

**LEASE AMENDMENT NO. 3  
(for Certain City Tidelands Premises at Encinal Terminals)**

<u>PREMISES</u>	1527 Buena Vista (Encinal Terminals), Alameda, California, consisting of approximately 6.4 acres
<u>LANDLORD:</u>	CITY OF ALAMEDA, a California charter city and municipal corporation
<u>TENANT:</u>	Bayview Landing, L. P.
<u>LEASE DATE:</u>	May 17, 1979

This Amendment No. 3 to the Lease ("Amendment"), is dated as of \_\_\_\_\_, 2026, and is entered into by and between the CITY OF ALAMEDA, a California charter city and municipal corporation (in Lease, "Lessor"; herein, "City" or "Landlord"), and Bayview Landing, L.P. (in Lease, "Lessee", herein, "Tenant") (collectively, the "Parties").

NOW, THEREFORE, in consideration of the facts, recitals, and mutual understanding of the Parties as stated herein and incorporated by reference from the documents described herein, and of their mutual covenants contained herein, the Parties hereby agree as follows:

1. Definitions. Capitalized terms used in this Amendment shall have the same meaning given to such terms in the Lease unless otherwise defined herein.
2. Execution; Effective Date. This Amendment shall only become effective upon execution by all Parties and shall be dated as of the date the final party so executes, as set forth on the signature page, which shall be its effective date ("Amendment Effective Date");
3. Background. The Parties agree to their mutual understanding of the following facts and circumstances, of which said mutual understanding is material to this Amendment and but for the Parties would not have entered hereinto:
  - (a) Landlord and Encinal Industries, Inc. entered into that certain Lease Agreement dated May 17, 1979, as amended by that certain Amended and Restated Lease dated January 6, 1984, and further amended by that certain Ground Lease Modification and Ground Lease Estoppel dated October 8, 1997 (as amended, the "Lease"), for certain premises described therein, including that certain tidelands parcel, subject to the public trust, and identified by Alameda County Assessor's Parcel Number ("APN") 072-382-009, consisting of approximately 6.4 acres ("Premises");
  - (b) The Lease Term is set to expire on April 4, 2029, and nothing in this Amendment is intended to modify or extend that date;
  - (c) The Lease for the Premises has been assigned to Tenant as more fully described in that certain Assignment of Ground Lease dated March 21, 2025;

- (d) The Premises is located within the area commonly known as Encinal Terminals, located at 1521 Buena Vista Avenue in Alameda, California, which consists of the Premises and several parcels owned by or otherwise under the control of Tenant, including those certain parcels identified by APNs 072-382-001, 072-382-002, and 072-383-001 (collectively, "Tenant's Parcels");
- (e) The Premises and Tenant's Parcels are subject to binding agreements between the Parties for a mixed-use redevelopment project known as the Encinal Terminals Project, including that certain Tideland Exchange Master Plan dated February 1, 2022, that certain Development Agreement dated March 3, 2022 ("DA"), that certain Disposition and Development Agreement dated March 3, 2022, and that certain Land Exchange and Title Settlement Agreement dated February 8, 2023, each as amended or may be amended, (together, "ETP Agreements"), and the ETP Agreements include numerous rights, duties, and obligations related to the exchange and improvement of public trust lands, for trust-consistent uses, on portions of both the Premises and Tenant's Parcels;
- (f) In consideration of the foregoing mutually understood facts, and in recognition of the City's duty to steward those lands which it holds in trust for the people of the State of California, including the Premises, consistently with state law and the public trust doctrine, the Parties intend that this Amendment and any trust-inconsistent uses or activities hereby authorized shall not impair, delay, or conflict with the City's duties under the public trust doctrine, nor any part of the ETP Agreements, nor the realization of promised public benefits on the timeline therein described, and the provisions agreed to herein are necessary to achieve said intent and to comply with the ETP Agreements, state law, and the public trust doctrine.

#### 4. Allowable Use.

- (a) To the extent a use permit is required for any use on the Premises that is authorized by this Amendment, such use shall not commence unless such use permit is obtained and maintained operative, and any use shall operate in full conformity therewith. For the purposes of this Amendment, the Parties understand and agree that the use described in subsection (b) is authorized by Planning Board Resolution No. PB-26-6, as may be amended or superseded ("Operative Use Permit"), and if the same is later amended or superseded by another use permit or resolution for substantially the same use, such amended or superseding use permit shall be understood and construed as the Operative Use Permit, and the use of the premises shall operate in conformity therewith without requiring further modification of this Amendment.
- (b) Notwithstanding Section 6 of the Lease, the Premises may be used for an interim, outdoor, non-retail, commercial storage use for new vehicles, as that use is generally described in the Operative Use Permit, and specifically including related temporary improvements and incidental use of new or existing structures for said use ("Allowable Use"). Where context requires, the term "Allowable Use" in reference to lands other than the Premises shall mean any use, operation, and/or other activity that is authorized by the Operative Use Permit.
- (c) In the event of any conflict between a provision of this Amendment and any provision of the Operative Use Permit, the more restrictive provision shall control as

to the Premises, and except during an Independent Access Period as defined in Section 7 hereof, as to Tenant's Limited-Access Lands.

5. Granting Act Findings for Non-Public-Trust Use. The Parties acknowledge and agree that, pursuant to the public trust doctrine and the grant of public trust lands to the City by Chapter 594 of the Statutes of 1917, as particularly amended by Chapter 734 of the Statutes of 2000, and as otherwise amended or may be amended (as amended, "Granting Act"), this Amendment for said Allowable Use may only be entered into pursuant to, and consistent with the determinations required by, Section 9 of the Granting Act (Stats. 2000, Ch. 734), which determinations are made and set forth in the ordinance authorizing this Amendment, being Ordinance No. \_\_\_\_\_.
6. Sublicense for Allowable Use.
  - (a) Notwithstanding Section 9 of the Lease, and only upon approval by City Manager, Tenant is authorized to enter into a sublicense, sublease, operating agreement, or other agreement for all or a portion of the Premises for the Allowable Use (for convenience, all such agreements referred to herein as a "Sublicense"; any holder thereof, "Sublicensee"), and, only upon approval by City Manager, a Sublicensee may enter into second-tier Sublicense with a second-tier Sublicensee. Before entering into any Sublicense, Tenant shall submit the name(s) of the Sublicensee to the City Manager, and within ten (10) business days, the City Manager shall approve the Sublicensee, unless the City Manager finds, with reasonable discretion, that the Sublicensee is not compatible with the Allowable Use. Notwithstanding the foregoing, Tenant is authorized to enter into a Sublicense with the entity known as RAR Capital for the duration of this Amendment.
    - (i) A Sublicensee may submit a list of potential second-tier Sublicensees for approval by City Manager according to the process above, and upon approval of said list, in whole or in part, Sublicensee may enter into one or more second-tier Sublicensees with those second-tier Sublicensees so approved. Any changes to said list shall require approval from the City Manager. The Parties agree that a list of second-tier Sublicensees is understood to be confidential, proprietary business information, and the City shall take all reasonable efforts to maintain such confidentiality, provided that City shall not be liable for any failure thereof, and in the case of any third-party litigation resulting therefrom, Tenant and/or Sublicensee agrees to fully defend and indemnify the City.
  - (b) Except during an Independent Access Period as defined in Section 7 hereof, subsection (a) shall also apply to the Allowable Use on Tenant's Limited-Access Lands, provided that, if during any Independent Access Period, Tenant entered into a Sublicense that was not approved pursuant to subsection (a), and said period ends, Tenant shall provide notice to the City of such Sublicense and Sublicensee (only if different than one previously approved for the Premises), and that Sublicense and Sublicensee shall be deemed approved.
  - (c) Tenant and any Sublicensee shall be jointly and severally liable for all duties and obligations assigned to Tenant under this Amendment and the Lease, including for any breach thereof, provided that Sublicensee shall not be liable for those duties and obligations herein referenced that arise solely under the ETP Agreements, except to

comply with any termination resulting therefrom. Notwithstanding any Sublicense, Tenant shall continue to be fully responsible for and bound by any other obligations and duties of Tenant owed to City. Tenant shall ensure all Sublicensees comply with this Amendment, the Lease, and all applicable laws and regulations.

7. Independent Access Period.

- (a) For purposes of this Amendment, “Tenant’s Limited-Access Lands” shall mean those portions of Tenant’s Parcels that are north of the westernmost point of the southern boundary of the Premises, which City believes can only be accessed by land upon and through the Premises, or through Tenant’s Parcels on lands that are subject to the jurisdiction of the Bay Conservation and Development Commission (“BCDC”; those lands subject thereto, “Tenant-BCDC Area”).
- (b) For purposes of this Amendment, “Independent Access Period” shall mean the period of time for which Tenant demonstrates to Landlord, to Landlord’s satisfaction, that the Allowable Use on all parts of Tenant’s Limited-Access Lands maintains contiguous access by land to and from the public right-of-way that satisfies all of the following criteria: (i) independent of and not requiring any passage, movement, or other intrusion on, over, upon, or through the Premises; (ii) in full compliance with any applicable BCDC permitting requirements if applicable; (iii) allows safe travel for the largest truck or carrier vehicle routinely expected to be used for the Allowable Use; (iv) can comply with all applicable standards and requirements for required egress and emergency vehicle access.
- (c) An Independent Access Period shall be established upon submittal by Tenant to Landlord of a permit, letter of determination, or other evidence that demonstrates compliance with, or the inapplicability of, BCDC requirements as to the Allowable Use on any portion of the Tenant-BCDC Area that is necessary to provide the contiguous access described in subsection (a), and in the case of evidence that is not a permit or letter of determination, Landlord may require direct consultation with BCDC. Notwithstanding the foregoing, Tenant may submit a survey by a licensed surveyor that shows the contiguous access described in subsection (a) is possible without intrusion upon, over, or through the Premises and Tenant-BCDC Area, and upon the submittal of such survey, the Independent Access Period shall be deemed established for the duration of this Amendment.
- (d) Within ten (10) days of such submittal, Landlord may reject the submittal in writing only on the basis that the evidence clearly does not authorize the use, is subject to outstanding conditions of approval that have not been met for the pertinent authorization, or is legally invalid, otherwise such evidence shall be deemed accepted and sufficient.
- (e) For purposes of this subsection, criteria (iii) and (iv) of subsection (a) shall be assumed upon satisfaction of subsection (b), provided that, if Tenant invokes any right under Section 14(c) hereof (for reference only, maintaining Allowable Use on Tenant’s Limited-Access Lands after termination of right of access over the Premises), the City, through its Building Official or Fire Marshall, may require by written notice to Tenant, further evidence to affirmatively establish said criteria in consideration of the applicable objective standards and code requirements, and

Tenant shall respond within thirty (30) days of such notice. If either or both of said officials have the right or duty, under any code or other law (but not the Lease or this Amendment), to require a permit for the matters concerned in this subsection, compliance with the applicable permitting process shall satisfy this subsection.

- (f) The Independent Access Period shall commence from the date Tenant submits the relevant evidence, and it shall only terminate upon the date of expiration of the pertinent authorization (e.g. if a permit), if applicable, or a failure to comply with subsection (e), when applicable, or the pertinent authorization or survey is terminated, revoked, or held invalid by any final order, decision, or other action by a court of competent jurisdiction or a regulatory agency with jurisdiction. Tenant may make as many submittals to establish an initial or subsequent Independent Access Period as Tenant deems necessary, notwithstanding any prior rejection or end of such prior period.
- (g) For the avoidance of doubt, nothing in this Section 7 shall be construed to limit any access or use of the Premises authorized under this Amendment. As long as Section 4 hereof remains in effect, Tenant may use the Premises as the primary or sole access to Tenant's Access-Limited Lands, regardless of whether an Independent Access Period is established, and without affecting the rights afforded by an Independent Access Period.

8. Additional Compensation.

- (a) In addition to the Base Rent (as set forth in the Lease), Tenant shall pay additional compensation to Landlord at a rate of four thousand dollars (\$4,000) per month for the right to use and occupy the Premises for the Allowable Use ("Use Fee"), plus an additional rate of five hundred dollars (\$500) per month for the use of the Premises as the sole legal access to the Tenant's Limited-Access Lands for the Allowable Use ("Access Fee"). "Additional Fees" shall mean the Use Fee and the Access Fee together.
- (b) The Additional Fees shall be due and payable to Landlord within thirty (30) days following the end of each calendar quarter.
- (c) During any Independent Access Period, the Access Fee shall be reduced to a rate of zero dollars (\$0) per month, prorated to the start and end dates of such period.
- (d) If Tenant can demonstrate, to the satisfaction of the City Manager and City Attorney, that any legal restriction upon the Premises, imposed by or resulting from any order or other action from a court of competent jurisdiction, or any rule, regulation, order, notice, or other action from a public agency with relevant enforcement authority, works to reduce the useable area of the Premises for the Allowable Use to three (3) acres or less, the Use Fee shall be prorated, by the tenth acre (0.10 acres), at a rate of eight hundred (\$800) per acre of area upon which the Allowable Use is legally able to operate. The City Manager and City Attorney shall have thirty (30) days to determine the validity of the request, but upon approval, the prorated Use Fee shall apply from the date Tenant submitted the evidence supporting the request. In the case of a rule, regulation, or other restriction that Tenant demonstrates without involvement of a court or other agency (e.g. a survey and reference to the applicable regulation), the City Manager and City Attorney shall exercise reasonable discretion in making the

determination and shall only reject the evidence based on written findings describing why such evidence is not sufficient.

(e) In addition to the Base Rent (as set forth in the Lease), if any part of the Allowable Use commenced upon the Premises and/or Tenant's Access-Limited Lands (unless an Independent Access Period could have been established) prior to the Amendment Effective Date, Tenant shall be liable for and pay, on the first date payment is due pursuant to subsection (b), compensation for such prior use as a single, one-time payment in the amount of five hundred dollars (\$500).

(i) Subsection (e) shall not apply to routine site maintenance, preparatory site work, vegetation management, or other related site work, including the authorized installation, rehabilitation, and occupation of temporary or existing structures, whether such work is for the Allowable Use, provided that no interim vehicle storage or related deliveries occur.

9. BCDC Area. No portion of the Premises that is subject to the jurisdiction of BCDC ("Premise-BCDC Area") shall be used contrary to any applicable BCDC permitting requirement, regulation, or law, and if Tenant uses the Premises-BCDC Area for the Allowable Use, Tenant shall timely provide to Landlord a copy of the permit or other evidence for such use. In the case of evidence other than a permit or letter of determination, Landlord may require direct consultation with BCDC. For any use of the Premises-BCDC Area, Tenant shall be solely responsible and fully liable for any and all permitting and compliance costs and any other costs arising from Tenant's use thereof, including without limitation any and all fines, penalties, or other regulatory charges for any violation of any applicable regulation or law. If the City's participation is necessary for any BCDC Permit for the Allowable Use upon the Premises, Tenant shall reimburse City, solely for such participation, according to the terms of any existing reimbursement agreement for the Encinal Terminals Project, or the City's adopted Master Fee Schedule, whichever results in a lesser cost to Tenant.

10. Lease Ratification; Conflicts; Effect.

(a) Lease Ratification. The Lease, as previously amended, is hereby fully ratified by the Parties and shall continue in full force and effect through the April 4, 2029 expiration date of the Lease, except during the period this Amendment is in effect, during which time subdivision (b) of this Section shall govern the relationship between this Amendment and the Lease.

(b) Conflicts with Lease. This Amendment shall control over any conflicting provisions of the Lease as to those matters specifically described herein, provided that the Lease shall control as to all other matters not in conflict with this Amendment. Except as to the Allowable Use authorized by this Amendment, and the rights and obligations arising therefrom, the Parties agree that this Amendment shall not expand, impair, or otherwise affect the rights and obligations of the Parties under the Lease as to any other matter.

(c) Effect on Lease. This Amendment shall be a part of the Lease but shall not be construed to amend any existing provision of the Lease, except that for any conflicts therebetween, the Amendment shall control as provided in subsection (b).

- (d) Effect of Termination. Upon the termination or expiration, as described in Section 11(a) hereof, of any provision of this Amendment that conflicts with any provision of the Lease, the respective provision of the Lease shall resume in full force and effect for the duration of the Lease Term.

## 11. Termination.

- (a) Termination of Amendment Defined. For purposes of and in reference to this Amendment, the terms “terminate” and “termination” shall only mean the expiration and termination of Section 4 of this Amendment (Allowable Use), and any right of Tenant reliant thereon.
- (b) Effect of Termination on Amendment; on Lease. Upon termination as defined in subsection (a), the remainder of this Amendment shall remain in force and effect as a part of the Lease, and such termination of this Amendment, including a termination for breach hereof, shall not terminate or otherwise affect the Lease, unless the notice explicitly states an intent to terminate the Lease and separately describes the nature of the breach under the relevant provisions of the Lease.
- (c) Notice of Termination Required. No termination shall occur without notice as required herein, except that no notice shall be required for a termination pursuant to subsections (d) or (g), which are automatic, provided that Landlord may give notice thereof, but such notice shall not extend the applicable date of termination.
- (d) Termination Date. This Amendment shall terminate at 11:59 p.m. on March 2, 2028 (“Termination Date”), unless extended or an earlier termination has occurred.
- (e) Termination by Tenant. Tenant may terminate this Amendment with at least 30 days’ written notice to Landlord, provided that, if the Allowable Use is not fully discontinued and removed in compliance with Section 14 hereof by the date of termination stated in such notice, the notice shall be considered revoked without further action by the Parties.
- (f) Termination for Breach. In the case of a material breach of any provision of this Amendment, Landlord may initiate a termination of this Amendment by providing thirty (30) days’ written notice to Tenant stating Landlord’s intent to terminate and describing the breach, and if Tenant does not cure the breach by the thirtieth (30th) day of such notice, this Amendment shall be deemed terminated as of that date, provided that Tenant may request, and Landlord may approve in its sole discretion, a reasonable extension if Tenant demonstrates good faith in curing said breach by informing Landlord at the earliest possible time of the actions Tenant plans to take to cure said breach and the estimated amount of time to so act.
- (g) Loss of Use Permit. The expiration, revocation, or other termination of the Operative Use Permit, without replacement, shall initiate a termination for breach pursuant to subsection (f) with the notice period construed as commencing on the date the use permit terminates, provided that if a new use permit application is submitted before the end of the notice period, this Amendment shall continue in full force and effect, unless said new application is thereafter denied, in which case, this Amendment shall be deemed terminated thirty (30) days following such denial.

(h) Failure to Comply with Law. Any failure by Tenant to comply with any federal, state, or local law or regulation in the use, operation, or other conduct related to any use of the Premises that results in a final determination of culpability against Tenant, including without limitation a conviction or judgment, imposition of any criminal, civil, or administrative penalty, or order for other non-monetary corrective action or punishment shall be grounds for Landlord to initiate a termination for breach pursuant to subsection (f), provided that for any violation that is not classified as a crime or subject to criminal penalty, it shall not be grounds for termination, except upon the third or subsequent final determination of such non-criminal violations within a 180-day period. For the purposes of this subsection, a local law or regulation shall not include a violation of the conditions of approval of the Operative Use Permit that does not relate to laws of general applicability.

12. Extension of Termination Date.

(a) Extension. Any extension of this Amendment shall only be made by action of City Council, except that, upon written request by Tenant, the City Manager shall approve a single extension of the Termination Date, if Tenant demonstrates compliance with all of the following conditions by March 2, 2028:

- (i) On or before February 1, 2028, Tenant has submitted initial applications with the relevant agencies for all permits and other approvals required to be obtained on or before March 31, 2028 under the ETP Agreements in effect on the Amendment Effective Date, or has obtained such permits and approvals;
- (ii) On or before March 2, 2028, Tenant has paid all application fees assessed by February 25, 2028 for the applications referenced in paragraph (i) (fees not assessed prior to February 25, 2028 shall not be considered);
- (iii) The first public hearing for the formation of the assessment district described in the ETP Agreements has occurred, or Tenant and City have agreed to some alternate funding source in compliance with ETP Agreements;
- (iv) All deadlines for preparatory site work or other physical work under the ETP Agreements have been extended (or superseded if applicable) by action of the City Council, or such action has, at a minimum, passed first reading; and
- (v) The extension so authorized shall be for a period that ends on the date of the first deadline for preparatory site work or other physical work under the ETP Agreements, as amended by the action described in paragraph (iv), provided that in no case shall this Amendment be extended, without action by City Council, for any duration that exceeds more than five (5) years following the Amendment Effective Date.

(b) Tenant may submit the extension request prior to all the criteria listed in subsection (b) having been met, and the City Manager shall not disapprove the request unless all said criteria are not met prior to 6:00 p.m. on March 2, 2028.

(c) If an extension has been granted pursuant to subsection (b), and during its duration, any one or more of the permits, approvals, or applications referred to in criteria (i) of

that subsection is withdrawn, canceled, revoked, or expires due to inactivity, a failure to respond, or for any other failure of Tenant to act, as confirmed by the applicable agency, a termination for breach of this Amendment shall automatically initiate pursuant to Section 11(f) hereof commencing from the date of such withdrawal, cancelation, revocation, or expiration, and if Tenant does not cure the withdrawal, cancelation, revocation, or expiration within the notice period, this Amendment shall be deemed terminated as provided in said Section 11(f).

- (i) This subsection shall not apply where Tenant has submitted a new or replacement application for substantially the same approval prior to or concurrently with such withdrawal, cancelation, revocation, or expiration. This subsection shall also not apply if Tenant submits evidence that Tenant is acting timely and in good faith at the direction of the relevant agency notwithstanding the withdrawal, cancelation, revocation, or expiration, which evidence Landlord shall accept for purposes of this provision, except where Tenant had notice from the relevant agency that Tenant needed to make some response and had not done so within ninety (90) days of such notice, and in such case, Landlord may determine, in its reasonable discretion, if this provision applies.
- (ii) Landlord may, in its reasonable discretion, extend the termination notice period under this subsection by up to ninety (90) additional days, for any reason, if it believes such extension will support compliance.

13. Modification or Termination for Public Trust Purposes.

- (a) In accordance with Section 9(b) of the Granting Act (Stats. 2000, Ch. 734), if any need for a trust-consistent use arises for the Premises, Landlord shall provide to Tenant 180 days' notice of a termination for a public trust use, after which notice period, this Amendment shall terminate except as provided in this Section 13. For purposes of this subsection, a need for a trust-consistent use arises only after: (i) a person or entity ("Potential Operator") makes a proposal to Landlord to use some or all of the Premises for a trust-consistent use and to pay a rental rate that is no less than the current Base Rent (as defined in the Lease) prorated based on the amount of area proposed for such use; (ii) for a period of at least thirty (30) days, the City and Potential Operator work to identify and negotiate as to whether other available public trust sites in the City can suitably accommodate the proposed use; (iii) the City determine the proposed use is trust consistent and finds the scope and duration of the proposal is viable in consideration of the ETP Agreements, and related obligations and deadlines therein, and (iv) at the close of such negotiations, the Potential Operator deposits with the City a minimum of one (1) years rent at the rate described in (i). The notice of termination issued under this section shall contain written information describing satisfaction of the foregoing criteria. Landlord may provide earlier notice to Tenant during the evaluation of the criteria, but the notice of termination under this Section 13 shall not be required nor commence until the satisfaction of all the foregoing criteria.
- (b) On or before the 150th day of the notice period, Tenant and Potential Operator may agree that the Allowable Use on the Premises will not conflict with the proposed public trust use, or can be reduced or modified to avoid conflicts, and submit such

agreement to Landlord, otherwise this Amendment shall terminate on the 181st day following the date of the notice.

- (c) For the avoidance of doubt, the intent of this Section 13 is that Tenant would voluntarily enter into a sublease with a Potential Operator for a trust-consistent use, for the area of the Premises necessary to support such use, and only if the need for such use arises as described in subsection (a); however, no part of this Section 13 shall require Tenant to enter into such a sublease. If Tenant declines to so sublease, Tenant shall be restricted from conducting the Allowable Use on the area of the Premises reasonably established necessary for the trust-consistent use by subsection (b) but may continue to operate on other areas of the Premises. For purposes of the foregoing sentence, it shall be assumed that the area of the Premises reasonably established necessary for the trust-consistent use is allocated to the area of the Premises-BCDC Area before other areas of the Premises, which other areas shall be assumed to be the areas of the Premises directly adjacent to the Premises-BCDC Area.
- (d) Regardless of whether Tenant and Potential Operator enter into a sublease, within thirty (30) days of a submittal pursuant to subsection (b), Tenant shall, at Tenant's sole cost, take reasonable action to effect a visible indication of the reduced area of the Premises allocated to the Allowable Use under such submittal. Upon satisfaction of the foregoing, the Use Fee, as provided in Section 8(a), shall be prorated by the percentage area of the Premises allocated exclusively to the Allowable Use.

14. Removal of Allowable Use upon Termination.

- (a) For purposes of this Amendment, "completely removed" shall mean that no physical element of the Allowable Use remains on or occupies any portion of the applicable lands, including without limitation one or more vehicles stored as part of the interim storage use and any temporary structures related thereto, but not including any preexisting structures, paving or access improvements, or unrelated site work.
- (b) For any termination pursuant to Section 11 or Section 13 hereof, the Allowable Use shall be fully discontinued and completely removed from the Premises by no later than 11:59 p.m. on the date of termination, which shall be the Termination Date, or the date the Amendment is deemed terminated, or the final day of an applicable termination notice period, as the case may be, unless the applicable termination or notice is extended, canceled, or revoked prior to said date. If the date of termination is a weekend or holiday, it shall be extended to the following business day.
- (c) Except during an Independent Access Period, subsection (b) shall apply in full to the Allowable Use on Tenant's Limited-Access Lands. If a termination or related act pursuant to Section 11 or Section 13 hereof occurs during an Independent Access Period, subsection (b) shall apply to Tenant's Limited-Access Lands if said period ends, and Tenant shall comply therewith within thirty (30) days of the date said period ends.

15. Holdover; Holdover Payment. If Tenant fails to comply with Section 14 herein in any manner, Tenant shall be deemed to holdover and thereafter be liable for and pay to Landlord a holdover payment of \$250 per day for each day any portion of the Premises is occupied by

the Allowable Use, and, except as provided in Section 14(c) hereof, a holdover payment of \$250 per day for each day any portion of Tenant's Limited-Access Lands are occupied by any part of the Allowable Use, which amounts shall be cumulative, if applicable, and which shall be immediately due and payable and shall be recoverable in any judicial action, arbitration, or any other such action. The Parties agree that said amounts are reasonable in recognition that any holdover unreasonably delays trust-consistent uses and the delivery of public trust improvements by the times contemplated in the ETP Agreements. This Section 15 does not authorize Tenant to continue the Allowable Use beyond termination of this Amendment, and this section shall not preclude or waive any right of Landlord to pursue an eviction or any other remedy permitted by law.

- (a) Notwithstanding any provision of this Section 15 to the contrary, in the case that a holdover in respect to the Premises is only for access to the Allowable Use on Tenant's Access-Limited Lands (i.e. all stored vehicles have been removed from the Premises), then the holdover payment shall be limited to fifty (\$50) per day, provided that, if the City determines, in its reasonable discretion, that the sole use of the Premises for access does not interfere or inhibit with Tenant's obligations under the ETP Agreements, the holdover payment shall be the Access Fee.

16. Compliance with ETP Agreements Required; Termination.

- (a) Tenant shall comply with any and all concurrent duties and obligations imposed upon Tenant by the ETP Agreements, as may be amended, for the duration of this Amendment, and any breach thereof shall also be deemed a breach of this Amendment, without requiring further action, subject to any applicable notice and cure rights under the respective ETP Agreement. If Tenant fails to cure and thereafter defaults, as that term is defined in the respective ETP Agreement, a termination of this Amendment for breach pursuant to Section 11(f) hereof shall automatically initiate commencing from the date of the default, or the date of the notice of default, if later. In the event of a termination of any one or more of the ETP Agreements, other than for default, a termination for breach pursuant to Section 11(f) hereof shall initiate automatically commencing from the date of such termination.
- (b) If a termination pursuant to subsection (a) occurs, whether by default or otherwise, as a result of a lapsed deadline defined in the ETP Agreements, or was subject to any notice and cure period in the ETP Agreements with which the City complied, Tenant shall be pay an additional holdover payment of one thousand dollars (\$1,000), in addition to any holdover payment required by Section 15 hereof, unless Tenant has fully complied with the requirements of Section 14 within the notice period for the notice of termination.
- (c) Notwithstanding the foregoing, if one or more ETP Agreements are terminated by mutual agreement of the Parties, this Amendment shall terminate on the sixtieth (60th) day following such mutual agreement, unless said mutual agreement provides a later termination date, which shall apply without modification of this Amendment.
- (d) This Section 16 shall not apply if a complete application for an extension or other amendment is pending review before the Planning Board and/or City Council as of the date of the event that would implicate this Section 16, and that, if approved or

adopted as proposed, would cure or avoid the relevant termination or breach. In such case, this Section 16 shall not take effect, and if said application is later denied, a termination for default shall occur in accordance with the process of Section 11(g).

17. Effect of Errors or Omissions. The Parties mutually agree that any errors or omissions in citation or reference to other documents, where such error or omission is clear from context, shall be construed as immaterial if such error does not affect the intent, meaning, or effect of the respective provision, and the correct meaning can be reasonably discerned from context.
18. Breach; Liability and Indemnification. Except as provided herein, any breach, liability, and/or indemnification under this Amendment shall be controlled by the provisions of the Lease, provided that Tenant explicitly agrees that Landlord shall not be liable for, and Tenant shall indemnify and save free and hold harmless Landlord from, any and all costs, charges, fees, penalties, fines, taxes, or other financial obligations of any character whatsoever resulting from any use, improvement, operation, or other activity on the Premises or any portion of the Encinal Terminals Site by Tenant (or Sublicensee) related to or in any way directly or indirectly connected to or arising from the Allowable Use, including specifically, without limitation, any use, improvement, operation, or other activity by Tenant (or Sublicensee) within areas subject to BCDC jurisdiction, and regardless of whether any such use, improvement, operation, or other activity is permitted or prohibited by this Amendment.
19. Attorney's Fees. Landlord shall fully recover its reasonable costs and attorneys' fees from Tenant if Landlord substantially prevails in any judicial action, arbitration, or mediation between the Parties that primarily concerns the Landlord's enforcement or defense of its public trust obligations, or if Landlord substantially prevails in any action to recover the Additional Compensation due to it under this Amendment or the Base Rent due to it under the Lease during the duration of this Amendment. In all other matters, the Parties shall be responsible for their own costs and attorneys' fees unless recovery thereof is otherwise authorized by law. Notwithstanding the foregoing, Tenant shall indemnify Landlord for all costs and attorneys' fees incurred as a result of any third-party challenge concerning this Amendment, the Allowable Use, or any other matters resulting or arising therefrom.
20. Delivery of Possession. Tenant agrees that the Premises is leased in its "AS-IS" condition, and Landlord shall have no obligation to make any repairs or modifications thereto. Tenant acknowledges and agrees that Landlord has made no representations or warranties regarding the Premises, including, without limitation, its suitability for any use proposed by Tenant.
21. Inspection by Certified Access Specialist. Landlord discloses that the Premises have not undergone inspection by a Certified Access Specialist as referenced in California Civil Code Section 1938 subsection (e) which provides: "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." Pursuant to the foregoing Section 1938(e), Tenant acknowledges and agrees that, if Tenant wishes to have the Premises inspected by a CASp: (i)

Tenant must notify Landlord on or before the date when Tenant executes this Lease Amendment pursuant to the election below; (ii) the inspection will be at Tenant's sole cost and expense; (iii) the inspection must be scheduled through Landlord and in coordination with the Building's property manager; (iv) any repairs or modifications necessary to correct any violation of construction-related accessibility standards that is noted in the CASp report shall be Tenant's responsibility; and (v) Tenant must provide a copy of the CASp report to Landlord on completion.

22. City's Authority. Tenant acknowledges that Landlord is entering into this Amendment in Landlord's proprietary capacity and not in its regulatory or governmental capacity. Nothing in this Amendment shall be construed as restraining, impairing, or restricting the City of Alameda in its regulatory capacity, or granting any rights upon the Tenant with respect to the use, occupancy or operation of the Premises in a manner inconsistent with any applicable laws.
23. City Manager Designee. Any determination or act required from or by the City Manager under this Amendment may be made by a designee thereof.
24. Governing Law. This Amendment shall be governed by the laws of the State of California. The Parties agree that venue shall be proper in the Superior Court of Alameda County for any dispute arising under this Amendment.

25. Insurance

- i. Liability Insurance. Tenant shall maintain in full force throughout the Term, commercial general liability insurance providing coverage on an occurrence form basis with limits of not less than Two Million Dollars (\$2,000,000.00) each occurrence for bodily injury and property damage combined, or such larger amount as Landlord may prudently require from time to time, covering bodily injury and property damage liability and product liability if a product is sold from the Premises. Each policy of liability insurance required by this Section shall: (i) contain a cross liability endorsement or separation of insureds clause; (ii) provide that any waiver of subrogation rights or release prior to a loss does not void coverage; (iii) provide that it is primary to and not contributing with, any policy of insurance carried by Landlord covering the same loss; (iv) provide that any failure to comply with the reporting provisions shall not affect coverage provided to Landlord, its partners, property managers and Mortgagees; and (v) name Landlord and such other parties in interest as Landlord may from time to time reasonably designate to Tenant in writing, as additional insureds in an Additional Insured Endorsement. Such additional insureds shall be provided at least the same extent of coverage as is provided to Tenant under such policies. The additional insured endorsement shall be in a form at least as broad as endorsement form number CG 20 11 01 96 promulgated by the Insurance Services Office.
- ii. Personal Property Insurance. Tenant shall maintain in full force and effect on all of its personal property, furniture, furnishings, trade fixtures and equipment from time to time located in, on or upon the Premises ("Tenant's Property") an amount not less than one hundred percent (100%) of their full replacement value from time to time during the Term, providing protection against all perils, included within the standard form of "all-risk" (i.e., "Special Cause of Loss") fire and casualty insurance policy. Landlord

shall have no interest in the insurance upon Tenant's Property and will sign all documents reasonably necessary in connection with the settlement of any claims or loss by Tenant. Landlord will not carry insurance on Tenant's Property.

- iii. Worker's Compensation Insurance; Employer's Liability Insurance. Tenant shall, at Tenant's expense, maintain in full force and effect during the Term of this Lease, worker's compensation insurance with not less than the minimum limits required by law, and employer's liability insurance with a minimum limit of coverage of One Million Dollars (\$1,000,000.00).
- iv. Pollution Legal Liability.
  - 1. Commercial Pollution Legal Liability. Tenant shall maintain a Commercial Pollution Legal Liability Insurance with coverage limits of not less than Two Million Dollars (\$2,000,000) annual aggregate covering claims arising out of or related to Tenant's Contamination during the term of this Lease. Such policy shall name the City as an additional insured.
  - (ii) Contractor's Pollution Legal Liability. Tenant shall cause any contractors retained for performing any work on the Premises, the total cost of which exceed Two Hundred Thousand dollars (\$200,000) to obtain and maintain Contractor's Pollution Liability Insurance covering the general contractor and all subcontractors in an amount of not less than Two Million Dollars (\$2,000,000) with a maximum deductible of Ten Thousand Dollars (\$10,000). Any such policy shall name the City as an additional insured.
- (e) Automobile Liability. Tenant shall maintain in full force and effect during the Term of this Lease, Commercial Automobile Liability. Such policy shall be in an amount of not less than One Million Dollars (\$1,000,000) combined singled limit.
- (f) Requirements for All Policies. Each policy of insurance required under this Section 27 a) be in a form, and written by an insurer, reasonably acceptable to Landlord, (b) be maintained at Tenant's sole cost and expense, and (c) require at least thirty (30) days' written notice to Landlord prior to any cancellation, nonrenewal or modification of insurance coverage. Insurance companies issuing such policies shall have rating classifications of "A-" or better and financial size category ratings of "VII" or better according to the latest edition of the Best Key Rating Guide. All insurance companies issuing such policies shall be admitted carriers licensed to do business in the state where the Property is located. Any deductible amount under such insurance shall not exceed \$5,000. Tenant shall provide to Landlord, upon request, evidence that the insurance required to be carried by Tenant pursuant to this Section 27, including any endorsement affecting the additional insured status, is in full force and effect and that premiums therefor have been paid. Tenant shall, at least thirty (30) days prior to expiration of each policy, furnish Landlord with certificates of renewal thereof and shall provide Landlord with at least thirty days prior written notice of any cancellation or modification.
- (g) Certificates of Insurance. Upon execution of this Lease by Tenant, and not less than thirty (30) days prior to expiration of any policy thereafter, Tenant shall furnish to Landlord a certificate of insurance reflecting that the insurance required by this Section

27 is in force, accompanied by an endorsement(s) showing the required additional insureds satisfactory to Landlord in substance and form.

- (h) Landlord's Insurance. During the Term, Landlord may, at its sole and absolute discretion, keep in effect property insurance covering the Premises in amounts not less than the full insurance replacement value thereof (but not on any of Tenant's Property) with customary limits and deductibles, together with such other types of insurance coverage, if any, as Landlord, in Landlord's sole discretion, may elect to carry.

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the day and year last set forth below.

**LANDLORD:**

CITY OF ALAMEDA,  
a charter city and municipal corporation

By: \_\_\_\_\_  
Adam W. Politzer  
Interim City Manager

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

Approved as to Form

DocuSigned by:  
By: Len Aslanian  
765D25E99B19464...  
Len Aslanian  
Assistant City Attorney

**TENANT:**

Bayview Landing, L. P.,  
A California limited partnership

By: TL Management, Inc. a California corporation  
Name: \_\_\_\_\_  
Title: its General Partner

Date: \_\_\_\_\_  
DocuSigned by:  
By: Tim Lewis  
Name: Jay Timothy Lewis  
59B137854727405...  
Title: President

Date: 4/22/2026

Recommended for Approval

Signed by:  
By: Abigail Thorne-Lyman  
Abigail Thorne-Lyman  
Director, Base Reuse and Economic Development