid to Tenant. Notwithstanding the foregoing sentence, with respect to any Leasehold Award received in connection with any Condemnation for street widening or the

installation of utilities, public sidewalks or walkways which occurs at any time following the Commencement Date, and provided such Condemnation does not result in material physical damage to then existing buildings or driveways, parkway access or access ways serving the Improvements, and which does not permanently and materially impair Tenant's use of or operations on the Premises, Landlord instead of Tenant, shall be entitled to receive, in addition to any award otherwise payable to Landlord pursuant to this Article, all of that portion of the Leasehold Award distributed to Tenant pursuant to this subsection (d).

(e) In addition to any other amounts to which Tenant is entitled as set forth above, Tenant shall be entitled to pursue any rights and remedies it may have against such condemning authority for: (i) any of Tenant's personal property (including, without limitation, any dry docks) that Landlord does not have the option to retain at the expiration of the Term; (ii) compensation pursuant to the provisions of California Government Code § 7262 et seq.; (iii) compensation for loss of good will pursuant to California Code of Civil Procedure § 1263.510 et seq.; and (iv) any other personal rights and remedies to which the occupant and user of the condemned portion of the Premises may be entitled under law. Said amounts shall not be deemed a part of an "award" as provided above.

(f) Nothing in this Article 14 shall be construed to allow Tenant to prosecute any claim against the condemning authority or Landlord which would diminish or otherwise adversely affect the Leasehold Award or Landlord's rights herein.

#### **14.7.2 Default.**

Anything in this Article to the contrary notwithstanding, Tenant shall not be entitled to any funds, awards, rights, benefits or entitlement of any kind arising from or out of a Condemnation, except so far as is designated for damage to Tenant's personal property, if the same occurs during the period in which an Event of Default exists under this Lease or after Landlord has exercised any remedy referred to in Section 12.2 above by reason of Tenant's Event of Default. Tenant shall be entitled to any award allocated by a court of competent jurisdiction to Tenant's personal property.

## **15. MAINTENANCE AND REPAIR**

### **15.1 Maintenance and Repair.**

The Premises and all Improvements, both inside and outside, shall be put and kept free of deferred maintenance and in good appearance and good and safe operating condition and repair by Tenant at Tenant's sole cost and expense and consistent with or superior to the standard of maintenance in Tenant's industry according to the Permitted Use. Tenant, at its sole cost and expense, shall be fully responsible for all care, maintenance, repair, and replacement (if required) of the Premises (excluding the Landlord owned Public Art Elements) and all Improvements as necessary to keep the Improvements free of deferred maintenance and in good and safe operating condition and repair except for reasonable wear and tear and casualty. Tenant acknowledges that over the Term of this Lease, that in order to adhere to these maintenance and repair standards, certain repairs and replacements which are accounted for as capital expenditures will be required and that regular capital reinvestment should therefore be anticipated and that capital reinvestment for such purposes does not qualify Tenant for an extension of the Term. Tenant also acknowledges that capital expenditures related to maintenance and repair so as to keep or return the Improvements to their original condition are not to be equated with capital expenditures for a major refurbishment or renovation representing an upgrade to the appearance



and/or operation of the Improvements which extends its useful life. Without limitation of the foregoing, Tenant shall perform all maintenance and make all repairs and replacements, ordinary as well as extraordinary, structural or otherwise, which may be necessary or required so that all times the Premises and the Improvements (together with all equipment, trade fixtures, mechanical and utility systems, paving, landscaping, installations and appurtenances) shall be free of deferred maintenance and in good operating condition and repair, satisfactory to Landlord in its sole discretion except for reasonable wear and tear which does not adversely affect the appearance and condition of the Premises or Improvements. Further, Tenant shall provide containers for the collection of trash and garbage outside the Improvements, which may require Landlord's approval, and keep the Premises in a clean, safe, healthy and sanitary condition, free and clear of rubbish, litter, and any fire hazards. Tenant's maintenance shall include, without limitation, all preventive maintenance, painting and replacements necessary to maintain and preserve the Premises and Improvements, and compliance with the Best Management Practices ("**BMPs**") set forth in the Jurisdictional Runoff Management Program incorporated by reference in Article 10 of the San Diego Unified Port District Code.

Prior to Tenant performing any non-routine repairs or replacements (i.e., those not occurring with an expected or known frequency in the normal course of business) to the structure of the building or building systems or which will substantially interfere with the typical operation of the Improvements, or affect the portions of the Improvements generally accessible to the public (if any) such as the lobby area of a hotel, plans and specifications for such repair or replacement must first be submitted to Landlord and receive Landlord's written approval, pursuant to the procedures provided in Article 6 herein as if such repairs or replacements were Alterations; provided that, if Tenant has timely and properly submitted all required documents and Tenant is diligently pursuing approvals as required hereunder but cannot timely perform the required repairs or replacements as a result of Landlord's failure to approve (or timely approve) such repairs or replacements (or the plans and specifications related thereto), Tenant shall not be in default hereunder for failing to timely make such repairs and/or replacements, provided Tenant promptly and diligently proceeds to comply with this Section 15.1.

Tenant waives all rights to make repairs at the expense of Landlord, as provided in § 1942 of the California Civil Code, and all rights provided by § 1941 of the California Civil Code.

## **15.2 Condition in Compliance with Laws.**

Tenant, at its sole cost and expense, shall keep the Premises and Improvements (together with all equipment, trade fixtures, mechanical and utility systems, paving, installations and appurtenances) in full compliance with all applicable Laws and the requirements of any insurer providing insurance for the Premises or any part thereof.

## **15.3 Performance by Landlord.**

### **15.3.1 Inspection and Correction.**

Landlord always shall have the right but not the duty or obligation to enter, view, inspect, determine the condition of, and protect its interests in the Premises and Improvements during normal business hours and upon a two (2) days' prior notice to Tenant (except in the case of an emergency in which case no prior notice shall be required but Landlord shall notify the on site manager thereof by phone prior to entering the Premises) and Landlord shall: (a) comply with all applicable and reasonable security and safety procedures of Tenant of which Tenant informs Landlord in writing and with which Landlord can reasonably comply, and (b) use commercially

reasonable efforts to minimize any interference with Tenant's operation and use of the Premises and the Improvements while on the Premises and at the Improvements. If Landlord determines that the Premises or Improvements are not in the condition required pursuant to the terms of this Lease, Landlord shall deliver written notice to Tenant detailing the items to be corrected and Tenant shall commence the necessary maintenance, alteration, repair and replacement work necessary to remedy the issues set forth in Landlord's notice within ten (10) days after written notice from Landlord and diligently pursue such work to completion. Further, if at any time Landlord determines the Premises or Improvements are not in the condition required pursuant to the terms of this Lease, upon ten (10) days prior written notice thereof Landlord may require Tenant to file and pay for a performance bond. The amount of said bond shall be adequate, in Landlord's reasonable opinion, to correct all unsatisfactory conditions.

### **15.3.2 Landlord Repair Rights.**

At Landlord's option, if Tenant fails to commence to perform the necessary maintenance, alteration, repair and replacement work within ten (10) days of Landlord's written demand therefor and thereafter diligently prosecute such work to completion (except in the event of an emergency in which case no such notice shall be required) in accordance with the requirements of this Lease, Landlord may, but need not, perform such maintenance, alteration, repair or replacement work, and Tenant shall pay Landlord the actual cost thereof, together with interest thereon at the Default Rate from the date incurred until paid and an administrative fee of fifteen percent (15%) of the cost of such work pursuant to the Reimbursement Procedure. Such payments shall constitute Additional Rent under this Lease and shall be paid monthly as billed by Landlord or in a lump sum payment, as directed by Landlord. If requested by Landlord, Tenant shall pay to Landlord the entire estimated cost of such work in advance, but such payment shall not relieve Tenant from the obligation to pay any excess costs that may be actually incurred by Landlord. For all maintenance, alteration, repair and replacement work undertaken by Landlord, Tenant hereby indemnifies and shall defend, at Tenant's sole expense and with counsel reasonably acceptable to Landlord, and hold the Landlord Parties harmless from any and all liability, Related Costs, demands, damages, expenses (including, without limitation, attorneys' (whether with in-house or outside counsel or both), consultants' and experts' fees, court costs and amounts paid in settlement of any claims or actions), arising directly or indirectly out of such work or the performance thereof, unless the same is the result of the gross negligence or willful misconduct of Landlord. Landlord shall have no obligation to repair or maintain any portion of the Premises. The rights of Landlord under this Section shall not create any obligations or increase any obligations of Landlord elsewhere in this Lease, nor shall the exercise of such rights, or the failure to exercise same, limit any other rights or remedies of Landlord. Landlord shall have the right to enter the portions of the Premises where the necessary maintenance, alteration, repair, replacement work, as applicable, is to be performed or is being performed in accordance with this Section 15.3.2 during normal business hours and upon a two (2) days' prior notice to Tenant (except in the case of an emergency in which case no prior notice shall be required but Landlord shall notify the on site manager thereof by phone prior to entering the Premises) and Landlord shall: (a) comply with all applicable and reasonable security and safety procedures of Tenant of which Tenant informs Landlord in writing and with which Landlord can reasonably comply, and (b) use commercially reasonable efforts to minimize any interference with Tenant's operation and use of the Premises and the Improvements while on the Premises and at the Improvements. Tenant shall provide Landlord Parties access to the Premises for the purposes set forth in this Section 15.3.

#### 15.4 Records.

Tenant shall, during the Term, and, with respect to each record, for a period of seven (7) years from the date the record was created (or such longer period as Tenant may decide in its sole discretion), keep or cause to be kept, accurate and complete records of maintenance conducted at the Premises. The records must be supported by source documents of original entry such as invoices, receipts, work orders, construction contracts, service contracts or other pertinent supporting documents. All of Tenant's maintenance records relating to the Premises shall be kept either at the Premises or at such other locations in San Diego County, California as are reasonably acceptable to Landlord. Landlord shall have the right at any time to examine such maintenance records without restriction and, at Landlord's request, Tenant shall provide Landlord with copies thereof at Tenant's expense for the purpose of determining the accuracy thereof. Any records delivered to Landlord hereunder will be Proprietary Information subject to the confidentiality provisions of Section 28.11.

### 16. TAXES AND PROPERTY EXPENSES

#### 16.1 Taxes.

This Lease may result in a taxable possessory interest and be subject to the payment of property and other taxes. Tenant shall pay, prior to delinquency, all Tax Expenses attributable to any time period during the Term now or hereafter assessed against, or relating in any way to the Tenant, this Lease, the Premises, the Improvements, or the use or occupancy thereof by Tenant and Tenant Parties. Tenant shall promptly following written request therefor from Landlord, provide Landlord with evidence of the payment of Tax Expenses. "**Tax Expenses**" shall include, without limitation, all federal, state, county, or local governmental or municipal taxes, fees, assessments, charges or other impositions of every kind and nature, whether general, special, ordinary or extraordinary, (including, without limitation, real estate taxes, possessory interest taxes, use taxes, general and special assessments, leasehold taxes or taxes based upon Tenant's receipt of rent, including gross receipts or sales taxes applicable to Tenant's receipt of rent, personal property taxes imposed upon the fixtures, machinery, equipment, apparatus, systems and equipment, appurtenances, furniture and other personal property used by Tenant in connection with the Premises) and any taxes and assessments relating to the business or other activities of Tenant upon or in connection with the Premises. Tax Expenses also shall include, without limitation:

(a) Any tax on Landlord's receipt of Rent, right to Rent or other income from the Premises;

(b) Any assessment, tax, fee, levy or charge in addition to, or in substitution, partially or totally, of any assessment, tax, fee, levy or charge previously included within the definition of real property tax, possessory interest tax or use tax or other Tax Expenses, and any assessments, taxes, fees, levies and charges that may be imposed by any Government Agency for services such as fire protection, street, sidewalk and road maintenance, refuse removal and for other governmental services formerly provided without charge to property owners or occupants. It is the intention of Tenant and Landlord that all such new and increased assessments, taxes, fees, levies, and charges and all similar assessments, taxes, fees, levies and charges be included within the definition of Tax Expenses for purposes of this Lease; and

(c) Any assessment, tax, fee, levy, or charge, which is levied or assessed based upon the area of the Premises or the Improvements or the Rent payable hereunder,

including, without limitation, any gross income tax upon or with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or any portion thereof.

Tenant agrees to reasonably cooperate with Landlord in connection with, and to not object to, the formation of a special maintenance district or infrastructure repair district that includes the Premises and other neighboring properties, the purpose of which is to fund the reasonable costs of the maintenance, repair and replacement of public property and/or improvements that (i) benefit the Premises, (ii) the approved costs of which are ratably allocated among Tenant and all other neighboring properties benefiting from the established district, and (iii) are related to the use and enjoyment of the Premises by Tenant, its Subtenants and/or their customers or invitees. All assessments levied by any such maintenance district shall constitute Tax Expenses.

## **16.2 Property Expenses.**

Without limitation of Tenant's other obligations under this Lease, Tenant agrees to pay all Property Expenses. As used herein, "**Property Expenses**" include, without limitation, all costs and expenses of any nature incurred or payable, or arising in connection with, the ownership, management, maintenance, construction, repair, dredging, replacement, restoration or operation of the Premises and/or the Improvements, including, without limitation, any amounts paid for: (i) the cost of supplying any utilities, the cost of operating, maintaining, repairing, renovating and managing any utility systems, mechanical systems, communications systems, sanitary and storm drainage systems, and the cost of supplies and equipment and maintenance and service contracts in connection therewith; (ii) the cost of licenses, certificates, permits and inspections; (iii) the cost of any insurance carried or required to be carried by Tenant with respect to the Premises and/or the Improvements including without limitation any premiums and deductibles; (iv) the cost of landscaping, supplies, tools, equipment and materials, and all fees, charges and other costs incurred in connection with the management, operation, repair and maintenance of the Premises and/or the Improvements; (v) payments under any easement, license, permit, operating agreement, declaration, or covenant or instrument pertaining to the Premises; and (vi) the cost of any Improvements, capital repairs, capital alterations, or capital equipment, required by any Government Agency or otherwise required under this Lease.

## **17. LABOR AND EMPLOYMENT/LOCAL HIRE/COMMUNITY ENGAGEMENT**

### **17.1 Nondiscrimination/Diversity, Equity, and Inclusion.**

Tenant shall comply with Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1991; the California Constitution; the California Fair Employment and Housing Act; the ADA; and any other applicable Laws now existing or hereinafter enacted, requiring equal employment opportunities or prohibiting discrimination. This shall include without limitation, laws and regulations prohibiting discrimination because of race, color, religion, sex, national origin, ancestry, physical or mental disability, veteran status, medical condition, marital status, age, sexual orientation, pregnancy, or other non-job related criteria. In complying with all such Laws, including without limitation the ADA, Tenant shall be solely responsible for such compliance and required programs, and there shall be no allocation of any such responsibility between Landlord and Tenant. Each Subtenant shall comply with the requirements of this Article 17.

In connection with Tenant's antidiscrimination obligations, Tenant shall not discriminate against any contractor, subcontractor, consultant, subconsultant, employee or applicant for employment (collectively, "**Tenant Hires**") because of race, religion, color, national origin, handicap, ancestry,

sex, gender, gender expression, sexual orientation, or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

Tenant will, within forty-five (45) days of the Effective Date, provide a written statement of Tenant's commitment to diversity, equity and inclusion, which shall include a commitment and brief description of its plan to implement good faith efforts to recruit Tenant Hires in a non-discriminatory manner and metrics used by Tenant to further such commitments and efforts. Tenant shall, not later than sixty (60) days following every two (2) year anniversary of the Effective Date, provide a written report describing Tenant's actions and results in furtherance of its commitment to diversity, equity, and inclusion. Tenant's report shall not identify individual Tenant Hires by name.

## **17.2 Compliance with Employment and Labor Requirements.**

Tenant shall comply with the Federal Fair Labor Standards Act of 1938; the Federal Labor-Management Reporting and Disclosure Act of 1959; the Occupational Safety and Health Act of 1970; the California Constitution; and any other Laws now existing or hereinafter enacted, regarding employment and labor practices. Tenant shall also comply with the National Labor Relations Act, including the provisions with respect to the rights of employees to organize.

## **18. INSURANCE**

### **18.1 Insurance.**

Tenant shall maintain insurance reasonably acceptable to Landlord in full force and effect throughout the Term.

### **18.2 Forms of Coverage.**

The policies for said insurance shall, as a minimum, provide the following:

#### **18.2.1 Commercial General Liability or Marine General Liability.**

"**Occurrence**" form Commercial General Liability or Marine General Liability covering the Premises, operations, and contractual liability assumed by Tenant in this Lease in the amount of not less than as set forth in Section 1.5.1 Tenant's indemnification obligations under this Lease shall in no event be limited by the terms or qualifications to the contractual liability coverage under such insurance.

#### **18.2.2 All Risk and Builder's Risk Property Coverage.**

All Risk Property Coverage, including flood and debris cleanup provisions, in an amount not less than the full 100% replacement value of all Improvements, together with business interruption and extra expense coverage, including a provision for the continuation of Rent payments for 24 months, a vandalism and malicious mischief endorsement, earthquake sprinkler leakage coverage, boiler and machinery coverage and, if so required by Landlord, earthquake coverage. The coverage policies shall be endorsed with a Loss Payee endorsement in favor of Landlord and the Permitted Lender (if any), as their interests may appear. It is agreed that any insurance proceeds in excess of Twenty-Five Thousand Dollars (\$25,000) resulting from a loss under said policies shall be payable jointly to Landlord and Tenant to ensure that said proceeds

will be reinvested in rebuilding and/or repairing the damaged Improvements and applied to Tenant's Rent obligations hereunder, as applicable. However, if there is a Permitted Lender that is a Financial Institution, then all proceeds from such policies of insurance (other than from the business interruption and extra expense coverage) shall be payable in trust, with safeguards reasonably acceptable to Landlord, to such Permitted Lender to be disbursed for the repair and restoration of the Improvements (or, if there is no Permitted Lender that is a Financial Institution, or if there is, but the Permitted Lender declines to hold and disburse such proceeds, to a bank or trust company doing business in the County of San Diego agreed upon by the parties, or if the parties fail to agree, to Bank of America, N.A., or its successor, which proceeds shall be deposited in interest bearing accounts or deposits agreed upon by the parties, or if the parties fail to agree, then in the bank's regular passbook savings account). All interest shall be added to the trust funds to be disbursed with the principal. All such proceeds shall be disbursed in progress payments for the payment of the cost of repairing or restoring the property so damaged or destroyed. The specific manner of holding such proceeds and the method and conditions of disbursement shall be subject to the prior written approval of Landlord so as to ensure the application of such proceeds in compliance with this Lease.

During the construction of any Alterations or restoration work, builder's risk completed value form insurance covering the perils insured under the ISO special causes of loss form, including collapse, water damage, transit and flood and earthquake coverage, covering the total value of work performed and equipment, supplies and materials furnished (with an appropriate limit for soft costs in the case of construction) and covering the full insurable value (exclusive of the cost of noninsurable items) of all equipment, supplies and materials at any off-site storage location used with respect to the Project or in transit, or any other coverage reasonably requested by Landlord in connection with the construction of Alterations or restoration work. The coverage shall be endorsed with a Loss Payee endorsement in favor of Landlord and the Permitted Lender (if any), as their interests may appear. The insurance proceeds shall be paid and disbursed in the same manner as set forth in this Section 18.2.2 above.

### **18.2.3 Worker's Compensation.**

Workers' compensation insurance covering all persons employed by Tenant at the Premises and with respect to whom death or bodily injury claims could be asserted against Tenant, Landlord or the Premises, with statutorily required limits, and employer's liability insurance with minimum limits of not less than One Million Dollars (\$1,000,000) for each accident/employee/disease. Workers' compensation insurance shall include a waiver of subrogation in favor of Landlord Parties.

### **18.2.4 Automobile Liability.**

Business automobile liability insurance covering liability arising out of vehicles used on or about the Premises by Tenant or its employees (including owned, non-owned, leased, rented and/or hired vehicles) insuring against liability for bodily injury, death and property damage in an amount not less than One Million Dollars (\$1,000,000) each accident limit.

### **18.2.5 UST Insurance Obligations.**

In the event underground storage tanks are located on the Premises, Tenant is required to comply with all Laws applicable to underground storage tanks, including, without limitation, United States Code, Title 42, Chapter 82, Subchapter IX, 40 CFR Part 280, 40 CFR Part 281 and 40 CFR Parts 282.50 – 282.105, and Title 23, Division 3, Chapter 18 of California Code of

Regulations, collectively, herein "UST Law." At the time Tenant is required to comply with any provisions of UST Law requiring financial assurance mechanisms, Tenant shall provide Landlord with a certified copy of its Certification of Financial Responsibility. If Tenant's program for financial responsibility requires insurance, then Tenant's policy(ies) shall name the Landlord Parties as additional insureds, and all other terms of Section 18.3 below, shall apply. Should Tenant change its financial assurance mechanisms, Tenant shall immediately provide Landlord with a certified copy of its revised Certification of Financial Responsibility.

#### **18.2.6 Marine General Liability Coverage.**

Marine General Liability Insurance in an amount of not less than as set forth in Section 1.5.1. Evidence of coverage in accordance with United States Longshore & Harbor Workers' Compensation Act, if applicable, either as part of Marine General Liability Insurance required herein, or an extension of a worker's compensation policy.

Protection and indemnity insurance for Tenant owned or leased vessels utilized at or near the Premises (including coverage for collision, towers' liability, and bodily injury and property damage.)

#### **18.2.7 Pollution Liability Coverage.**

Tenant shall obtain or cause its contractor or any Tenant Party to obtain Pollution Liability, Pollution Legal Liability and/or Asbestos Pollution Liability and/or Errors & Omissions applicable to any work being performed or the potential release of any Hazardous Material, with limits of \$5,000,000 per claim or occurrence and \$10,000,000 aggregate per policy period of one year or the limits maintained by or available to the contractor or such Tenant Party, whichever is higher. The Landlord Parties shall also be named as an additional insured on any such policy. Immediately upon learning of or reasonably suspecting that a release of Hazardous Materials has occurred on, in, under or about the Premises, Tenant shall provide notice of the same to Landlord.

### **18.3 General Requirements.**

#### **18.3.1 Certificates and Other Requirements.**

All required insurance shall be in force the first day of the Term, and shall be maintained continuously in force throughout the Term. In addition, the cost of all required insurance shall be borne by Tenant. During the entire Term, Tenant shall provide Landlord with insurance certificates, in a form acceptable to Landlord, issued by the insurer evidencing the existence of the necessary insurance policies and original endorsements effecting coverage required by this Article ("**Certificates**"). The Certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind insurance on its behalf. Notwithstanding the forgoing, Landlord reserves the right to require complete, certified copies of all required policies at any time. Any information provided by Tenant hereunder will be Proprietary Information of Tenant subject to the confidentiality provisions of Section 28.11.

#### **18.3.2 Additional Insureds and Other Requirements.**

All liability insurance policies shall name, or be endorsed to name the Landlord Parties as additional insureds and protect the Landlord Parties against any legal costs (whether with in-house or outside counsel or both) in defending claims. All liability policies shall provide cross-liability coverage. All insurance policies shall be endorsed to state that coverage will not be

suspended or voided, except after Landlord has been furnished with thirty (30) days' prior written notice. To the extent the policy is blanket endorsed or is specifically endorsed to provide the same, all insurance policies shall also provide that the subject policy shall not be cancelled without thirty (30) days' prior written notice to Landlord. All insurance policies shall be endorsed to state that Tenant's insurance is primary and not excess or contributory to any insurance issued in the name of Landlord. Further, all insurance companies must have a S&P or AM Best rating of not less than "A-".

### **18.3.3 Deductibles.**

Any deductibles or self-insured retentions must be declared and acceptable to Landlord. If the deductibles or self-insured retentions are unacceptable to Landlord, then Tenant shall have the option to either: (i) reduce or eliminate such deductibles or self-insured retentions as respects the Landlord Parties; or (ii) procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses, or (iii) agree to self-insure the risk with form of collateral or written agreement acceptable to Landlord in Landlord's sole discretion.

### **18.3.4 Updates.**

Landlord shall retain the right at any time to review the coverage, form, amount and type of insurance required herein. If, in the reasonable opinion of Landlord, the insurance provisions in this Lease do not provide adequate protection for the Landlord Parties and/or members of the public using the Premises or using services connected with Tenant's use or occupancy of the Premises, Landlord may require Tenant to obtain insurance sufficient in coverage, form, amount and type to provide adequate protection. Landlord's requirements shall be designed to ensure protection from and against the kind and extent of risks that exist at the time a change in insurance is required.

### **18.3.5 New Certificates.**

If Landlord changes the insurance requirements as provided in Section 18.3.4 above, Landlord shall notify Tenant in writing of such changes. With respect to changes in insurance requirements that are available from Tenant's then-existing insurance carrier, Tenant shall deposit new Certificates with Landlord issued by the insurer evidencing acceptable insurance policies incorporating such changes within thirty (30) days of receipt of such notice. With respect to changes in insurance requirements that are not available from Tenant's then-existing insurance carrier, Tenant shall deposit new Certificates evidencing acceptable insurance policies with Landlord, incorporating such changes, within ninety (90) days of receipt of such notice. In the event Tenant fails to deposit insurance Certificates as required herein, and such failure is not cured within ten (10) days following written notice thereof to Tenant, this Lease shall be in default without further notice to or cure right by Tenant, and Landlord shall be entitled to exercise all legal remedies. Without limitation of the foregoing, Tenant agrees that if Tenant does not take out and maintain such insurance or furnish Landlord with renewals or binders in a timely manner, Landlord may (but shall not be required to), procure said insurance on Tenant's behalf and charge Tenant the cost thereof, which amount shall be payable by Tenant to Landlord pursuant to the Reimbursement Procedure.

### **18.3.6 Default.**

If Tenant fails or refuses to maintain insurance as required in this Lease, or fails to provide proof of insurance in the time periods required herein, and such failure is not cured within ten (10)



days following written notice thereof to Tenant, Landlord has the right to declare this Lease in default without further notice to Tenant, and Landlord shall be entitled to exercise all legal remedies.

#### **18.3.7 No Limit on Liability.**

The procuring of such required policies of insurance shall not be construed to limit Tenant's liability hereunder, nor to fulfill the indemnification provisions and requirements of this Lease.

#### **18.3.8 Compliance with Insurance Requirements.**

Tenant agrees not to use the Premises in any manner that will result in the cancellation of any insurance Landlord may have on the Premises or on adjacent premises, or that will cause cancellation of any other insurance coverage for the Premises or adjacent premises, notwithstanding that such use may be included within the Permitted Use. Tenant further agrees not to keep on the Premises or permit to be kept, used, or sold thereon, anything prohibited by any fire or other insurance policy covering the Premises. Tenant shall, at its sole expense, comply with all reasonable requirements for maintaining fire and other insurance coverage on the Premises and represents to Landlord that Tenant will confirm that it is in compliance with such requirements at all times.

#### **18.4 Waiver of Subrogation.**

Tenant hereby releases the Landlord Parties from any and all liability or responsibility to Tenant or anyone claiming through or under Tenant by way of subrogation or otherwise for any loss or damage to the Premises, any Improvements, or any of Tenant's personal property or business caused by or arising from a fire or any other event that is covered by the insurance required to be carried pursuant to this Lease or is actually carried, even if such fire or other event shall have been caused by the fault or negligence of any of the Landlord Parties. Each Subtenant similarly releases the Landlord Parties. Tenant, and any Subtenant, shall also obtain an endorsement waiving the insurance company's subrogation rights against the Landlord Parties for any insurance policies required by the terms of this Lease. Tenant and Subtenant shall also defend and indemnify the Landlord Parties in the manner specified in Section 19.1 in the event any Person asserts such a claim.

#### **18.5 Subtenants to Maintain Insurance.**

All Subtenants shall maintain insurance in the amounts required under Section 18.2, which shall comply with the requirements of Section 18.3. In addition, all Subleases shall provide that the Subtenant releases the Landlord Parties pursuant to the requirements of Section 18.4.

### **19. INDEMNITY**

#### **19.1 Indemnity.**

Tenant hereby indemnifies and shall defend the Landlord Parties, at Tenant's sole cost and expense and with counsel reasonably selected by Landlord, and hold the Landlord Parties harmless from any and all claims (including claims under negligence and strict liability), demands, liability, losses, causes of actions and suits of any kind, administrative or judicial proceedings, orders, judgments, and all Related Costs arising directly or indirectly out of (i) the performance by

Tenant of its obligations under this Lease, (ii) the construction of any Improvements or Alterations, (iii) any breach by Tenant of its obligations under this Lease, (iv) any accident, injury or damage whatsoever caused to any Person or the property of any Person on or about the Premises, (v) the use, occupancy, possession or operation of the Premises by any Tenant Party, or any acts or omissions of any Tenant Party, except for claims or litigation arising through the sole gross negligence or sole willful misconduct of Landlord (but subject to Section 18.4) and (vi) the Tenant Hazardous Material and Pre-Existing Hazardous Material. Landlord, at its election, may conduct its own defense with its own counsel independent from Tenant's counsel (and in that event Tenant will select its own counsel) and the reasonable costs incurred by Landlord in such defense shall be covered by the foregoing indemnification, hold harmless and defense obligations and be subject to reimbursement pursuant to the Reimbursement Procedure. The terms of this Article 19 shall survive the expiration or earlier termination of this Lease. The foregoing indemnity obligations of Tenant are in addition to, and not in limitation of, any other indemnity obligations of Tenant contained in this Lease or otherwise.

## **20. DAMAGE OR DESTRUCTION**

### **20.1 Casualty.**

In the event of any damage to or destruction of any Improvements (including from fire, sea level rise or other casualty), whether or not from a risk coverable by the insurance described in Article 18, Tenant shall promptly repair and restore such Improvements, in a manner reasonably approved in writing by Landlord, so that after such restoration and repair, the Improvements are at least as valuable and usable as immediately prior to such damage or destruction. Tenant shall be entitled to have any insurance policy proceeds held in trust with the Permitted Lender or other trustee selected pursuant to Section 18.2.2 disbursed as progress payments as the work of repair, restoration or replacement progresses, to be used solely for paying for such work; and upon completion of such work free and clear of liens, if required by the terms of the Permitted Encumbrance any remaining balance of any insurance proceeds shall be paid first to the Permitted Lender to reduce the indebtedness of the Permitted Encumbrance, and thereafter, if the Permitted Lender permits or if it is required by the terms of the Permitted Encumbrance, to Tenant. If the Permitted Lender is the trustee, the Permitted Lender may disburse the progress payments in accordance with its normal disbursement procedures (e.g. upon receipt of appropriate mechanic's lien releases, invoices, etc.) so long as such disbursement procedures are reasonably satisfactory to Landlord and ensure that the proceeds of insurance are applied to the costs of repairing or replacing the Improvements. To the extent that the insurance proceeds are insufficient to pay for the costs of restoring, repairing or replacing the damaged Improvements, Tenant shall pay such deficiency to the trustee for application to the restoration costs on or before the earlier to occur of (i) sixty (60) days from the date of such damage or destruction, or (ii) the date the insurer first makes available such insurance proceeds for repair, restoration or replacement. In the event Tenant or the Permitted Lender fails to commence to repair, restore or replace the damaged Improvements (including without limitation, engaging architects and engineers to prepare plans and specifications for the restoration), or pursue any permits necessary to repair, restore or replace the damaged Improvements, within ninety (90) days of such damage or destruction or to diligently prosecute such work to completion, Tenant shall be deemed to be in default hereunder upon written notice thereof from Landlord to Tenant and, in addition to any other remedies, Landlord shall be entitled to receive and retain such insurance proceeds to apply them to the repair, restoration and replacement of the Improvements. The provisions of Articles 6 and 7 shall apply to all work performed pursuant to this Article. Notwithstanding the foregoing, if Tenant and the Permitted Lender are not able to obtain sufficient insurance proceeds (in the case of an insured casualty) or construction funds (in the case of an

uninsured casualty) to commence repair, restoration or replacement of the damaged Improvements within ninety (90) days of such damage or destruction, and in the case of an insured casualty, Tenant and the Permitted Lender have used their best efforts to so obtain such insurance proceeds, or in the case of an uninsured casualty, Tenant and the Permitted Lender have used their best efforts to obtain sufficient construction funds, then Tenant and the Permitted Lender shall have such additional time as is necessary to obtain such insurance proceeds or construction funds (but in no event to exceed one hundred eighty (180) days from the date of such damage or destruction) in which to commence to repair, restore or replace the damaged Improvements.

## **20.2 Casualty During the Last Part of Term.**

Notwithstanding Section 20.1 to the contrary, if there is damage or destruction to the Improvements during the last five (5) years of the Term and the cost of repairing said damage or destruction exceeds the cost of demolishing and removing the remaining Improvements and any remediation required hereunder as determined by the Demolition and Remediation Report, Tenant shall have the option to terminate this Lease, subject to Tenant's satisfaction of all of the following requirements: (a) Tenant shall, within ninety (90) days after the date of the casualty, give Landlord written notice of its election to terminate ("**Notice of Election to Terminate**"); and (b) Tenant shall, at the election of Landlord (which election shall be communicated in writing to Tenant ("**Demolition Notice**") within thirty (30) days of Landlord's receipt of the Notice of Election to Terminate), raze and remove the damaged or destroyed Improvements and any other Improvements that Landlord may designate in the Demolition Notice and, if applicable, remediate the Premises to the extent required by the terms of this Lease, and shall complete said demolition, removal and remediation, if any, and shall vacate the Premises within one hundred and eighty (180) days of Landlord's delivery of the Demolition Notice (which vacation date shall fix the termination date of this Lease). Any and all property damage insurance proceeds (exclusive of any proceeds applicable to Tenant's personal property (including any dry docks (whether floating or moored) that would be retained by Tenant at the end of the Term) paid as a result of the damage or destruction giving rise to the termination hereunder, shall be distributed in accordance with the following order of priority: first, to the payment of the costs to raze and remove the Improvements as required above and perform any remediation required by the terms of this Lease, second, to repayment of any outstanding indebtedness under any Permitted Encumbrance, if required by the terms thereof; and third, to Landlord all remaining insurance proceeds. For purposes of this Article 20, a "Material Casualty" means an event of any damage to or destruction of any Improvements (including from fire, sea level rise or other casualty), that results in the time required to rebuild or restore the Improvements affected by such event exceeding six (6) months as determined by a qualified engineer.

## **20.3 No Rental Abatement.**

Tenant shall not be entitled to any abatement or reduction in the Rent during any period of time that any Improvements are in need of repair, restoration or replacement or are under construction for such repairs, restoration or replacements or any other period of time during the Term of this Lease.

## **20.4 Waiver of Statutory Provisions.**

The provisions of this Lease, including this Article 20, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises or Improvements, or any other portion thereof, and any California statute or

regulation, now or hereafter in effect, regarding the rights or obligations of a tenant concerning damage or destruction following a casualty event are waived and shall have no application to this Lease or any damage or destruction to all or any part of the Premises or Improvements as a result of a casualty event.

## 21. HAZARDOUS MATERIALS

### 21.1 Hazardous Materials.

#### 21.1.1 Tenant Use of Hazardous Materials.

Tenant shall not cause or permit any Hazardous Material, or products or materials which include any hazardous substance as a component to be generated, brought onto, used, stored, emitted, released or disposed of in or about the Premises or Improvements (collectively and individually, a "**Hazardous Materials Activity**") by Tenant or its agents, whether by a Tenant Party or any other Person unless expressly approved, at Landlord's sole discretion, in writing by Landlord after submittal by Tenant of Safety Data Sheets ("**SDS**") or other information requested by Landlord regarding the Hazardous Material. Approval by Landlord of any Hazardous Materials Activity shall not create or impose any liability or obligation on Landlord with respect to such Hazardous Material or Hazardous Materials Activity and Tenant assumes all liability and obligations related thereto. All Hazardous Materials Activity shall be in strict compliance with all applicable Laws and other requirements in effect during the Term, including, without limitation, Laws and requirements that regulate Hazardous Materials or otherwise relate to public health and safety or the protection of the environment ("**Environmental Laws**") and shall comply at all times with all Environmental Laws.

#### 21.1.2 Notice of Release or Investigation.

If Tenant becomes aware of (i) any actual or threatened release of any Hazardous Material on, in, under, from, or about the Premises or (ii) any notice, inquiry, investigation, proceeding, or claim by any Government Agency or other Person regarding the presence of any Hazardous Material on, in, under, from or about the Premises (collectively "**Inquiry**"), Tenant shall immediately upon learning of or reasonably suspecting that a release of Hazardous Materials has occurred on, in, under or about the Premises, provide verbal notice of the same to Landlord, and give Landlord written notice of the release or Inquiry within twenty-four (24) hours after Tenant learns or first has reason to believe there has been a release or Inquiry and shall simultaneously furnish to Landlord copies of any notices of inquiry or investigation, claims, notices of violation, reports, warning or other writings received by Tenant that concern the release or Inquiry. Tenant shall not object to Landlord's participation in any meetings with any Government Agency (defined below) involving Tenant and other potentially responsible parties concerning environmental conditions at or relating to the Premises, and in all events shall provide a written summary of matters addressed at any such meetings that Landlord does not attend. For the avoidance of doubt, nothing in this Lease shall diminish or curtail Landlord's right or ability to comment on Tenant's investigation or remediation of environmental conditions at the Premises with or before other government agencies, including any federal, state or local government agency (such as, but not limited to, the United States Environmental Protection Agency, the San Diego Regional Water Quality Control Board (the "**SDRWQCB**"), the Department of Toxic Substances Control, and/or the Air Resources Board (each a "**Government Agency**") that may be relevant to or potentially impact the Premises at least ten (10) full business days prior to such meeting or as soon as reasonably possible if the Government Agency schedules the meeting for less than ten (10) business days from the date the meeting is proposed. Landlord shall be entitled to have its

representatives attend and participate in any and all such meetings. If any Government Agency brings up the Premises in any other scheduled meeting, Tenant shall suggest that a separate meeting should be scheduled so that Landlord can participate.

### **21.1.3 Landlord Right to Inspect and Data.**

If Hazardous Materials Activity has occurred during the Term or is ongoing, Landlord or its designated representatives, at Landlord's sole discretion, may, but is no way obligated to, enter upon the Premises and make any inspections, tests or measurements Landlord deems necessary or desirable to determine if a release or discharge of Hazardous Materials has occurred. Landlord shall furnish Tenant a minimum of twenty-four (24) hours' notice prior to conducting any inspections or tests, unless, in Landlord's sole judgment, circumstances require otherwise. If Landlord reasonably suspects a possible release of Hazardous Materials or a use of Hazardous Materials in violation of Environmental Law, then Landlord, at Landlord's sole discretion, may require Tenant, at Tenant's sole expense, to have additional investigation for such Hazardous Materials conducted on, under or about the Premises by an environmental consultant or engineering firm designated by Landlord. Such tests may include, without limitation, the testing of the Premises and any area outside the Premises that Landlord reasonably believes may have been contaminated by a release or discharge at or from the Premises, including but not limited to soil, subsoil media, indoor air, improvements, structures, surface waters, sediments, groundwaters and/or natural resources. Tenant shall provide Landlord, as soon as reasonable after they become available to Tenant, access to all information reports and data obtained, generated or learned as a result of sampling or testing activities on the Premises, including raw and verified lab data and consultant reports. Landlord shall be permitted to have representatives present during any sampling or testing on or at the Premises or outside of the Premises, and may obtain split samples, if requested, copies of the results of on-site testing and visual inspections, and complete access to all samples and tests taken or conducted as a result of any investigations of the Premises. Access to any consultant reports issued by or on behalf of Tenant concerning the Premises shall be furnished to Landlord as soon as reasonable after the reports are finalized. Any environmental reports issued by or on behalf of Tenant regarding the Premises or Hazardous Material Activities related thereto shall first be generated in draft form and furnished to Landlord for review and comment, and Tenant shall reasonably consider incorporating any comments to such reports made by Landlord. No such report will be made final until Landlord has had reasonable opportunity to review the draft and to provide comments to Tenant thereon. Copies of any environmental reports issued by or on behalf of Tenant concerning the Premises or Hazardous Materials Activities shall be furnished to Landlord concurrently with any submittal to a Government Agency, and within five (5) business days of being finalized as to all other reports. Landlord's failure to inspect, test or take other actions pursuant to this Section 21.1.3 shall in no way relieve Tenant of any responsibility for a release of a Hazardous Material.

### **21.1.4 Clean-up Obligations.**

If Hazardous Materials Activity, Tenant Hazardous Material, or Pre-Existing Hazardous Material has resulted or does result in contamination of the Premises and/or the Improvements, any adjacent or nearby property, the San Diego Bay or any soil, subsoil media, indoor air, improvements, structures, surface waters, sediments, groundwaters and/or natural resources, Tenant shall promptly take all necessary actions, at Tenant's sole expense, to investigate, remove, remediate or mitigate such Hazardous Materials in compliance with all Environmental Laws and in a manner and with results satisfactory to Landlord in Landlord's good faith discretion ("**Environmental Cleanup**"). For purposes of the definition of "Environmental Cleanup" in this Lease, Landlord shall not impose numeric Hazardous Material cleanup levels for the Premises

that are more stringent than numeric cleanup levels for the Premises that are prescribed by the SDRWQCB or other regulatory agency acting within its jurisdiction, but Landlord reserves reasonable, good faith discretion regarding the means and methods of any removal or remediation of Hazardous Materials, taking into account the reasonably anticipated future public trust uses of the Premises as set forth in and consistent with the California Harbors & Navigation Code, including without limitation Harbors & Navigation Code App. 1 §§ 4, 87, and the Port Master Plan (as they each may be amended in the future). Moreover, notwithstanding anything to the contrary in this Lease, Landlord's discretion over the means and methods of any removal or remediation of Hazardous Materials pursuant to this subsection shall be governed exclusively by this Section 21.1.4, but solely as to the extent of the removal or remediation of Hazardous Materials and not as to any other proposed Alterations or Improvements. Tenant shall provide notice to Landlord prior to performing any removal or remedial action. In the event that an Environmental Cleanup conducted by or required of Tenant or a Tenant Party interferes with the current or future use of the Premises or other property of Landlord, Tenant shall promptly alter or amend the Environmental Cleanup (whether such is completed or not and regardless of the time period elapsed between the clean-up activities and Landlord's request to alter the Environmental Cleanup because of the interference), upon notice from Landlord, as necessary to prevent and/or eliminate such interference. Tenant or a Tenant Party shall not propose, and Landlord is under no obligation to agree to, any covenant or use restriction or other institutional controls as part of any removal or remediation required as a result of this Section 21.1.4, and any agreement by Landlord to the same shall be within Landlord's sole and absolute discretion. Unless otherwise agreed in writing by Landlord, an Environmental Cleanup required under this Section shall avoid and not include the use of restrictive covenants or other institutional controls. To the extent Landlord incurs any costs or expenses in performing Tenant's obligation to conduct an Environmental Cleanup which is Tenant's obligation under this Lease or under Environmental Law, Tenant shall reimburse Landlord for all such costs and expenses in accordance with the Reimbursement Procedure. This provision does not limit Tenant's indemnification obligation set forth in Sections 21.2 and 19.1.

#### **21.1.5 Clean-up Extending Beyond Lease Term.**

Should any Environmental Cleanup of Hazardous Materials for which Tenant or a Tenant Party is responsible not be completed prior to the expiration or sooner termination of this Lease, then: (i) Tenant shall deposit with Landlord (or if the parties agree in their sole discretion, into a third-party escrow) an amount of money equal to the balance of the estimated costs of the Environmental Cleanup for disbursement for such Environmental Cleanup costs, and (ii) if the nature of the contamination or Environmental Cleanup required of Tenant is of such a nature as to make any portion of the Premises untenable or unleaseable, then Tenant shall be liable to Landlord as a holdover Tenant until the Environmental Cleanup has been sufficiently completed to render the Premises in full compliance with all Environmental Laws and to make the Premises suitable, in Landlord's good faith determination, for lease to third parties. The estimated cost of the Environmental Cleanup shall require approval of the Landlord (such approval not to be unreasonably withheld). To the extent Landlord estimates, at any time, that the funds remaining on deposit may not be sufficient to cover all remaining anticipated Environmental Cleanup costs, then Tenant shall deposit, within thirty (30) days of Landlord's written demand therefor, such additional funds with Landlord as Landlord may estimate at such time may be required to complete the Environmental Cleanup.

### **21.1.6 Financial Security.**

If Landlord determines, in its reasonable discretion, that Tenant does not have insurance or other financial resources sufficient to enable Tenant to fulfill its obligations under this Article 21 whether or not accrued, liquidated, conditional, or contingent, then Tenant shall, at the request of Landlord, procure and thereafter maintain in full force and effect such environmental impairment liability and/or pollution liability insurance policies and endorsements, or shall otherwise provide such collateral or security reasonably acceptable to Landlord as is appropriate to assure that Tenant will be able to perform its duties and obligations hereunder.

### **21.2 Hazardous Materials Indemnification.**

Tenant hereby assumes for itself and shall indemnify and defend Landlord Parties, at Tenant's sole cost and expense and with counsel reasonably selected by Landlord, and hold the Landlord Parties harmless from any and all claims, demands, liability, losses, causes of actions and suits of any kind, administrative or judicial proceedings, orders, (judicial or administrative), judgments, and all Related Costs (whether or not based upon personal injury, negligence, strict liability, property damage, or contamination of, or adverse effects upon, the environment (including soil, subsoil media, indoor air, improvements, structures, surface waters, sediments, ground waters and/or natural resources), including any loss of or damage to Landlord's real or personal property, and claims for cost recovery and contribution), which occur or arise before, during or after the Term relating to, or resulting from, any Hazardous Materials Activity, Tenant Hazardous Material or any Pre-Existing Hazardous Material or any breach by Tenant under this Article 21. Tenant's obligations under this Article 21 (including the indemnification of Landlord by Tenant under this section) include, without limitation, any Environmental Cleanup required by this Lease or Environmental Law, costs incurred in connection with any investigation of site conditions or any cleanup, treatment, remedial, removal, or restoration work required by this Lease or any federal, state or local Government Agency because of Hazardous Materials present in the soil, subsoil media, indoor air, improvements, structures, surface waters, sediments, ground waters and/or natural resources above, on, or under the Premises consistent with Tenant's obligations set forth in this Lease. The obligations apply whether or not the concentrations of any such Hazardous Material are material, the concentrations exceed state or federal maximum contaminant or action levels, or any Government Agency has issued a clean-up or other order. Landlord shall have a direct right of action against Tenant even if no third party has asserted a claim. Furthermore, Landlord shall have the right to assign said indemnity and Environmental Cleanup requirements under this Article 21. This indemnification and Environmental Cleanup requirements under this Article 21 include, but are not necessarily limited to:

- (a) Losses attributable to diminution in the value of the Premises;
- (b) Losses of rental or other income from the Premises;
- (c) Loss of or damage to natural resources;
- (d) Loss or restriction of use of rentable space(s) in the Premises;
- (e) Adverse effect on the marketing of any space(s) in the Premises;
- (f) All other liabilities, obligations, penalties, fines, claims, actions (including remedial or enforcement or cost recovery or contribution actions of any kind and administrative or judicial proceedings, orders, or judgments), damages (including consequential and punitive

damages), and costs (including attorney (whether with in-house or outside counsel or both), consultant, and expert fees and expenses); and

(g) All Related Costs (including, without limitation, reasonable attorneys' fees (whether with in-house or outside counsel or both), consulting fees and subcontracted costs) incurred by Landlord in undertaking any assessment or remediation of the Premises that is not fully resolved by Tenant by the time this Lease terminates or expires.

### **21.3 Termination of Lease.**

Upon the expiration or earlier termination of the Term, Tenant shall: (i) cause all Tenant Hazardous Material and Pre-Existing Hazardous Material to be removed from the Premises and disposed of in accordance with all applicable provisions of Environmental Law; (ii) remove any underground or aboveground storage tanks or other containers installed or used by Tenant, or its predecessors, to store any Hazardous Material on the Premises, and repair any damage to the Premises caused by such removal; (iii) cause any soil, subsoil media, indoor air, improvements, structures, surface waters, sediments, groundwaters, natural resources or other portion of the Premises which has become contaminated by any Hazardous Material to be decontaminated, detoxified, or otherwise cleaned-up in accordance with the applicable requirements of any relevant Government Agency; and (iv) surrender possession of the Premises to Landlord free of any Tenant Hazardous Material and Pre-Existing Hazardous Material.

### **21.4 Storage Tanks.**

#### **21.4.1 Storage Tanks.**

No underground storage tanks ("**USTs**") or aboveground storage tanks ("**ASTs**") shall be permitted to be installed on or under the Premises without the prior written consent of Landlord in its sole and absolute discretion. In the event Tenant obtains such approval to install a UST or a AST on or under the Premises, Tenant shall be responsible for complying with all Laws pertaining to such UST or AST, including tank monitoring of such UST or AST as required by the County of San Diego Hazardous Material Management Division (HMMD) or any other responsible agency. Tenant further agrees to take sole responsibility for reporting unauthorized releases from UST to HMMD and Landlord within twenty-four (24) hours of such unauthorized release. Tenant will be responsible for all fees and costs related to the unauthorized release of any Hazardous Material or any required Environmental Cleanup, including, but not limited to, investigative, surface and groundwater clean-up, and expert and agency fees. Tenant shall maintain evidence of financial responsibility for taking corrective action and for compensating third parties for bodily injury and/or property damage caused by a release from a UST or an AST. Tenant further agrees to be responsible for maintenance and repair of the USTs and ASTs; obtaining tank permits; filing a business plan with HMMD or other responsible agency; and for paying for all regulatory agency fees relating to USTs and ASTs.

#### **21.4.2 Records.**

Tenant agrees to keep complete and accurate records regarding USTs and ASTs on the Premises for at least the prior three (3) years period including, but not limited to, records relating to permit applications, monitoring, testing, equipment installation, repairing and closure of the USTs and ASTs, and any unauthorized releases of Hazardous Materials. Tenant also agrees to make such records available for Landlord or responsible agency inspection. Tenant further



agrees to include a copy of Health and Safety Code, Chapter 6.7, § 25299, as part of any agreement between Tenant and any operator of USTs or ASTs.

#### **21.4.3 Aboveground Storage Tanks.**

In the event Tenant obtains such approval to install an AST, Tenant shall be responsible for complying with all Laws pertaining to such AST. Tenant shall, in accordance with this Lease and applicable Laws, secure and pay for all necessary permits and approvals, prepare a spill prevention control counter measure plan and conduct periodic inspections to ensure compliance therewith. In addition, Tenant shall maintain and repair said tanks to conform and comply with all other applicable Laws for ASTs, including without limitation all of the requirements of Health & Safety Code, Chapter 6.67, §§ 25270 through 25270.13 as presently existing or as hereinafter amended, including without limitation conducting daily visual inspection of said tanks, allowing the SDRWQCB, Landlord, and/or responsible agency, to conduct periodic inspections. Tenant also shall comply with valid orders of the SDRWQCB, filing the required storage tank statement and payment of the fee therefor, establishing and maintaining the required monitoring program and systems, reporting spills as required, and payment of lawfully imposed penalties as provided therein and as otherwise provided by Law.

### **21.5 Environmental Covenants.**

#### **21.5.1 Regulated Waste Removal.**

Tenant hereby acknowledges that excavation of soils, including sediment, from the Premises could result in exportation of a regulated waste requiring appropriate characterization, handling, transport and disposal (together "**Regulated Waste Removal**"). Landlord takes no responsibility and assumes no liability whatsoever for Regulated Waste Removal. Accordingly, Tenant hereby waives any claim, or potential claim, it may have to recover costs or expenses arising out of or associated with Regulated Waste Removal and agrees to indemnify, defend and hold harmless the Landlord Parties from and against any and all claims (including under negligence or strict liability), liabilities, losses, damages, costs, and expenses arising from, out of, or in any way related to Regulated Waste Removal, except only claims or litigation arising through the sole gross negligence or sole willful misconduct of Landlord.

#### **21.5.2 Residual Hazardous Materials.**

Landlord shall have no liability or responsibility for ensuring that Tenant's workers, including without limitation those conducting testing, construction and maintenance activities on the Premises, are protected from residual contaminants in 29 Code of Federal Regulations ("**CFR**"). Tenant shall assess all human health risks from vapor transport or direct contact with residual hazardous substances or contaminants and incorporate such engineering and institutional controls as may be required to sufficiently protect human health of onsite workers and transient visitors. Tenant hereby waives any claim, or potential claim, it may have to recover any damages, losses, Related Costs related to worker exposure or alleged exposure to any residual onsite contamination and to indemnify, defend and hold harmless the Landlord Parties from and against any and all such Related Costs, claims (including under negligence or strict liability), liabilities, losses and damages, except only claims or litigation arising through the sole gross negligence or sole willful misconduct of Landlord.

### **21.5.3 Covenant Not to Sue and Release of Landlord.**

Tenant hereby RELEASES the Landlord Parties from, COVENANTS NOT TO SUE the Landlord Parties for, and agrees not to seek to have any regulatory agency or third party impose liability upon or seek damages or costs from Landlord for or related to, any contamination or violation of Environmental Laws existing at or arising from the Premises and ASSUMES FOR ITSELF (as between Tenant and Landlord Parties) all obligations, requirements and liabilities of Tenant under this Article 21, including for claims for contribution, equitable indemnity or otherwise seeking to transfer or limit the obligations, requirements and liabilities of Tenant under this Article 21. With respect to all releases made by Tenant under or pursuant to this Article 21, Tenant hereby waives the application and benefits of California Civil Code § 1542 and hereby verifies that it has read and understands the provision of California Civil Code § 1542 set forth in Article 22 below.

### **21.6 Survival.**

The terms of this Article 21 shall survive the expiration or earlier termination of this Lease.

## **22. "AS-IS" LEASE AND WAIVERS**

### **22.1 Tenant's Acknowledgment.**

Tenant acknowledges that prior to entering into this Lease, Landlord has provided the disclosure required under California Health and Safety Code § 78700, as set forth in the Environmental Disclosure Addendum attached to this Lease as Exhibit I, which is incorporated herein by reference, and has given Tenant sufficient opportunity to consider, inspect and review, to Tenant's complete satisfaction: (1) any and all rights, appurtenances, entitlements, obligations, and liabilities concerning the Premises; (2) the physical condition of the Premises, including, without limitation, the condition and value of any Improvements and the soils, subsoil media, indoor air, improvements, structures, surface waters, sediments, groundwaters, and natural resources at, under or adjacent to the Premises; (3) the risk of climate change and the possible adverse consequences thereof, including, without limitation, rises in sea level and possible damage to and destruction of the Premises; (4) the development potential of the Premises including without limitation on the preceding clause (3), the effect of all Laws, including, without limitation, those concerning land use, environmental quality and maintenance, endangered species, and traffic regulation; (5) the financial prospects of the Premises and local market conditions; (6) Tenant's determination of the feasibility of Tenant's intended use and enjoyment of the Premises; (7) the presence of any Pre-Existing Hazardous Material and any other contamination of the Premises, including the contamination of any soils, subsoil media, indoor air, improvements, structures, groundwaters, and natural resources, including San Diego Bay water and sediment; and (8) all other facts, circumstances, and conditions affecting, concerning or relating to the Premises. The land use; the environmental, biological, physical and legal condition of the Premises; the risks associated with possible climate change; the feasibility of Tenant's intended use and enjoyment of the Premises; and such other facts, circumstances and conditions being collectively referred to herein as the "**Condition of the Premises**"; and, without limitation on any other provision of this Lease, Tenant expressly assumes the risk that adverse conditions affecting the Premises have not been revealed by Tenant's investigations.

## **22.2 Only Landlord's Express Written Agreements Binding.**

Tenant acknowledges and agrees that no Person acting on behalf of Landlord is authorized to make, and that except as expressly set forth in this Lease, neither Landlord nor anyone acting for or on behalf of Landlord has made, any representation, warranty, statement, guaranty or promise to Tenant, or to anyone acting for or on behalf of Tenant, concerning the Condition of the Premises or any other aspect of the Premises. Tenant further acknowledges and agrees that no representation, warranty, agreement, statement, guaranty or promise, if any, made by any Person for or acting on behalf of Landlord which is not expressly set forth in this Lease will be valid or binding on Landlord.

## **22.3 As-Is Lease.**

Tenant agrees and acknowledges that Tenant and its Sublessees have been in sole and continuous possession of all or portions of the Premises since at least November 1, 1943, and have conducted operations on the Premises, including, without limitation, the manufacture and sale of kelp products, operation of a power-generating facility, and other industrial use of the Premises, which have or may have resulted in the generation, disposal, or release of Hazardous Material on, in, under, or about the Premises. Tenant further understands and agrees that the Premises are being leased in an "as is, with all faults" condition and that improvements, grading, filling, removal of existing improvements, and relocation of utility lines shall be made and performed by Tenant at the sole cost and expense of Tenant. Tenant understands and agrees that the "as is, with all faults" condition of the Premises includes any contamination of the Premises, including, without limitation, soil, subsoil media, indoor air, improvements, structures, surface waters, sediments, ground waters and/or natural resources, and adjacent San Diego Bay water and sediment, and that information received from Landlord regarding such matters may not be complete or accurate and should not be accepted as such. Tenant further acknowledges and agrees that Tenant's execution of this Lease shall constitute Tenant's representation, warranty and agreement that the Condition of the Premises has been independently verified by Tenant to its full satisfaction, and that, except to the extent of the express covenants of Landlord set forth in this Lease, Tenant will be leasing the Premises based solely upon and in reliance on its own inspections, evaluations, analyses and conclusions, or those of Tenant's representatives; and that **TENANT IS LEASING THE PREMISES IN ITS "AS-IS, WITH ALL FAULTS" CONDITION AND STATE OF REPAIR INCLUSIVE OF ALL FAULTS AND DEFECTS, WHETHER KNOWN OR UNKNOWN, AS MAY EXIST AS OF THE TENANT'S EXECUTION OF THIS LEASE.** Without limiting the scope or generality of the foregoing, Tenant expressly assumes the risk that the Premises do not or will not comply with any Laws now or hereafter in effect.

## **22.4 Waivers, Disclaimers and Indemnity.**

### **22.4.1 Waiver and Disclaimer.**

Tenant hereby fully and forever waives, and Landlord hereby fully and forever disclaims, all warranties of whatever type or kind with respect to the Premises, whether expressed, implied or otherwise including, without limitation, those of fitness for a particular purpose, tenantability, habitability or use.

### **22.4.2 Landlord's Materials.**

Tenant further acknowledges that any information and reports including, without limitation, any engineering reports, architectural reports, feasibility reports, marketing reports, soils reports,

environmental reports, analyses or data, or other similar reports, analyses, data or information of whatever type or kind which Tenant has received or may hereafter receive from Landlord Parties or its agents or consultants (collectively the "Landlord's Materials") have been furnished without warranty of any kind and on the express condition that Tenant will make its own independent verification of the accuracy, reliability and completeness of such Landlord's Materials and that Tenant will not rely thereon. Accordingly, subject to terms of Section 22.4.3 below, Tenant agrees that under no circumstances will it make any claim against, bring any action, cause of action or proceeding against, or assert any liability upon, Landlord Parties or any of the persons or entities who prepared or furnished any of the Landlord's Materials as a result of the inaccuracy, unreliability or incompleteness of, or any defect or mistake in, any such Landlord's Materials and Tenant hereby fully and forever releases, acquits and discharges Landlord Parties and each Person furnishing such Landlord's Materials of and from, any such claims, actions, causes of action, proceedings or liability, whether known or unknown.

### 22.4.3 Release and Waiver.

(a) *Release.* Except to the extent of **Claims** (as defined below) against Landlord arising from any breach by Landlord of its covenants and obligations expressly provided in this Lease, Tenant, on behalf of Tenant, each Tenant Party and their respective successors and assigns, hereby fully and forever releases, acquits and discharges Landlord of and from, and hereby fully, and forever waives and agrees not to assert or seek to have any third party or regulatory agency assert, any and all claims, actions, causes of action, suits, proceedings, demands, rights, damages, Related Costs, losses, judgments, provisional relief, fines, penalties, and fees, including, without limitation, any and all claims for compensation, reimbursement, or contribution whatsoever (individually and collectively, "**Claims**"), whether known or unknown, direct or indirect, foreseeable or unforeseeable, absolute or contingent, that any Tenant Party or any of Tenant's successors or assigns now has or may have or which may arise or be asserted in the future arising out of, directly or indirectly, or in any way connected with: (i) any act or omission of Landlord (or any Person acting for or on behalf of Landlord or for whose conduct Landlord may be liable), whether or not such act be the active, passive or sole negligence of Landlord, in connection with prior ownership, maintenance, operation or use of the Premises or adjacent properties; (ii) any condition of environmental contamination or pollution at, on, under, or emanating from the Premises or adjacent properties (including, without limitation, any Pre-Existing Hazardous Material or other contamination or pollution of any soil, subsoil media, indoor air, improvements, structures, surface waters, sediments, ground waters and/or any related impacts to natural resources, and any investigative order or cleanup or abatement order relating to the Premises or adjacent properties); (iii) to the extent not already included in clause (ii) above, the prior, present or future existence, release or discharge, or threatened release or discharge, of any Hazardous Materials at, on, under, or emanating from the Premises or adjacent properties (including, without limitation, the release or discharge, or threatened release or discharge, of any Hazardous Materials into the air at the Premises or into any soils, subsoil media, indoor air, improvements, structures, sediments, surface waters, groundwaters and/or any related impacts to natural resources); (iv) the violation of, or noncompliance with, any Environmental Laws or other applicable Laws now or hereafter in effect, however and whenever occurring; (v) the condition of the soil at the Premises; (vi) the Condition of the Premises, including, without limitation, the condition of any Improvements including, without limitation, the structural integrity and seismic compliance of such Improvements; (vii) any matters which would be shown on an accurate ALTA land survey of the Premises (including, without limitation, all existing easements and encroachments, if any); (viii) all applicable Laws now or hereafter in effect; (ix) matters which would be apparent from a visual inspection of the Premises; or (x) to the extent not already covered by any of the foregoing clauses (i) through (ix) above, the use, maintenance,

development, construction, ownership or operation of the Premises by Landlord or any predecessor(s)-in-interest in the Premises of Landlord.

(b) *Waiver of Civil Code § 1542.* With respect to all releases made by Tenant under or pursuant to Article 21 and this Article 22, Tenant hereby waives the application and benefits of California Civil Code § 1542 and hereby verifies that it has read and understands the following provision of California Civil Code § 1542:

"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 THE RELEASED PARTY."

**TENANT:** \_\_\_\_\_

**22.4.4 Survival.**

The terms of this Article 22 shall survive the expiration or earlier termination of this Lease.

**23. QUITCLAIM OF TENANT'S INTEREST UPON TERMINATION**

Subject to the terms of this Article 23 and Article 7, upon the expiration or earlier termination of the Lease, all Improvements, excluding trade fixtures, installed or constructed on the Premises, shall become the property of Landlord and a part of the realty and shall be surrendered to Landlord. In order to confirm such transfer of ownership, at Landlord's request following the expiration or earlier termination of the Lease, Tenant shall deliver to Landlord a Tenant-executed quitclaim deed in recordable form conveying the Improvements to Landlord free and clear of any mechanic's or materialmen's liens and other encumbrances. Without limitation of the foregoing, Tenant hereby appoints Landlord as Tenant's attorney-in-fact to execute such deed in the name and on behalf of Tenant and to record same in the official records of San Diego County, California. This power of attorney is irrevocable and coupled with an interest.

**24. PEACEABLE SURRENDER**

Upon expiration of this Lease or earlier termination thereof, Tenant shall peaceably surrender the Premises to Landlord in a broom clean condition with all refuse removed and in as good condition and repair as the Premises were when Tenant first took possession of the Premises, or, as applicable, any portion thereof, except for reasonable wear and tear and casualty, to the extent the Premises may have been rebuilt, restored, altered, or added to as permitted or required by the provisions of this Lease. Notwithstanding the foregoing, Tenant shall leave or remove such Improvements as directed by Landlord pursuant to Section 7.2, and surrender the Premises in the condition required under Section 7.2. If Tenant fails to surrender the Premises at the expiration of this Lease or the earlier termination or cancellation thereof in the condition required under this Lease, in addition to Landlord's other remedies, Tenant shall defend and indemnify Landlord from all liability and expense resulting from the delay or failure to surrender, including without limitation any succeeding tenant claims based on Tenant's failure to surrender or Landlord's failure to deliver the Premises.

## 25. WAIVER

No waiver of any provision of this Lease shall be implied by any failure of a party to enforce any remedy on account of the violation of such provision, even if such violation shall continue or be repeated subsequently. Any waiver by a party of any provision of this Lease may only be in writing, and no express waiver shall affect any provision other than the one specified in such waiver and that one only for the time and in the manner specifically stated. No receipt of monies by Landlord from Tenant after the termination of this Lease shall in any way alter the length of the Term or of Tenant's right of possession hereunder or after the giving of any notice shall reinstate, continue or extend the Term or affect any notice given Tenant prior to the receipt of such monies, it being agreed that after the service of notice or the commencement of a suit or after final judgment for possession of the Premises, Landlord may receive and collect any Rent due, and the payment of said Rent shall not waive or affect said notice, suit or judgment. The Landlord shall have the power and authority to waive any requirement of Tenant under this Lease except as such authority may be limited by the Port Act or BPC from time to time; provided, however, Landlord may elect to obtain approval of the BPC as a condition to exercising this authority.

## 26. HOLDOVER

This Lease shall terminate without further notice at expiration of the Term. Any holding over by Tenant after either expiration or termination without Landlord's written consent shall be a tenancy-at-sufferance upon all of the provisions of this Lease, except those pertaining to the Term, and except that Monthly Rent shall be 150% of the Monthly Rent in effect prior to the expiration or termination. If Tenant, with Landlord's consent, remains in possession of the Premises after Lease expiration or termination, such possession shall be deemed a month-to-month tenancy terminable upon thirty (30) days' notice furnished at any time by either party to the other. All provisions of this Lease, except those pertaining to the Term, shall apply to the month-to-month tenancy, and Tenant shall continue to pay all Rent required by this Lease. Notwithstanding anything herein to the contrary, in no event may the Term of this Lease, together with any holdover period, exceed sixty-six (66) years.

## 27. NOTICES

All notices provided for by this Lease or by Laws to be given or served upon Landlord or Tenant shall be addressed as provided in Section 1.6 (as such address may have been changed by subsequent notice given to the other party) and shall be in writing and: (i) personally served upon Landlord or Tenant, or any Person hereafter authorized by either party in writing to receive such notice, (ii) delivered via reputable over-night courier service, or (iii) delivered by U.S. postal service certified letter.

Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the parties so served; provided, however, if served by certified mail, service will be considered completed and binding on the party served forty-eight (48) hours after deposit in the U.S. Mail.

## 28. GENERAL PROVISIONS

### 28.1 Terms; Captions.

The necessary grammatical changes required to make the provisions hereof apply either to corporations, limited liability companies or partnerships or individuals, men or women, as the case

may require, shall in all cases be assumed as though in each case fully expressed. The captions of Articles and Sections are for convenience only and shall not be deemed to limit, construe, affect or alter the meaning of such Articles and Sections.

## **28.2 Binding Effect.**

Each of the provisions of this Lease shall extend to and shall, as the case may require, bind or inure to the benefit not only of Landlord and of Tenant, but also of their respective heirs, successors or assigns, provided this clause shall not permit any Assignment by Tenant contrary to the provisions of Article 11 of this Lease.

## **28.3 No Merger.**

If both Landlord's and Tenant's estates in the Premises become vested in the same owner (other than by termination of this Lease following an Event of Default hereunder, subject to the rights of a Permitted Lender pursuant to Section 10.3 above), this Lease shall not be terminated by application of the doctrine of merger except at the express election of Landlord and with the consent of any Permitted Lender.

## **28.4 Recording.**

Unless the parties agree otherwise in writing in advance, on or before the date of this Lease, Landlord and Tenant shall execute a Memorandum of Lease in the form of Exhibit E attached hereto (the "**Memorandum of Lease**"). At Tenant's option, Tenant shall cause the Memorandum of Lease to be recorded at Tenant's sole cost and Tenant shall be solely responsible for any transfer taxes or fees required to be paid in connection with the recording of the Memorandum of Lease.

## **28.5 Transfer of Landlord's Interest.**

Tenant acknowledges that, subject to the Port Act and the oversight of the California State Lands Commission, Landlord has the right to transfer all or any portion of its interest in the Premises and in this Lease, and Tenant agrees that in the event of any such transfer, Landlord shall automatically be released from all liability under this Lease and Tenant agrees to look solely to such transferee for the performance of Landlord's obligations hereunder after the date of such transfer. Each landlord hereunder shall be liable only for those obligations arising during its period of ownership and shall be released from further obligations upon any transfer. The liability of Landlord and any transferee of Landlord shall be limited to their respective interests in the Premises, and Landlord and such transferee shall be without personal liability under this Lease, and Tenant hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under Tenant.

## **28.6 Time of Essence.**

Time is of the essence with respect to this Lease and each of its provisions.

## **28.7 Partial Invalidity.**

If any term, provision or condition contained in this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable,

shall not be affected thereby, and each and every other term, provision and condition of this Lease shall be valid and enforceable to the fullest extent possible permitted by Law.

### **28.8 Entire Agreement.**

It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Lease and this Lease supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties hereto with respect to the subject matter hereof. This Lease contains all of the terms, covenants, conditions, warranties and agreements of the parties relating in any manner to the rental, use and occupancy of the Premises, shall be considered to be the only agreement between the parties hereto and their representatives and agents, and none of the terms, covenants, conditions or provisions of this Lease can be modified, deleted or added to except in writing signed by the parties hereto. All negotiations and oral agreements acceptable to both parties have been merged into and are included herein and neither the drafts of this Amended and Restated Lease nor any other negotiations or draft agreements (including notes and communications related thereto) shall be admissible in any proceeding for the purpose of interpreting this Lease. There are no other representations or warranties between the parties, and all reliance with respect to representations is based totally upon the representations and agreements contained in this Lease. However, Tenant acknowledges and agrees that other documents may restrict Tenant's use of the Premises or impose other obligations not specifically referenced in this Lease including, but not limited to, conditions of approval of a CDP or mitigation measures under CEQA.

### **28.9 Joint and Several.**

If there is more than one Person constituting Tenant (i) the obligations imposed upon such persons or entities under this Lease shall be joint and several and (ii) the act or signature of, or notice from or to, any one or more of them with respect to this Lease shall be binding upon each and all of such persons and entities with the same force and effect as if each and all of them had so acted or signed, or given or received such notice.

### **28.10 Tenant's Authority.**

If Tenant is a corporation, partnership or limited liability company, each individual executing this Lease on behalf of Tenant hereby represents and warrants that Tenant is a duly formed and existing entity qualified to do business in the state in which the Premises is located and that Tenant has full right and authority to execute and deliver this Lease and that each Person signing on behalf of Tenant is authorized to do so.

### **28.11 Financial and Other Information Supplied by Tenant.**

Tenant represents and warrants that any financial or other information supplied by Tenant to Landlord regarding Tenant, Existing Guarantor, Additional UK Guarantor or Additional US Guarantor prior to entering into this Lease or as required hereby during the Term or regarding any Transfer (collectively, the "**Proprietary Information**"), or to Tenant's actual knowledge, regarding any Transferee, is true and accurate and not misleading in any material respect. The breach of this warranty shall be a default of this Lease by Tenant. All Proprietary Information provided by Tenant, Existing Guarantor, Additional UK Guarantor or Additional US Guarantor prior to entering into the Lease or during the Term or regarding any Transfer, including, without limitation, any financial statements or other information as required hereby, shall be considered the confidential information of Tenant, unless such Proprietary Information either (a) is in the public domain by



reason of prior publication through no act or omission of Landlord, or (b) is information Landlord needs to disclose in order to enforce this Lease, defend against a lawsuit concerning this Lease, or comply with any applicable Laws or legal process, but only to the extent and for the purposes of such required disclosure. Landlord shall use such Proprietary Information solely for the purpose of its internal evaluation of the Premises and this Lease and any application made in connection with this Lease. Landlord shall return to Tenant the copy of any Proprietary Information provided in connection with or under this Lease after it has reviewed the terms thereof, and in no event later than 21 days after receipt thereof. Landlord shall not provide access to or a copy of the Proprietary Information to any third party or other federal, state or local Government Agency unless required to do so by court order or other legal process and in any case not until Landlord has provided notice to Tenant with sufficient time to allow Tenant to challenge such court order or legal process and shall not release such information so long as Tenant is actively pursuing such relief from such court order or legal process in a manner that Landlord would not be in violation of such court order or legal process during such pursuit until a final, non-appealable decision of a court of competent jurisdiction on such matter. In addition, Landlord's obligations regarding disclosure of Proprietary Information hereunder is subject to all Laws, including, without limitation, the California Public Records Act and the Ralph M. Brown Act; provided that, if Landlord receives any public records act request, notice or legal proceeding under the California Public Records Act which relates to any Proprietary Information delivered to Landlord by Tenant, Existing Guarantor, Additional UK Guarantor or Additional US Guarantor, and Landlord identifies Proprietary Information responsive to such request, notice, or legal proceeding, then within five (5) business days from such identification, Landlord shall notify Tenant and provide Tenant a copy of such document and Landlord shall not provide access to or a copy of the Proprietary Information to any third party or other federal, state or local Government Agency until Landlord has provided notice to Tenant with sufficient time to allow Tenant to challenge such public records act request, notice or legal proceeding and shall not release such information so long as Tenant is actively pursuing such relief from such court public records act request, notice or legal proceeding until a final, non-appealable decision of a court of competent jurisdiction on such matter. Notwithstanding anything to the contrary set forth in this Section 28.11, Landlord may disclose the Proprietary Information to its partners, investors, lenders (including prospective lenders), purchasers (including prospective purchasers), financial advisors, accountants, property managers, affiliates, and its and their attorneys, provided that Landlord informs such recipients of the confidential nature of the Proprietary Information. Tenant hereby indemnifies and shall defend the Landlord, at Tenant's sole cost and expense and with counsel reasonably selected by Landlord, and hold the Landlord harmless from any and all claims (including claims under negligence and strict liability), demands, liability, losses, causes of actions and suits of any kind, administrative or judicial proceedings, orders, judgments, and all Related Costs arising out of Landlord's compliance with the non-disclosure provisions of this Section 28.11. If another agency requests access to or a copy of the Proprietary Information, Landlord shall notify Tenant so that Tenant may contact the agency and discuss this request directly with such agency prior to Landlord's release of such Proprietary Information.

### **28.12 Attorneys' Fees.**

Should any suit or action be commenced to enforce, protect, or establish any right or remedy of any of the terms and conditions hereof, including without limitation a summary action commenced by Landlord under the laws of the State of California relating to the unlawful detention of property, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees (whether with in-house or outside counsel or both) and costs of suit, including, without limitation, any and all costs incurred in enforcing, perfecting and executing such judgment.

**28.13 Transaction Costs.**

To the extent Tenant requests any approval, consent or other action by Landlord (including, without limitation, in connection with any proposed Alterations, Financing Transaction or Transfer), Tenant shall pay or reimburse Landlord, upon written demand therefor, all of Landlord's reasonable attorneys' fees (whether with in-house or outside counsel or both) and other third party costs incurred by Landlord relating to Landlord's review, together with Landlord's then current processing or cost recovery fee for similar transactions consistent with any schedule of such fees then utilized by Landlord. Landlord will provide Tenant with a copy of any such fee schedule following written request therefor from Tenant. Such costs and fees shall be payable to Landlord whether or not Landlord grants such approval or consent, or undertakes the action requested by Tenant.

**28.14 Governing Law.**

Venue for any legal proceeding shall be in San Diego County, California. This Lease shall be construed and enforced in accordance with the Laws of the State of California.

**28.15 Brokers.**

Landlord and Tenant each hereby warrant to each other that neither has retained or employed any real estate broker or agent in connection with the negotiation of this Lease. Tenant shall be solely responsible for the payment of any fee or commission due to any broker and agrees to indemnify and defend and hold Landlord harmless from any and all claims, demands, losses, liabilities, lawsuits and costs and expenses (including without limitation reasonable attorneys' fees, whether with in-house or outside counsel or both) with respect to any leasing commission or equivalent compensation alleged to be owing by Landlord.

**28.16 Counterparts/Originals.**

This Lease may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement. Any facsimile or copies of original signatures or signatures delivered electronically (such as .pdf, .tif, or other electronic files or via DocuSign) shall be considered and treated as if they were original signatures.

**28.17 Drafting Presumption; Review Standard.**

The parties acknowledge that this Lease has been agreed to by both the parties, that both Landlord and Tenant have consulted with attorneys with respect to the terms of this Lease and that no presumption shall be created against the drafting party. Any deletion of language from this Lease prior to its execution by Landlord and Tenant shall not be construed to raise any presumption, canon of construction or implication, including, without limitation, any implication that the parties intended thereby to state the converse of the deleted language. Unless otherwise specified in this Lease, any approval or consent to be given by Landlord may be given or withheld in Landlord's sole discretion. For purposes of interpreting the environmental indemnity, cleanup, and restoration provisions of this Lease, where such provisions in the Original Lease are expressed differently in this Lease, the parties agree that such environmental provisions of this Lease shall not be construed to have a narrower or more limited interpretation than the analogous provisions of the Original Lease.

### **28.18 Estoppel Statement.**

At any time and from time to time upon not less than fifteen (15) business days' notice by Landlord, Tenant shall execute, acknowledge and deliver to Landlord or any other party specified by Landlord an estoppel statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications) and the date to which each obligation constituting Rent has been paid, and stating whether or not Landlord is in default in performance of any covenant, agreement or condition contained in this Lease, and, if so, specifying such default of which Tenant may have knowledge, and any other information regarding the Lease or Tenant's performance reasonably requested by Landlord. At any time and from time to time upon not less than fifteen (15) business days' notice by Tenant or a Permitted Lender, Landlord shall execute, acknowledge and deliver to such Permitted Lender an estoppel statement in the Form of Landlord's Estoppel Statement attached hereto as Exhibit G.

### **28.19 OFAC.**

Tenant represents and warrants that (i) Tenant and each Person owning an interest in Tenant is not now, and shall not during the term of this Lease become, a Person with whom Landlord or any citizen of the United States is restricted from doing business with under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56 (commonly known as the "**USA Patriot Act**") and regulations promulgated pursuant thereto, or under any successor statutes or regulations, including, without limitation, persons and entities ("**Prohibited Persons**") named on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury ("**OFAC**") and/or on any other similar list pursuant to any authorizing statute, executive order or regulation, nor a Person (also, a "**Prohibited Person**") with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States, (ii) none of the funds or other assets of Tenant constitute property of, or are beneficially owned, directly or indirectly, by any Prohibited Person, (iii) no Prohibited Person has any interest of any nature whatsoever in Tenant (whether directly or indirectly), (iv) none of the funds of Tenant have been derived from any unlawful activity with the result that the investment in Tenant is prohibited by Laws or that the Lease is in violation of law, and (v) Tenant has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times.

### **28.20 Certified Access Specialist.**

For purposes of § 1938 of the California Civil Code, Landlord hereby discloses to Tenant, and Tenant hereby acknowledges, that the Premises have not undergone inspection by a Certified Access Specialist ("**CASp**"). (defined in California Civil Code § 55.52(a)(3)). Pursuant to § 1938 of the California Civil Code, Landlord hereby provides the following notification to Tenant: "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." If Tenant requests to perform a CASp inspection of the Premises, Tenant shall, at its sole cost, retain a CASp approved by Landlord (provided that Landlord may designate the CASp, at Landlord's option) to perform the inspection of the Premises at a time agreed upon by the parties. Tenant shall provide Landlord with a copy of any report or certificate issued by the CASp (the "**CASp Report**") and Tenant shall, at its sole cost, promptly complete any modifications necessary to correct violations of construction related accessibility standards identified in the CASp Report, which modifications will be completed in accordance with terms of this Lease, including, but not limited to, Article 6 hereof. Tenant and Landlord agree to keep the information in the CASp Report confidential as Proprietary Information of Tenant under the confidentiality provisions of Section 28.11, except as necessary for the Tenant to complete such modifications.

[Signature pages follow.]

**IN WITNESS WHEREOF, LANDLORD AND TENANT HAVE EXECUTED THIS LEASE AS OF THE DATE FIRST SET FORTH ABOVE.**

APPROVED AS TO FORM AND LEGALITY **SAN DIEGO UNIFIED PORT DISTRICT**

GENERAL COUNSEL

By: \_\_\_\_\_  
Nathan Slegers  
Deputy General Counsel

By: \_\_\_\_\_  
Adam J. Meyer  
Acting Director, Real Estate

[Signature pages continue on following page.]

**CP KELCO U.S., INC.,**  
a Delaware corporation

By: \_\_\_\_\_  
Signature

NAME: Bruce Dructor  
Its: Vice President

## DEFINITIONS ADDENDUM

This Definitions Addendum constitutes a part of that certain Lease (the "**Lease**") entered into as of \_\_\_\_\_, 20\_\_\_\_ by and between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, and, where applicable, acting through the Board of Port Commissioners of the San Diego Unified Port District ("**Landlord**") and CP KELCO U.S., INC., a Delaware corporation, and its predecessors, successors and assigns ("**Tenant**") and by reference to the same in the Lease, the following definitions are incorporated into and constitute a part of the Lease.

### DEFINITIONS ADDENDUM

<b>ADA:</b>	the Americans with Disabilities Act, 42 U.S.C. §12101 (et seq.) and the regulations promulgated thereunder, as the same may be amended from time to time.
<b>ADDITIONAL RENT:</b>	all sums of money other than Monthly Rent required to be paid by Tenant to Landlord under this Lease.
<b>AFFILIATE:</b>	any managing member or general partner of the subject Person (as the case may be), or any Person that Controls, is directly or indirectly Controlled by, or is under common ownership or Control with the subject Person.
<b>AGGREGATE DEBT AMOUNT:</b>	defined in Section 11.10.
<b>ALTERATIONS:</b>	any alterations, additions, installations, removals, demolitions, improvements or other physical changes to the Premises or any Improvements thereon, including the alteration, addition, installation or removal of machines, equipment, appliances or fixtures.
<b>ALTERATION PLANS:</b>	defined in Section 6.1.
<b>APPROVED PARENT:</b>	defined in Section 11.10.
<b>ASSIGNMENT:</b>	any disposition, assignment, sale, conveyance, exchange or other transfer of all or any portion of Tenant's interest in this Lease (including without limitation any easements), the leasehold estate created hereby, or the Premises, whether by operation of law or otherwise.
<b>ASSIGNMENT PARTICIPATION FEE:</b>	defined in Section 11.10.
<b>ASTs:</b>	defined in Section 21.4.1.
<b>BANKRUPTCY CODE:</b>	Title 11 of the United States Code, as amended.

**DEFINITIONS ADDENDUM****BANKRUPTCY EVENT:**

the occurrence with respect to Tenant, Existing Guarantor, Additional UK Guarantor, Additional US Guarantor or any other Person liable for Tenant's obligations hereunder (including without limitation any general partner of Tenant) of any of the following: (a) such Person becoming insolvent, as that term is defined in the Bankruptcy Code; (b) appointment of a receiver or custodian for any property of such Person, or the institution of a foreclosure or attachment action upon any property of such Person; (c) filing by such Person of a voluntary petition under the provisions of the Bankruptcy Code or any insolvency laws; (d) filing of an involuntary petition against such Person as the subject debtor under the Bankruptcy Code or any insolvency laws, which either (1) is not dismissed within sixty (60) days after filing, or (2) results in the issuance of an order for relief against the debtor; (e) such Person making or consenting to an assignment for the benefit of creditors or a composition of creditors; or (f) an admission by Tenant, Existing Guarantor, Additional UK Guarantor or Additional US Guarantor of its inability to pay debts as they become due.

**BMP:**

defined in Section 15.1.

**BPC:**

Board of Port Commissioners of the San Diego Unified Port District.

**BUILDABLE CONDITION:**

defined in Section 7.2

**CASp:**

defined in Section 28.20.

**CCC:**

defined in Section 4.3.

**CDP:**

defined in Section 4.3.

**CEQA:**

defined in Section 4.3.

**CERTIFICATES:**

defined in Section 18.3.1.

**CFR:**

defined in Section 21.5.2.

**CHANGE IN ENTITY:**

includes, whether through one transaction or a series of transactions.

(i) with respect to a corporation whose stock is not publicly traded through a nationally recognized



**DEFINITIONS ADDENDUM**

exchange, partnership, association, limited liability company, or other entity (other than a corporation whose stock is traded through a nationally recognized exchange) any one or more of the following resulting in a change in Control of Tenant: (A) the withdrawal, admittance or change, voluntary, involuntary or by operation of law or otherwise, of one or more of the partners, members, shareholders, or other principals or participants unless due to death or disability of the shareholders, partners and/or members, or (B) the assignment, transfer or sale (including upon the enforcement of any hypothecation, pledge or encumbrance), whether voluntary or involuntary or by operation of law or otherwise, of any stock, partnership, membership or equity interests (other than (i) to immediate family members by reason of gift or death, or (ii) to a family trust for the benefit of immediate family members), or (C) the dissolution, merger, consolidation or other reorganization of such corporation, partnership, association, limited liability company or other entity;

(ii) with respect to a corporation whose stock is publicly held and traded through a nationally recognized exchange, the transfer or sale, voluntary or involuntary, of all or substantially all of the assets or stock of the corporation to a third party.

Any event(s) or transaction(s) that would constitute a Change in Entity of a Tenant Parent also shall constitute a Change in Entity of Tenant.

**CLAIMS:**

defined in Section 22.4.3(a).

**COMMENCEMENT DATE:**

defined in Section 1.1

**COMPLETION AND COMPLETE:**

shall mean that Tenant has obtained and delivered to Landlord (i) a final certificate of occupancy, if such certificate of occupancy can be issued, for substantially all of the Improvements or Alterations, as applicable, from the appropriate governing authority, (ii) a certificate from Tenant's architect and general contractor in favor of Landlord stating that, to the best knowledge of such certifying party, the Improvements or Alterations, as applicable, have been completed in accordance with this Lease, and (iii) a copy of final lien releases in statutory form from all of Tenant's contractors and all subcontractors.

**DEFINITIONS ADDENDUM**

<b>CONDEMNATION:</b>	defined in Section 14.1.
<b>CONDITION OF THE PREMISES:</b>	defined in Section 22.1.
<b>CONSTANT DOLLARS:</b>	shall mean that the referenced dollar amount shall be adjusted on each anniversary of the Rent Commencement Date by an amount equal to the percentage increase in the CPI from the Rent Commencement Date to the most recent anniversary of the Rent Commencement Date preceding the date the Constant Dollar equivalent is to be calculated.
<b>CONSTRUCTION REQUIREMENTS:</b>	those requirements, conditions and procedures regulating the installation, construction, modification and repair of Improvements and Alterations as described in <u>Exhibit C</u> attached to this Lease.
<b>CONTROL, CONTROLLED AND CONTROLLING:</b>	shall be deemed to be either or both (i) the ownership of more than fifty percent (50%) of the stock or other voting interest of the subject entity or the ownership of beneficial interests in the subject entity, or (ii) the power to direct the management of the subject entity with respect to major decisions of the subject entity, whether through voting interests or by way of agreement.
<b>CPI:</b>	Consumer Price Index for All Urban Consumers for all items in Los Angeles, Long Beach, and Anaheim, CA. Items based on the period 1982 - 84 = 100 as published by the United States Department of Labor's Bureau of Labor Statistics.
<b>DEFAULT RATE:</b>	an annual rate equal to the lesser of (i) the annual "Bank Prime Loan" rate cited in the Federal Reserve Statistical Release Publication H.15(519), published weekly (or such other comparable index as Landlord and Tenant shall reasonably agree upon if such rate ceases to be published), plus four (4) percentage points, and (ii) the highest rate permitted by applicable law.
<b>DEMOLITION AND REMEDIATION CONTRACTOR:</b>	defined in Section 7.4.1.
<b>DEMOLITION AND REMEDIATION REPORT:</b>	defined in Section 7.4.1.
<b>DEMOLITION AND REMEDIATION REPORT UPDATE:</b>	defined in Section 7.4.2(a).

**DEFINITIONS ADDENDUM**

<b>DEMOLITION AND REMEDIATION SECURITY AMOUNT:</b>	defined in Section 7.4.2.
<b>DEMOLITION AND REMEDIATION SECURITY FUNDING PERIOD:</b>	defined in Section 7.4.2.
<b>DEMOLITION NOTICE:</b>	defined in Section 20.2.
<b>DISCRETIONARY ACTION:</b>	defined in Section 8.3.
<b>DISCRETIONARY PROJECT:</b>	defined in Section 8.1.
<b>EFFECTIVE DATE:</b>	defined the preamble of this Lease.
<b>ENVIRONMENTAL CLEANUP:</b>	defined in Section 21.1.4.
<b>ENVIRONMENTAL LAWS:</b>	defined in Section 21.1.1.
<b>ESTIMATED DEMOLITION AND REMEDIATION COST:</b>	defined in Section 7.4.2.
<b>EVENT OF DEFAULT</b>	Defined in Section 12.1
<b>EXISTING IMPROVEMENTS:</b>	shall mean any improvements (including utilities, storm drains and park ways) located upon the land (and water, if applicable) that are in existence and located on, in, over or under the Premises as of the date of this Lease, whether constructed by Landlord, a prior tenant or another third party.
<b>EXISTING OWNERS:</b>	defined in Section 11.10.
<b>EXPIRATION DATE:</b>	defined in Section 1.1.
<b>FINANCIAL INSTITUTION:</b>	shall mean (i) an insurance company qualified to do business in the State of California; or (ii) a U.S. federally- or state-chartered bank, savings bank, or savings and loan association; or (iii) a pension or retirement fund operated for the employees and former employees of, and regulated and controlled by, the United States of America or any state thereof, or any agency thereof (e.g., the California State Teachers' Retirement System); or (iv) a real estate investment trust; or (v) any lender or investment fund whose regular on-going business includes real property secured financing for commercial or industrial properties, or (vi) a combination of two or more of the preceding entities.

**DEFINITIONS ADDENDUM**

<b>FINANCING PARTICIPATION FEE:</b>	defined in Section 10.5.
<b>FINANCING TRANSACTION:</b>	defined in Section 10.1.1.
<b>FORCE MAJEURE EVENT:</b>	defined in Section 6.3.
<b>FORECLOSURE PURCHASER:</b>	defined in Section 10.3.3.
<b>GOVERNMENT AGENCY:</b>	defined in Section 21.1.2.
<b>GROSS PROCEEDS:</b>	defined in Section 11.10.
<b>HAZARDOUS MATERIAL OR HAZARDOUS MATERIALS:</b>	shall mean any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance, including, without limitation, asbestos and oil and petroleum products, which is a "Hazardous Material" or "Hazardous Substance" within the meaning of any applicable Laws (including, but not limited to, hazardous substances as defined by Cal. Health & Safety Code § 78075(a) and anything that may result in contamination, pollution, waste, or nuisance as defined by Cal. Water Code § 13050), and at any concentration that is subject to regulation under any Laws relating to such Hazardous Material or Hazardous Substance. Notwithstanding any exclusion from the definition of hazardous substance or hazardous material in any applicable Laws, Hazardous Material and Hazardous Materials as defined herein include any hydrocarbons, petroleum, petroleum products or waste and any other chemical, substance or waste, that is regulated by, or may form the basis of liability under, any Laws.
<b>HAZARDOUS MATERIALS ACTIVITY:</b>	defined in Section 21.1.1.
<b>IMPROVEMENTS:</b>	those buildings, structures and other improvements (including vaults, utilities and other underground improvements) now (including any Existing Improvements, if applicable) or hereafter (including Alterations) located on, in, over or under the Premises.
<b>INCURABLE DEFAULT:</b>	defined in Section 10.3.2(b).
<b>INQUIRY:</b>	defined in Section 21.1.2.
<b>LANDLORD END OF TERM ELECTION:</b>	defined in Section 7.2.

**DEFINITIONS ADDENDUM**

**LANDLORD PARTIES:**

Landlord, its officers, directors, members of the BPC, employees, partners, affiliates, agents, contractors, successors and assigns.

**LATE CHARGES:**

defined in Section 5.2.

**LAWS:**

All present and future federal, California state, and local laws, rules, orders, ordinances, regulations, statutes, requirements, codes and executive orders, including, without limitation, the ADA, and any Laws of like import, and all rules, regulations and government orders with respect thereto, including, without limitation, those related to (i) operational safety requirements at the Premises such as the Occupational Health and Safety Act, Cal/OSHA regulations, and others established by federal, state, or local government, and (ii) any of the foregoing relating to Hazardous Materials, environmental matters (including, but not limited to, Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Resource Conservation and Recovery Act ("RCRA"), the Clean Air Act, the Clean Water Act, the Oil Pollution Act, the Toxic Substances Control Act, and comparable and supplemental California laws, and rules and regulations prescribed in connection with California Assembly Bill 617 relating to any applicable Community Air Protection Program or Community Emissions Reduction Program), public health and safety matters and landmarks protection, as any of the same now exist or may hereafter be adopted or amended. Said Laws shall include, but are not limited to the Laws enacted by the San Diego Unified Port District Act, such as Article 10 of the San Diego Unified Port District Code; any applicable ordinances of the city in which the Premises are located, including the building code thereof, and any governmental permits and approvals, including, without limitation, any California Coastal Development Permit, applicable to the Premises or the use or development thereof.

**LEASEHOLD AWARD:**

defined in Section 14.7.1.

**MAJOR ALTERATIONS:**

defined in Section 6.1.1.

**MEMORANDUM OF LEASE:**

defined in Exhibit E.

**MONTHLY RENT:**

as set forth in Section 1.4.

**DEFINITIONS ADDENDUM**

<b>MINOR ALTERATIONS:</b>	defined in Section 6.1.2.
<b>NET PROCEEDS:</b>	defined in Section 10.5.
<b>NEW LEASE:</b>	defined in Section 10.3.2(d)
<b>NOTICE OF ELECTION TO TERMINATE:</b>	defined in Section 20.2.
<b>OFAC:</b>	defined in Section 28.19.
<b>PERMITTED ENCUMBRANCE:</b>	defined in Section 10.2.
<b>PERMITTED LENDER:</b>	defined in Section 10.2.
<b>PERMITTED USE:</b>	defined in Section 1.3.
<b>PERSON:</b>	any individual, partnership, firm, joint venture, association, corporation, limited liability company, Government Agency or any other form of business entity.
<b>PMP:</b>	defined in Section 1.3.
<b>PMPA:</b>	defined in Section 8.1.
<b>PRE-EXISTING HAZARDOUS MATERIAL:</b>	any Hazardous Material located on or under the Premises as of November 1, 1943, whether known or unknown, only to the extent such Hazardous Material was re-suspended, released, redeposited, discharged, emitted, exacerbated by, requires investigation or remediation as a result of, or otherwise arises out of or results from, the use, occupancy, possession, or operation of the Premises subsequent to November 1, 1943, including to the extent such Hazardous Material has come to be located on any other property. It shall be Tenant's obligation to prove that any Hazardous Material located on or under the Premises as of November 1, 1943 has not been suspended, released, deposited, discharged, emitted, exacerbated by, does not require investigation or remediation as a result of, and/or does not otherwise arise out of or result from, the use, occupancy, possession, or operation of the Premises subsequent to November 1, 1943.
<b>PREMISES:</b>	defined in Section 1.2.
<b>PRIMARY USE:</b>	defined in Section 1.3.

**DEFINITIONS ADDENDUM**

<b>PROHIBITED PERSON:</b>	defined in Section 28.19.
<b>PROHIBITED PERSONS:</b>	defined in Section 28.19.
<b>PROPERTY EXPENSES:</b>	defined in Section 16.2.
<b>PROPRIETARY INFORMATION</b>	defined in Section 28.11.
<b>PWL:</b>	defined in Section 6.6.1(a)
<b>REGULATED WASTE REMOVAL:</b>	defined in Section 21.5.1.
<b>REIMBURSEMENT PROCEDURE:</b>	defined in Section 5.4.
<b>RELATED COSTS:</b>	any costs, damages (of all kinds including punitive damage, diminution in value and loss of use), claims, liabilities, expenses (including reasonable attorneys' (whether with in-house or outside counsel or both), consultants' and experts' fees), losses, fines, penalties and court costs related to the subject matter of the Related Costs and amounts paid in settlement of any claims or actions related to the subject matter of the Related Costs.
<b>REMOVAL EXTENSION:</b>	defined in Section 7.5.
<b>REMOVAL PERIOD:</b>	defined in Section 7.4.1.
<b>RENT:</b>	defined in Article 5.
<b>RENT COMMENCEMENT DATE:</b>	defined in Section 1.4.
<b>SUBLEASE:</b>	any sublease (or sub-sublease or other level of sublease), and any occupancy, franchise, license, operating agreement, concession agreement or management agreement or other right to use applicable to this Lease or the Premises or any part thereof, including, without limitation, the Staite Sublease.
<b>SDS:</b>	defined in Section 21.1.1.
<b>SUBTENANT:</b>	any subtenant (or sub-subtenant or other level of subtenant), occupant, franchisee, licensee, operator, concessionaire or manager under any Sublease, including, without limitation, Staite Subtenant.
<b>TAX EXPENSES:</b>	shall have the meaning as defined in Section 16.1.

**DEFINITIONS ADDENDUM**

<b>TENANT HAZARDOUS MATERIAL:</b>	any Hazardous Material (i) brought onto the Premises on or subsequent to November 1, 1943, by any Person, (ii) brought onto the Premises or any other property by Tenant or Tenant Party, or (iii) generated, re-suspended, released, deposited, discharged, emitted, or exacerbated by, or that otherwise arises out of or results from, the use, occupancy, possession, or operation of the Premises from and after November 1, 1943, including to the extent such Hazardous Material has come to be located on any other property.
<b>TENANT HIRES:</b>	defined in Section 17.1.
<b>TENANT PARENT:</b>	a Person which Controls, directly or indirectly, Tenant.
<b>TENANT PARTY:</b>	Tenant, its agents, employees, representatives, contractors, subcontractors, suppliers, materialmen, workmen, licensees, concessionaires, Affiliates and successors and assigns and its Subtenants (including, without limitation, Staitte Subtenant), and the agents, employees, representatives, contractors, subcontractors, suppliers, materialmen, workmen, concessionaires, licensees, Affiliates and successors and assigns of those Subtenants.
<b>TENANT RELATED PARTY:</b>	(i) a corporation or other business entity into or with which Tenant shall be merged or consolidated (such as a "successor corporation"), or to which substantially all of the assets of Tenant may be transferred or sold; or (ii) a corporation or other business entity (a "related corporation") which shall Control, be Controlled by or be under common Control with Tenant.
<b>TERM:</b>	defined in Section 3.1.
<b>THIRD PARTY:</b>	defined in Section 11.10.
<b>TRANSFER:</b>	defined in Section 11.1.
<b>TRANSFER NOTICE:</b>	defined in Section 11.2.
<b>TRANSFeree:</b>	defined in Sections 11.2 and 11.3.
<b>USA PATRIOT ACT:</b>	defined in Section 28.19.
<b>USTs:</b>	defined in Section 21.4.1.





**EXHIBIT A**

**LEGAL DESCRIPTION OF PREMISES**

## EXHIBIT "A"

15218

**Legal Description for  
CP KELCO U.S. INC.  
TIDELAND LEASE  
Parcel / Drawing No 021-010  
Within Corporate Limits of San Diego**

All that certain portion of land conveyed to the San Diego Unified Port District by that certain Act of Legislature of the State of California pursuant to Chapter 67, Statutes of 1962, First Extraordinary Session, as amended, and delineated on that certain Miscellaneous Map No. 564, filed in the Office of the San Diego County Recorder on May 28, 1976, File No. 76-164686, in the City of San Diego, County of San Diego, State of California, and more particularly described as follows:

**PARCEL NO. 1**

Commencing at a 3" diameter brass disk monument marked S.D.U.P.D. No. 47 as shown on Record Of Survey Map No. 17055, filed in the Office of the San Diego County Recorder on June 29, 2001; thence leaving said monument South 67°34'39" East a distance of 994.60 feet (calculated) to a point on the Mean High Tide Line for the Bay of San Diego, as said Mean High Tide Line is shown on the above described Miscellaneous Map No. 564, said point also being the TRUE POINT OF BEGINNING of Parcel No. 1; thence along said Mean High Tide Line South 53°30'58" East a distance of 22.00 feet; thence South 53°03'31" East a distance of 5.05 feet; thence leaving said Mean High Tide Line North 39°47'49" East a distance of 29.91 feet to the beginning of a tangent 30.00 feet radius curve, concave to the south; thence northeasterly along the arc of said curve through a central angle of 90°02'46" an arc distance of 47.15 feet to a point on the southwesterly line of Belt Street, as said Belt Street area was Parcel 11 portion of Pueblo Lot 1164 shown on City of San Diego Drawing No. 12-A, used as attachment for Document of Conveyance on file in the Office of the District Clerk as Document No. 75; thence along said southwesterly line of Belt Street South 50°09'25" East a distance of 746.97 feet; thence North 88°52'00" West a distance of 67.67 feet; thence North 84°32'00" West a distance of 27.20 feet; thence South 33°39'49" West a distance of 341.07 feet; thence South 62°09'33" West a distance of 79.65 feet; thence North 56°20'11" West a distance of 13.00 feet; thence South 33°39'49" West a distance of 18.00 feet; thence North 56°20'11" West a distance of 29.00 feet; thence South 33°39'49" West a distance of 15.83 feet to a point on the U. S. Bulkhead Line, as said U.S. Bulkhead Line is now established for the bay of San Diego and delineated on map entitled "Harbor Lines, San Diego Bay, California, File No. (D.O. Series) 426", approved by the Secretary of the Army, April 29, 1963, and filed in the Office of the District Engineer, Los Angeles, California; thence along said U.S. Bulkhead Line

Sheet 1 of 2

EXHIBIT A

-2-

**15219**

North 56°20'11" West a distance of 551.78 feet to a point which bears South 56°20'11" East a distance of 334.46 feet from U.S. Bulkhead Line Station 464; thence leaving said U.S. Bulkhead Line North 18°30'49" West a distance of 32.14 feet; thence North 53°57'43" West a distance of 46.70 feet; thence North 36°21'32" West a distance of 24.92 feet; thence North 52°24'33" West a distance of 22.54 feet; thence North 56°20'11" West a distance of 16.50 feet; thence North 39°47'49" East a distance of 169.27 feet; thence North 56°20'11" West a distance of 11.06 feet; thence North 39°47'49" East a distance of 321.40 feet to the TRUE POINT OF BEGINNING of Parcel No.1, containing 399, 059 square feet or 9.16 acres of tidelands area.

### PARCEL NO. 2 WATER AREA

Commencing at the above described U.S. Bulkhead Line Station 464, thence along said U. S. Bulkhead Line South 56°20'11" East a distance of 334.46 feet to the TRUE POINT OF BEGINNING of Parcel No. 2; thence continuing along said U.S. Bulkhead Line South 56°20'11" East a distance of 512.60 feet; thence leaving said U.S. Bulkhead Line South 33°39'49" West a distance of 700.00 feet to a point on the U.S. Pierhead Line, as said U.S. Pierhead Line is now established for the Bay of San Diego; thence along said U.S. Pierhead Line North 56°20'11" West a distance of 512.60 feet to a point which bears South 56°20'11" East a distance of 371.25 feet from the U.S. Pierhead Line Station 477; thence leaving said U.S. Pierhead Line North 33°39'49" East a distance of 700.00 feet to the TRUE POINT OF BEGINNING of Parcel No. 2, containing 358, 820 square feet or 8.24 acres of water covered area.

The above described land and water area is delineated on the San Diego Unified Port District Drawing No. 021-010, dated 22 December 2005 and made a part of this agreement.

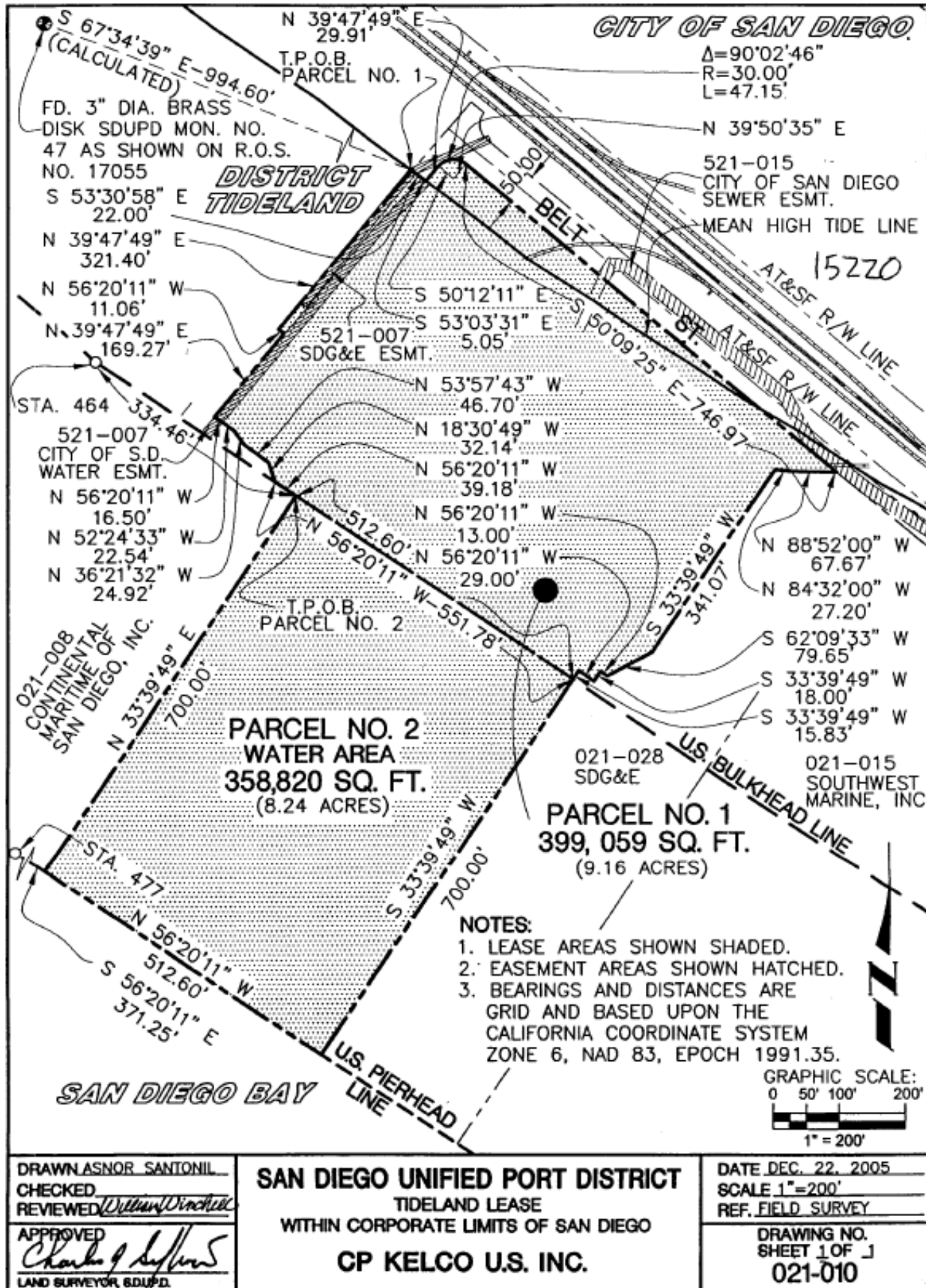
All bearings and distances in the above legal description are grid, and based upon the California Coordinate System, Zone 6, N.A.D. 83, Epoch 1991.35.

*Charles J. Sefkow* 12/22/05  
 Charles J. Sefkow Date  
 L.S. 7876 Expires 31 Dec. 2006  
 Survey Chief, Survey Section  
 San Diego Unified Port District



Sheet 2 of 2

**EXHIBIT B**  
**DEPICTION OF PREMISES**



DEVSERV\REM\021\021-010\_102703

## EXHIBIT C

### CONSTRUCTION REQUIREMENTS

1. **GENERALLY.** TENANT SHALL COMPLY WITH THE PROVISIONS OF THIS EXHIBIT C, SUCH OTHER GENERAL CONSTRUCTION RELATED RULES AND REQUIREMENTS AS LANDLORD MAY ADOPT OR REASONABLY REQUIRE FROM TIME TO TIME FOR CONSTRUCTION BY TENANT, AND THE PROVISIONS OF THE LEASE IN CONNECTION WITH ALL CONSTRUCTION OR DEMOLITION WORK AT THE PREMISES ("CONSTRUCTION WORK"). THE CONSTRUCTION RELATED RULES AND REQUIREMENTS CONTEMPLATED HEREIN ARE SEPARATE FROM ANY APPROVALS REQUIRED UNDER THE LEASE TO UNDERTAKE SUCH CONSTRUCTION.

2. **Contractors.** Landlord shall have the right to approve the general contractor for Construction Work (other than Minor Alterations) in its reasonable discretion. All contractors and subcontractors performing any Construction Work must be licensed in the State of California.

3. **Architects and Engineers.** All architects and engineers must have an active license to practice in the State of California.

4. **Contractors, Architects and Engineers Agreements.** Landlord shall have the right to approve the architectural, engineering and construction contracts for all the Improvements (other than Minor Alterations) in its reasonable discretion. All such contracts shall provide, in form and content reasonably satisfactory to Landlord, (i) for the assignment thereof to Landlord as security to Landlord for Tenant's performance hereunder (ii) that if this Lease is terminated Landlord may, at its election, use any plans and specifications created by such architect, engineer or contractor for the contemplated Improvements at the Premises.

5. **Construction Barricades.** Tenant shall install a construction barricade around the area of Construction Work (other than Minor Alterations), and erect such other protective measures as may be reasonably required by Landlord.

6. **Dust and Trash Control.** Tenant shall take commercially reasonable steps to minimize dust resulting from any Construction Work, and shall promptly dispose of all trash generated from the Construction Work.

7. **Performance and Payment Bonds.** Tenant shall furnish Landlord with the following separate corporate surety bonds not less than five (5) days prior to the commencement of any Construction Work with a hard cost reasonably estimated by Tenant to be greater than Three Million Dollars (\$3,000,000) (as such amount is increased on each anniversary of the Rent Commencement Date by the percentage increase in the CPI from the Rent Commencement Date):

7.1 A corporate surety performance bond ("Performance Bond") issued by a surety company licensed to transact business as such in the State of California, in an amount not less than one hundred percent (100%) of the projected cost of such Construction Work. The Performance Bond and its issuer shall be in all material respects satisfactory to Landlord. The Performance Bond shall name Tenant as principal and Landlord as obligee, assuring full completion by Tenant of such Construction Work.

7.2 A corporate surety Payment Bond, issued by a surety company licensed to transact business as such in the State of California, with Tenant as principal and Landlord as obligee, in a sum equal to one hundred percent (100%) of the total construction cost anticipated to be incurred in connection with such Construction Work, guaranteeing payment for all materials, provisions,

supplies and equipment used in, upon, for or about the performance of the Construction Work or for labor done thereon and protecting Landlord from any and all liability, loss or damages arising out of or in connection with any failure to make any such payments ("Payment Bond").

7.3 The Payment Bond and Performance Bond shall be in form and content satisfactory to Landlord.

7.4 Tenant may provide to Landlord a corporate guaranty from a contractor that is reasonably acceptable to Landlord in lieu of the Performance Bond and the Payment Bond for any Major Alteration, the terms of such guaranty to be acceptable to Landlord in its reasonable discretion.

8. Financial Assurances. At least ten (10) days prior to commencing any Construction Work (other than Minor Alterations), Tenant shall deliver to Landlord evidence reasonably demonstrating to Landlord that Tenant has obtained or retains financial resources and capabilities in an amount sufficient to complete the Construction Work.

9. Construction Schedule. Tenant shall, at least ten (10) days prior to date on which Tenant intends to commence construction of any Construction Work (other than Minor Alterations), deliver to Landlord a construction schedule. Tenant shall use commercially reasonable efforts, subject to Force Majeure Events, to perform the Construction Work in accordance with the construction schedule.

10. Contractor Insurance. All contractors and subcontractors performing Construction Work shall obtain and thereafter maintain so long as such Construction Work is occurring, at least the minimum insurance coverages set forth below, which insurance coverages may be modified by Landlord from time to time in its sole and absolute discretion:

- (i) Workers' compensation and employer's liability insurance:
  - (a) Workers' compensation insurance as required by any applicable law or regulation.
  - (b) Employer's liability insurance in the amount of \$1,000,000 each accident/employee/disease.
- (ii) General liability insurance: Commercial General Liability insurance covering all operations by or on behalf of the contractor, which shall include the following minimum limits of liability and coverages:
  - (a) Required coverages:
    - (1) Premises and Operation;
    - (2) Products and Completed Operations;
    - (3) Contractual Liability;
    - (4) Broad Form Property Damage (including Completed Operations);
    - (5) Explosion, Collapse and Underground Hazards; and
    - (6) Personal Injury Liability.
  - (b) Minimum limits of liability:
    - (1) \$2,000,000 each occurrence (for bodily injury and property damage);
    - (2) \$2,000,000 for Personal Injury Liability;



- (3) \$5,000,000 aggregate for Products and Completed Operations (which shall be maintained for a three (3) year period following final completion of the Work); and
- (4) \$5,000,000 general aggregate applying separately to this Project.

(iii) **Automobile Liability Insurance:** Automobile liability insurance including coverage for owned, leased, rented, hired, and/or non-owned automobiles. The limits of liability shall not be less than \$1,000,000 for each accident limit for bodily injury, death and property damage.

(iv) **Umbrella/Excess Liability Insurance:** The general contractor shall also carry umbrella/excess liability insurance in the amount of \$5,000,000. If there is no per project aggregate under the Commercial General Liability policy, the limit shall be \$10,000,000.

(v) **Contractor's Pollution Liability Coverage:** If Landlord determines, in its sole and absolute discretion, that Tenant performs or contracts for any work which involves a Hazardous Materials Activity or which has the potential to disturb or result in the release of any Hazardous Material, for which there is potential exposure to pollution or Hazardous Materials to Persons or the environment, Tenant shall obtain or cause its contractor to obtain Contractor's Pollution Liability, Pollution Legal Liability and/or Asbestos Pollution Liability and/or Errors & Omissions applicable to the work being performed or the potential release of any Hazardous Material, with limits of \$5,000,000 per claim or occurrence and \$10,000,000 aggregate per policy period of one year or the limits maintained by or available to the contractor, whichever is higher.

Landlord Parties shall be named as an additional insured on the forgoing insurance, and such insurance shall provide that the same shall not be canceled, or reduced in amount or coverage below the requirements of this Lease, nor shall it be allowed to expire, without at least thirty (30) days prior written notice to Landlord. The foregoing insurance shall include a waiver of subrogation in favor of Landlord Parties.

11. **Notice of Completion.** Within ten (10) days after Completion of any Construction Work (other than Minor Alterations), Tenant shall record a Notice of Completion in the office of the San Diego County Recorder and furnish a copy thereof to Landlord upon such recordation.
12. **Lien Releases.** Within sixty (60) days after Completion, Tenant shall deliver to Landlord unconditional final lien waivers from all contractors and materialmen.
13. **Copy of Record Set of Plans and Certificate of Completion.** At the conclusion of any Construction Work (other than Minor Alterations), deliver to Landlord (i) a set of "as-built drawings", (ii) a certificate from Tenant's architect and general contractor in favor of Landlord stating that, to the best knowledge of such certifying party, the Construction Work has been Completed in accordance, in all material respects, with the approved plans therefor, and (iii) a copy of the certificate of completion issued by the applicable government agency to the extent such certificate must be issued.
14. **Conflict.** In the event of conflict between the terms of these Construction Requirements and terms of the Lease, the terms of the Lease shall control.

**EXHIBIT D****GUARANTY**

J. M. Huber Corporation, a New Jersey corporation, hereinafter "Guarantor," whose address is 333 Thornall Street, Edison, NJ 08837, as a material inducement to and in consideration of the San Diego Unified Port District, hereinafter "Lessor," entering into a written Lease, hereinafter "the Lease" with CP Kelco U.S., Inc., a Delaware corporation, hereinafter "Lessee," dated the same date as this Guaranty, pursuant to which Lessor leased to Lessee, and Lessee leased from Lessor, premises located at 2145 East Belt Street in the city of San Diego, County of San Diego, California, in accordance with the Lease on file in the Office of the Clerk of Lessor, Document No. 50028, attached to this Guaranty, and made a part of it, unconditionally guarantees and promises to and for the benefit of Lessor, that Lessee shall perform the provisions of the Lease for which it is responsible.

If Guarantor is more than one person, Guarantor's obligations are joint and several, and are independent of Lessee's obligations. A separate action may be brought or prosecuted against any Guarantor, whether the action is brought or prosecuted against any other Guarantor, Lessee, or all, or whether any other Guarantor, Lessee, or all are joined in the action.

Guarantor waives the benefit of any statute of limitations affecting Guarantor's liability under this Guaranty.

The provisions of the Lease may be changed by agreement between Lessor and Lessee at any time, without the consent of or without notice to Guarantor. The Guarantor shall guaranty the performance of the Lease, as changed. Assignment of the Lease (as permitted by the Lease) shall not affect this Guaranty. Lessor's failure or delay in the enforcement of any of its rights also shall not affect this Guaranty.

If Lessee defaults under the Lease, Lessor can proceed immediately against Guarantor, Lessee, or both, or Lessor can enforce against Guarantor, Lessee, or both, any rights that it has under the Lease or pursuant to applicable laws. If the Lease terminates and Lessor has any rights it can enforce against Lessee after termination, Lessor can enforce those rights against Guarantor without giving prior notice to Lessee, Guarantor, or both, or without making any demand on either of them.

Guarantor waives the right to require Lessor to: (1) proceed against Lessee; (2) proceed against or exhaust any security that Lessor holds from Lessee; or (3) pursue any other remedy in Lessor's power. Guarantor waives any defense by reason of any disability of Lessee, and waives any other defense based on the termination of Lessee's ability from any cause.

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Until all Lessee's obligations under the Lease have been discharged in full, Guarantor has no right of subrogation against Lessee. Guarantor waives: (i) its right to enforce any remedies that Lessor now has, or later may have, against Lessee; (ii) any right to participate in any security now or later held by Lessor; (iii) all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guaranty; and (iv) all notices of the existence, creation, or incurrence of new or additional obligations.

If Lessor is required to enforce Guarantor's obligations by legal proceedings, Guarantor shall pay Lessor all costs incurred, including but not limited to reasonable attorney fees.

Guarantor's obligations under this Guaranty shall be binding on any successor of Guarantor. As used herein, a successor of Guarantor shall mean any assignee, transferee, personal representative, heir, or other person or entity succeeding lawfully, and pursuant to the provisions of said Lease, to the rights or obligations of Guarantor.

Also as used herein, Lessor shall mean Lessor's successors and assigns, if any.

J. M. Huber Corporation

Dated: Dec 21 2005

By: Edward P. Castorina  
Edward P. Castorina  
Title: Assistant Secretary

STATE OF GEORGIA

COUNTY OF Cobb

On December 21, 2005, before me, Lynn Hobbs, personally appeared Edward Castorina, personally known to me (proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature Lynn W. Hobbs

LYNN W. HOBBS  
NOTARY PUBLIC, COBB COUNTY, GEORGIA  
MY COMMISSION EXPIRES JUNE 24, 2007

**REAFFIRMATION OF EXISTING GUARANTY**

The undersigned, as Guarantor under that certain Guaranty dated December 21, 2005 (the "**Existing Guaranty**") hereby (i) acknowledges and consents to the foregoing Amended and Restated Lease, and (ii) notwithstanding the Transfer of Ownership Interest (as defined in the Restated Lease), agrees that the terms and conditions of the Existing Guaranty, including the Guarantors' promises, obligations, covenants and guarantees thereunder, shall continue to apply with equal force with respect to the foregoing Amended and Restated Lease following the Effective Date of the foregoing Amended and Restated Lease and the date of the Transfer of Ownership Interest.

J. M. Huber Corporation,  
a New Jersey corporation

By: \_\_\_\_\_ ]  
Signature

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

**EXHIBIT E**

**MEMORANDUM OF LEASE**

**RECORDING REQUESTED BY:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Above Space for Recorder's Use Only)

**MEMORANDUM OF LEASE**

This Memorandum of Lease, hereinafter "Memorandum," is dated \_\_\_\_\_, 20\_\_, between SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, Landlord, and CP Kelco U.S., Inc., a Delaware corporation, Tenant, concerning that certain real property described in Exhibit A and depicted in Exhibit B, attached hereto and by this reference made a part hereof (the "Leased Premises").

For good and adequate consideration, Landlord leases the Leased Premises to Tenant, and Tenant hires them from Landlord, for the term and on the provisions contained in that certain Lease of even date herewith by and between Landlord and Tenant (the "Lease"), including without limitation provisions prohibiting assignment, subleasing, and encumbering said leasehold without the express written consent of Landlord in each instance, all as more specifically set forth in said Lease, and subject to the terms of Article 23 of the Lease, Landlord conveys to Tenant and Tenant accepts from Landlord, all of Landlord's right, title and interest in and to the Existing Improvements, which said Lease is incorporated in this Memorandum by this reference.

The term of the Lease is thirty (30) years, beginning November 1, 2006, and ending October 31, 2026, with two (2) renewal options for an additional five (5) years through October 31, 2031.

This Memorandum is not a complete summary of the Lease. Provisions in this Memorandum shall not be used in interpreting the Lease provisions. In the event of conflict between the terms of this Memorandum and terms of the Lease, the terms of the Lease shall control.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum of Lease as of the date first set forth above.

APPROVED AS TO FORM AND LEGALITY

**SAN DIEGO UNIFIED PORT DISTRICT**

GENERAL COUNSEL

By: \_\_\_\_\_  
Nathan Slegers  
Deputy General Counsel

By: \_\_\_\_\_  
Adam J. Meyer  
Acting Director, Real Estate

**CP KELCO U.S., INC.,  
a Delaware corporation**

By: \_\_\_\_\_  
Signature  
NAME: Bruce Dructor  
Its: Vice President

**EXHIBIT A TO MEMORANDUM OF LEASE**  
**LEGAL DESCRIPTION OF PREMISES**

## EXHIBIT "A"

15218

**Legal Description for  
CP KELCO U.S. INC.  
TIDELAND LEASE  
Parcel / Drawing No 021-010  
Within Corporate Limits of San Diego**

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Sheet 1 of 2

EXHIBIT A

-2-



**15219**

North 56°20'11" West a distance of 551.78 feet to a point which bears South 56°20'11" East a distance of 334.46 feet from U.S. Bulkhead Line Station 464; thence leaving said U.S. Bulkhead Line North 18°30'49" West a distance of 32.14 feet; thence North 53°57'43" West a distance of 46.70 feet; thence North 36°21'32" West a distance of 24.92 feet; thence North 52°24'33" West a distance of 22.54 feet; thence North 56°20'11" West a distance of 16.50 feet; thence North 39°47'49" East a distance of 169.27 feet; thence North 56°20'11" West a distance of 11.06 feet; thence North 39°47'49" East a distance of 321.40 feet to the TRUE POINT OF BEGINNING of Parcel No.1, containing 399, 059 square feet or 9.16 acres of tidelands area.

### PARCEL NO. 2 WATER AREA

Commencing at the above described U.S. Bulkhead Line Station 464, thence along said U. S. Bulkhead Line South 56°20'11" East a distance of 334.46 feet to the TRUE POINT OF BEGINNING of Parcel No. 2; thence continuing along said U.S. Bulkhead Line South 56°20'11" East a distance of 512.60 feet; thence leaving said U.S. Bulkhead Line South 33°39'49" West a distance of 700.00 feet to a point on the U.S. Pierhead Line, as said U.S. Pierhead Line is now established for the Bay of San Diego; thence along said U.S. Pierhead Line North 56°20'11" West a distance of 512.60 feet to a point which bears South 56°20'11" East a distance of 371.25 feet from the U.S. Pierhead Line Station 477; thence leaving said U.S. Pierhead Line North 33°39'49" East a distance of 700.00 feet to the TRUE POINT OF BEGINNING of Parcel No. 2, containing 358, 820 square feet or 8.24 acres of water covered area.

The above described land and water area is delineated on the San Diego Unified Port District Drawing No. 021-010, dated 22 December 2005 and made a part of this agreement.

All bearings and distances in the above legal description are grid, and based upon the California Coordinate System, Zone 6, N.A.D. 83, Epoch 1991.35.

*Charles J. Sefkow* 12/22/05  
 Charles J. Sefkow Date  
 L.S. 7876 Expires 31 Dec. 2006  
 Survey Chief, Survey Section  
 San Diego Unified Port District

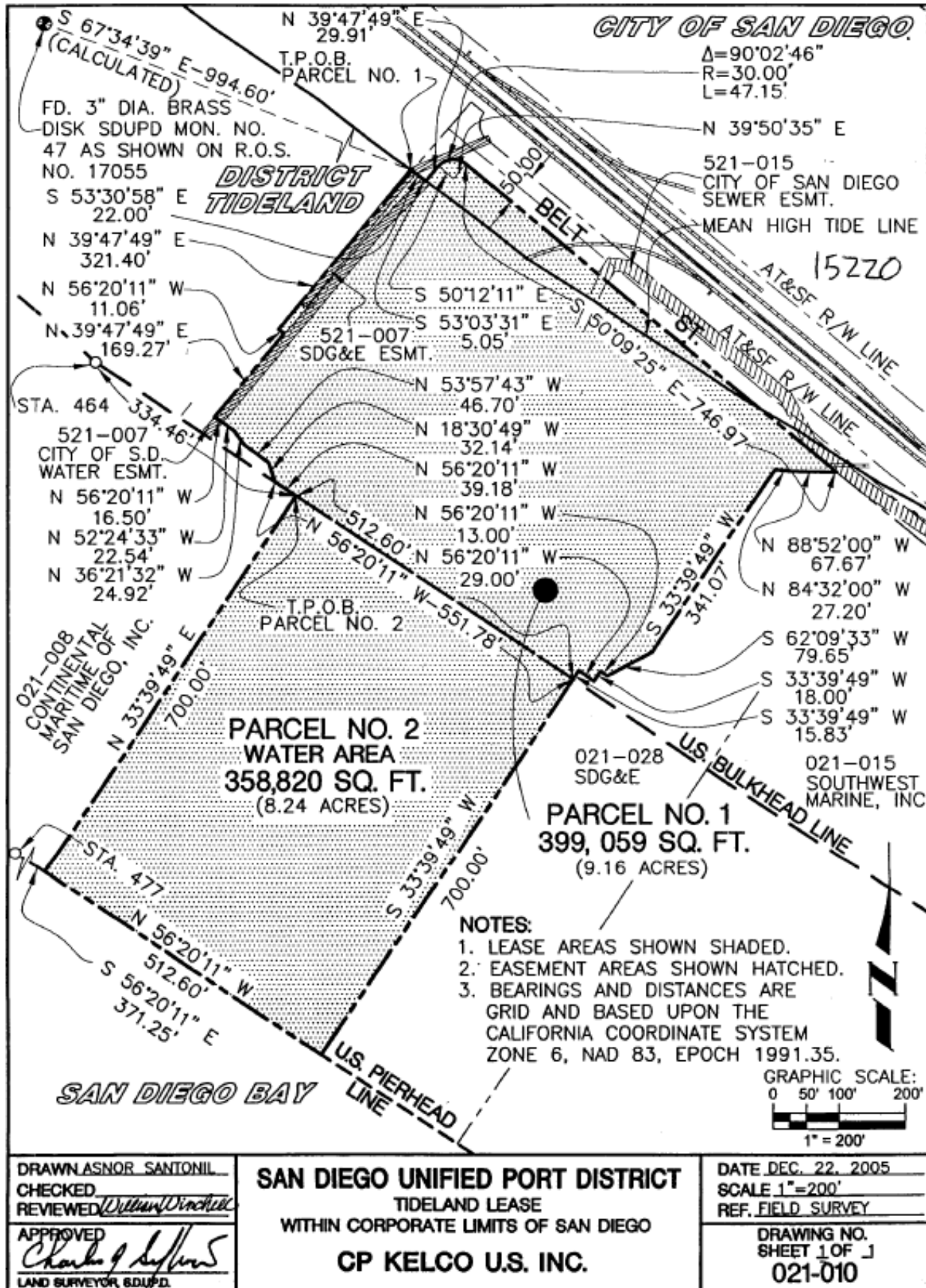


Sheet 2 of 2

EXHIBIT A

-3-

**EXHIBIT B TO MEMORANDUM OF LEASE**  
**DEPICTION OF PREMISES**



(FOR USE BY SAN DIEGO UNIFIED PORT DISTRICT)

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

OPTIONAL

Though the information below is not required by law, it may prove valuable to person relying on the document
and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

Capacity(ies) Claimed by Signer(s)

Signer's Name \_\_\_\_\_

- Individual
Corporate Officer -- Title(s):
Partner -- Limited General
Attorney in Fact
Trustee
Guardian or Conservator
Other:

Signer is Representing: \_\_\_\_\_

\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name \_\_\_\_\_

- Individual
Corporate Officer -- Title(s):
Partner -- Limited General
Attorney in Fact
Trustee
Guardian or Conservator
Other:

Signer is Representing: \_\_\_\_\_

\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

(FOR USE BY TENANT)

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

OPTIONAL

Though the information below is not required by law, it may prove valuable to person relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

Capacity(ies) Claimed by Signer(s)

Signer's Name \_\_\_\_\_

- Individual
Corporate Officer -- Title(s):
Partner -- Limited General
Attorney in Fact
Trustee
Guardian or Conservator
Other:

Signer is Representing: \_\_\_\_\_

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name \_\_\_\_\_

- Individual
Corporate Officer -- Title(s):
Partner -- Limited General
Attorney in Fact
Trustee
Guardian or Conservator
Other:

Signer is Representing: \_\_\_\_\_

RIGHT THUMBPRINT OF SIGNER
Top of thumb here



**EXHIBIT G****FORM OF LANDLORD'S ESTOPPEL STATEMENT**

\*Name  
Address

Ladies and Gentlemen:

This Landlord Estoppel Statement ("Statement") is issued by the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, and, where applicable, acting through the Board of Port Commissioners of the San Diego Unified Port District (hereinafter referred to as "Landlord"), as landlord under that certain lease dated \_\_\_\_\_, covering a portion of those lands conveyed to Landlord by that certain act of the Legislature of the State of California entitled "San Diego Unified Port District Act", Stats. 1962, 1st Ex. Sess., c. 67, as amended, between Landlord and \_\_\_\_\_, and its predecessors, successors and assigns (hereinafter referred to as "Tenant"), as tenant, a copy of which lease is on file in the Office of the Clerk of Landlord bearing Document No. \_\_\_\_\_ (the "Lease").

To the actual knowledge of Landlord (without any duty of investigation or inquiry), Landlord hereby acknowledges and confirms to Recipient (as defined below) the following:

1. The Lease is currently in full force and effect and has not been modified in whole or in part [\* , except as provided by that \*(those) certain amendment(s)\* described and dated as follows: \* copies of which amendment(s)\* is/are\* on file in the Office of the Clerk of Landlord bearing Document No.(s)]\*.
2. The Lease is for a term of \* (\*) years, commencing \* and ending \*.
3. As of the date of this Statement, Tenant is not, to the actual knowledge of Landlord (without any duty of investigation or inquiry), in default or in breach under the provisions of the Lease.
4. Landlord has no actual knowledge (without any duty of investigation or inquiry) of any other assignment or hypothecation of said leasehold estate, or any pledge or assignment of rents with respect to said premises \*[except any security interest therein created in favor of \* for a loan in the amount of \* Dollars (\$\*) as consented to by Landlord in an Administrative Approval or Resolution No. \*, a copy of which is attached hereto and by reference incorporated herein]\*. *[NOTE TO DRAFTER: Modify language if encumbrance has not yet been approved.]*
5. All rent, and any other charges payable by Tenant pursuant to the lease (referred to collectively hereinafter as "Rent") has been paid through and including \*; provided, however, there may be Rent still due and owing which will be discovered at the time of audit by Landlord and, to that extent, Landlord cannot represent that all Rent has been paid.

6. This Statement is given by Landlord with the understanding that the statements herein made may be relied upon only by \* (the "Recipient") and only for the purpose of estopping Landlord from asserting contrary facts against Tenant which Tenant also has no knowledge of.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

APPROVED AS TO FORM AND LEGALITY **SAN DIEGO UNIFIED PORT DISTRICT**

GENERAL COUNSEL

By: \_\_\_\_\_  
Assistant/Deputy

By: \_\_\_\_\_  
Tony Gordon  
Director, Real Estate



**EXHIBIT H-1**

**GUARANTY**

This Guaranty ("Guaranty") dated \_\_\_\_\_, 2024, is made by Tate & Lyle PLC, a United Kingdom public limited company, hereinafter "Guarantor," whose business address is \_\_\_\_\_, and whose mailing address is \_\_\_\_\_, in favor of the San Diego Unified Port District, a public corporation ("District").

WHEREAS, District and CP Kelco U.S., Inc., a Delaware corporation ("Tenant") entered into that certain Lease dated January 10, 2006, for certain tidelands in the City of San Diego, California, located at 2145 East Belt Street, San Diego, which Lease is on file in the Office of the Clerk of Landlord as Document No. 50028 ( the "Prior Lease"); and

WHEREAS, on February 21, 2017, District and Tenant entered into that certain Agreement for Amendment of Lease Amendment No. 1 on file in the Office of the Clerk of Landlord as Document No. 66186 ("Amendment No. 1", and together with the Prior Lease, the "Original Lease"); and

WHEREAS, in connection with the parties' desire to further amend and restate the Original Lease, District and Tenant have entered into an Amended and Restated Lease dated as of \_\_\_\_\_, 2024 filed in the Office of the District Clerk (the "Restated Lease"); and

WHEREAS, Guarantor has agreed to guaranty all of Tenant's obligations under the Restated Lease pursuant to the terms of this Guaranty, not to exceed Twenty-Five Million and 00/100 Dollars (\$25,000,000.00) (the "Maximum Liability Amount").

**AGREEMENT**

Therefore, for value received, and in consideration of, and in order to induce the District to enter into the Restated Lease, Guarantor, hereby agrees as follows:

1. The foregoing recitals are hereby incorporated by reference.
2. Guarantor unconditionally and absolutely guarantees to District the full and prompt payment and performance of all obligations of Tenant which Tenant presently or hereafter may have under the Restated Lease, not to exceed the Maximum Liability Amount (collectively, the "Obligations").
3. Guarantor represents and warrants that Guarantor owns 100% of the ownership interests in Tenant.
4. The obligations of Guarantor hereunder are independent of the Obligations. If any Obligations are due pursuant to the Restated Lease, and the same have not been paid or performed by Tenant following District providing Tenant with a reasonable cure period to pay or perform such obligations under the Restated Lease, then a separate action may be brought or prosecuted against Guarantor, whether or not the action is initially brought or prosecuted against Tenant, or whether or not Tenant is joined in the action.
5. Guarantor, waives the benefit of any statute of limitations affecting Guarantor's liability, individually or collectively, under this Guaranty.

6. The provisions of the Restated Lease may be changed by written agreement between District and Tenant at any time, without the consent of or without notice to the Guarantor. The Guarantor shall guaranty the Obligations, as changed from time to time by written agreement between District and Tenant. Except as otherwise specified herein, assignment of the Restated Lease (as permitted by the Restated Lease) shall not affect this Guaranty. District's failure or delay in the enforcement of any of its rights also shall not affect this Guaranty. If some or all of the Obligations are discharged or modified pursuant to any bankruptcy or similar proceedings (including, without limitation, by reason of the disaffirmance or rejection of the Restated Lease), each of Guarantor's obligations hereunder will continue in full force and effect as if some or all of the Obligations had not been so discharged or modified. The liability of Guarantor hereunder shall in no way be affected by the release or discharge of Tenant or any other guarantor of the Restated Lease or any disability or other defense of Tenant (except for defenses and claims that are available to Tenant under the Restated Lease). If Tenant defaults under the Restated Lease, District can proceed immediately against the Guarantor, Tenant, or both, or District can enforce against Guarantor, Tenant, or both, any rights that District has under the Restated Lease or pursuant to applicable laws with respect to the Obligations. If the Restated Lease terminates and District has any rights it can enforce against Tenant after termination with respect to the Obligations, District can enforce those rights against Guarantor, without giving prior notice to Tenant, Guarantor, or both, or without making any demand on either of them.

7. Guarantor waives the right to require District to: (1) proceed against Tenant; (2) proceed against or exhaust any security that District holds from Tenant; or (3) pursue any other remedy in District's power. Guarantor waives any defense by reason of any disability of Tenant, and waives any other defense based on the termination of Tenant's ability from any cause (except for defenses and claims that are available to Tenant under the Restated Lease). Guarantor further waives all rights and defenses that are or may become available to Guarantor, including without limitation any rights and defenses set forth in §§ 2787 through 2856, inclusive, of the California Civil Code. In addition, Guarantor agrees that Landlord (not Tenant) shall have the right to designate the portion of Tenant's obligations under the Lease that is satisfied by a partial payment by Tenant.

8. Until all Obligations under the Restated Lease have been discharged in full, Guarantor has no right of subrogation against Tenant. Guarantor waives (i) its rights to enforce any remedies that District now has, or later may have, against Tenant; (ii) any right to participate in any security now or later held by District; (iii) all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guaranty; and (iv) all notices of the existence, creation, or incurrence of new or additional Obligations.

9. If District seeks to enforce Guarantor's obligations by legal proceedings before a court of competent jurisdiction, Guarantor and District agree that the non-prevailing party in such legal proceedings shall pay all reasonable and documented out-of-pocket costs incurred, including but not limited to reasonable attorneys' fees (whether with in-house or outside counsel or both) of the prevailing party in connection with such legal proceedings. District has the right to prosecute any individual Guarantor for the full amount for said costs.

10. Guarantor's obligations under this Guaranty shall be binding, jointly and severally, on any successor of Guarantor, individually or collectively. As used herein, a successor of Guarantor shall mean any assignee, transferee, personal representative, heir, or other Person succeeding lawfully, and pursuant to the provisions of said Restated Lease, to the rights or obligations of

Guarantor, individually or collectively. Also as used herein, District shall mean District's successors and assigns, if any.

11. This Guaranty shall be governed, construed and enforced in accordance with the laws of the State of California, without regard to conflict of law principles.

12. Any dispute, controversy or claim arising out of or relating to this Guaranty, including the formation, interpretation, breach or enforcement thereof, including whether such claims are arbitrable, will be referred to and finally determined by binding arbitration administered by the International Centre for Dispute Resolution of the American Arbitration Association in accordance with its International Arbitration Rules. The arbitration tribunal shall consist of three (3) arbitrators, unless the parties within thirty (30) days following the commencement of the arbitration proceedings agree, in each party's sole discretion, in writing, to a single arbitrator. The chair of the arbitration panel shall be an attorney with at least twenty (20) years of active litigation and/or arbitration experience or a retired judge. The place of the arbitration proceedings shall be San Diego, California. The language to be used in the arbitration proceedings shall be English. The arbitration award shall be rendered within thirty (30) days after the later of (i) the conclusion of the arbitration hearing(s), or (ii) the date established for the receipt of the parties' final statements and proofs. Judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof and enforced in any manner provided by law. Guarantor submits itself to the jurisdiction of the State of California for this purpose.

13. Guarantor hereby irrevocably appoints Tenant as its agent for the service of process in any action or proceeding against Guarantor arising out of this Guaranty. In addition, Landlord shall, within five (5) business days of completion of service on Guarantor's agent as provided in this Section 13, and to the extent service has not already been effectuated against Guarantor pursuant to applicable law or otherwise, provide Guarantor with notice of the commencement of any action or proceeding against Guarantor arising out of this Guaranty at the address set forth on the first page of this Guaranty. Guarantor hereby consents to service of process by any means authorized by California law, and nothing herein shall affect the right to serve process in any other manner permitted by law.

14. Notwithstanding anything to the contrary in this Guaranty, this Guaranty shall terminate and Guarantor shall have no further obligations under this Guaranty as of the date on which there are no further outstanding Obligations.

15. Notwithstanding anything to the contrary set forth in this Guaranty, the Maximum Liability Amount under this Guaranty shall not be reduced by amounts recovered or collected by Landlord from the Tenant or Guarantor, to the extent such amounts are reimbursement for (i) expenses incurred by Landlord in collecting or attempting to collect amounts due Landlord under the Restated Lease, including, but not limited to, attorneys' fees and costs, and (ii) late charges and interest due under the Restated Lease.

16. This Guaranty may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement. Any facsimile or copies of original signatures or signatures delivered electronically (such as .pdf, .tif, or other electronic files or via DocuSign) shall be considered and treated as if they were original signatures.

*[signature page follows]*

In witness thereof, Guarantor has entered into this Guaranty as of the date written below.

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

**TATE & LYLE PLC,**  
a United Kingdom public limited company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**[[NOTE TO DRAFT: PLEASE PROVIDE  
GUARANTOR'S BY-LAWS/CHARTER  
AND, AT EXECUTION, SIGNATURE  
AUTHENTICATED BY APOSTILLE  
STAMP]]**

**EXHIBIT H-2**

**GUARANTY**

This Guaranty ("Guaranty") dated \_\_\_\_\_, 2024, is made by TLHUS, Inc., a Delaware corporation, hereinafter "Guarantor," whose business address is \_\_\_\_\_, and whose mailing address is \_\_\_\_\_, in favor of the San Diego Unified Port District, a public corporation ("District").

WHEREAS, District and CP Kelco U.S., Inc., a Delaware corporation ("Tenant") entered into that certain Lease dated January 10, 2006, for certain tidelands in the City of San Diego, California, located at 2145 East Belt Street, San Diego, which Lease is on file in the Office of the Clerk of Landlord as Document No. 50028 ( the "Prior Lease"); and

WHEREAS, on February 21, 2017, District and Tenant entered into that certain Agreement for Amendment of Lease Amendment No. 1 on file in the Office of the Clerk of Landlord as Document No. 66186 ("Amendment No. 1", and together with the Prior Lease, the "Original Lease"); and

WHEREAS, in connection with the parties' desire to further amend and restate the Original Lease, District and Tenant have entered into an Amended and Restated Lease dated as of \_\_\_\_\_, 2024 filed in the Office of the District Clerk (the "Restated Lease"); and

WHEREAS, Guarantor has agreed to guaranty all of Tenant's obligations under the Restated Lease pursuant to the terms of this Guaranty.

**AGREEMENT**

Therefore, for value received, and in consideration of, and in order to induce the District to enter into the Restated Lease, Guarantor, hereby agrees as follows:

1. The foregoing recitals are hereby incorporated by reference.
2. Guarantor unconditionally and absolutely guarantees to District the full and prompt payment and performance of all obligations of Tenant which Tenant presently or hereafter may have under the Restated Lease (collectively, the "Obligations").
3. Guarantor represents and warrants that Guarantor is an affiliate of the Tenant's parent company which owns 100% of the ownership interests in Tenant.
4. The obligations of Guarantor hereunder are independent of the Obligations. If any Obligations are due pursuant to the Restated Lease, and the same have not been paid or performed by Tenant following District providing Tenant with a reasonable cure period to pay or perform such obligations under the Restated Lease, then a separate action may be brought or prosecuted against Guarantor, whether or not the action is initially brought or prosecuted against Tenant, or whether or not Tenant is joined in the action.
5. Guarantor, waives the benefit of any statute of limitations affecting Guarantor's liability, individually or collectively, under this Guaranty.
6. The provisions of the Restated Lease may be changed by written agreement between District and Tenant at any time, without the consent of or without notice to the Guarantor. The

Guarantor shall guaranty the Obligations, as changed from time to time by written agreement between District and Tenant. Except as otherwise specified herein, assignment of the Restated Lease (as permitted by the Restated Lease) shall not affect this Guaranty. District's failure or delay in the enforcement of any of its rights also shall not affect this Guaranty. If some or all of the Obligations are discharged or modified pursuant to any bankruptcy or similar proceedings (including, without limitation, by reason of the disaffirmance or rejection of the Restated Lease), each of Guarantor's obligations hereunder will continue in full force and effect as if some or all of the Obligations had not been so discharged or modified. The liability of Guarantor hereunder shall in no way be affected by the release or discharge of Tenant or any other guarantor of the Restated Lease or any disability or other defense of Tenant (except for defenses and claims that are available to Tenant under the Restated Lease). If Tenant defaults under the Restated Lease, District can proceed immediately against the Guarantor, Tenant, or both, or District can enforce against Guarantor, Tenant, or both, any rights that District has under the Restated Lease or pursuant to applicable laws with respect to the Obligations. If the Restated Lease terminates and District has any rights it can enforce against Tenant after termination with respect to the Obligations, District can enforce those rights against Guarantor, without giving prior notice to Tenant, Guarantor, or both, or without making any demand on either of them.

7. Guarantor waives the right to require District to: (1) proceed against Tenant; (2) proceed against or exhaust any security that District holds from Tenant; or (3) pursue any other remedy in District's power. Guarantor waives any defense by reason of any disability of Tenant, and waives any other defense based on the termination of Tenant's ability from any cause (except for defenses and claims that are available to Tenant under the Restated Lease). Guarantor further waives all rights and defenses that are or may become available to Guarantor, including without limitation any rights and defenses set forth in §§ 2787 through 2856, inclusive, of the California Civil Code.

8. Until all Obligations under the Restated Lease have been discharged in full, Guarantor has no right of subrogation against Tenant. Guarantor waives (i) its rights to enforce any remedies that District now has, or later may have, against Tenant; (ii) any right to participate in any security now or later held by District; (iii) all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guaranty; and (iv) all notices of the existence, creation, or incurrence of new or additional Obligations.

9. If District seeks to enforce Guarantor's obligations by legal proceedings before a court of competent jurisdiction, Guarantor and District agree that the non-prevailing party in such legal proceedings shall pay all reasonable and documented out-of-pocket costs incurred, including but not limited to reasonable attorneys' fees (whether with in-house or outside counsel or both) of the prevailing party in connection with such legal proceedings. District has the right to prosecute any individual Guarantor for the full amount for said costs.

10. Guarantor's obligations under this Guaranty shall be binding, jointly and severally, on any successor of Guarantor, individually or collectively. As used herein, a successor of Guarantor shall mean any assignee, transferee, personal representative, heir, or other Person succeeding lawfully, and pursuant to the provisions of said Restated Lease, to the rights or obligations of Guarantor, individually or collectively. Also as used herein, District shall mean District's successors and assigns, if any.

11. This Guaranty shall be governed, construed and enforced in accordance with the laws of the State of California, without regard to conflict of law principles.

12. Guarantor submits itself to the jurisdiction of the State of California in connection with any dispute, controversy or claim arising out of or relating to this Guaranty, including the formation, interpretation, breach or enforcement hereof.

13. In addition, Landlord shall, within five (5) business days of completion of service on Guarantor's agent as provided in this Section 13, and to the extent service has not already been effectuated against Guarantor pursuant to applicable law or otherwise, provide Guarantor with notice of the commencement of any action or proceeding against Guarantor arising out of this Guaranty at the address set forth on the first page of this Guaranty. Guarantor hereby consents to service of process by any means authorized by California law, and nothing herein shall affect the right to serve process in any other manner permitted by law.

14. Notwithstanding anything to the contrary in this Guaranty, this Guaranty shall terminate and Guarantor shall have no further obligations under this Guaranty as of the date on which there are no further outstanding Obligations.

15. This Guaranty may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement. Any facsimile or copies of original signatures or signatures delivered electronically (such as .pdf, .tif, or other electronic files or via DocuSign) shall be considered and treated as if they were original signatures.

*[signature page follows]*

In witness thereof, Guarantor has entered into this Guaranty as of the date written below.

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

**TLHUS, Inc.**,  
a Delaware corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_



**EXHIBIT I****ENVIRONMENTAL DISCLOSURE ADDENDUM**

California Health and Safety Code Section 78700 requires any owner of nonresidential real property who knows, or has reasonable cause to believe, that any release of hazardous substance has come to be located on or beneath that real property to give written notice of that condition to the tenant of the real property. Landlord is providing the following information concerning the presence of hazardous substances on and under the Premises to Tenant. This is a summary of information only, is not intended, nor shall it be deemed or construed, as a representation or warranty of any kind by Landlord and has been prepared for Tenant's convenience to facilitate Tenant's independent due diligence evaluation with respect to the releases of hazardous substances at and beneath the Premises.

According to environmental reports, including the August 2024 Sediment Assessment Report prepared pursuant to Investigative Order No. R9-2022-0042 for San Diego Gas & Electric Company and BAE Systems San Diego Ship Repair Inc., and other environmental reports referenced therein, various Hazardous Substances have come to be located on or beneath the Premises, including, but not limited to, polychlorinated biphenyls ("PCBs"), polycyclic aromatic hydrocarbons ("PAHs"), metals, and at least one polychlorinated terphenyl. Environmental reports describing the environmental conditions at the Premises in more detail may be accessed at the Geotracker Website project page for the BAE Systems and SDG&E Northern Sediment Delineation Investigation (T10000008866) at [https://geotracker.waterboards.ca.gov/profile\\_report.asp?global\\_id=T10000008866](https://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T10000008866).

Additional environmental reports indicate that other Hazardous Substances may have come to be located on or beneath the Premises including copper, mercury, other metals, PCBs, and PAHs. These environmental reports may be accessed at the Geotracker Website project page for the San Diego Bay Shipyard Sediment Cleanup (T10000003580) at [https://geotracker.waterboards.ca.gov/profile\\_report.asp?global\\_id=T10000003580](https://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T10000003580).

Additional information regarding the potential presence of Hazardous Substances on or beneath the Premises may be accessed through the Department of Toxic Substances Control's Envirostor website at <https://www.envirostor.dtsc.ca.gov/public/map/?myaddress=2145+East+Belt+Street%2C+San+Diego%2C+CA%2C+USA>, and at the Geotracker website at <https://geotracker.waterboards.ca.gov/map/?CMD=runreport&myaddress=T10000008866>.

**Tenant Acknowledgement and Consent:** By execution of this Lease, Tenant (a) acknowledges its receipt of the foregoing notice given pursuant to Section 78700 of the California Health and Safety Code; (b) acknowledges and agrees that Landlord shall have no liability or responsibility for the accuracy of any of the information contained in the reports prepared by and for third parties and available on the Geotracker website at <https://geotracker.waterboards.ca.gov/> or on the Envirostor website at <https://www.envirostor.dtsc.ca.gov/public/>; and (c) acknowledges that Landlord has complied with its obligations under Section 78700 of the Health and Safety Code.