Exhibit 2

AMENDED AND RESTATED LEASE

(City of Alameda – Bay Ship & Yacht Co.)

dated as of
_____, 2017

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This amended and restated lease (this "Lease") is dated _____, 2017 for purposes of reference only, and is between the City of Alameda, a California charter city ("City") as landlord, and Bay Ship & Yacht Co., a California corporation ("Tenant" or "BSY") as tenant. City and BSY are the "parties" to this Lease, and each is a "party." A list of defined terms is attached as Appendix I.

Recitals

A. City and Tenant entered into that certain lease dated December 31, 2012 ("Original Lease") and are now amending and restating it. The "Effective Date" of the Original Lease and this Lease is December 31, 2012; however, the amendments to the Original Lease made by this Lease are effective and binding on the parties as of _____, 2017 ("Amendment Date"). The Lease shall replace and supersede the Original Lease as of the Amendment Date, provided, however, that nothing in this Lease shall be construed as limiting or otherwise altering any obligations or liabilities of the parties that arose under the Original Lease prior to the Amendment Date.

B. City is the owner, in trust for the people of California, of a parcel of land situated in the City of Alameda at 2900-3000 Main Street comprising a portion of Assessor's Parcel No. 074-0891-3. The "Tidelands Parcel" is the portion of such Assessor's Parcel located eastward of a north-south line drawn through the western portion of the BSY Premises Boundary (as shown on Attachment No. 1 to the Memorandum of Lease recorded on April 6, 2016, as document 2016081890) and its northerly projection. Much or all of the Tidelands Parcel was at one time a portion of the former Todd Shipyards property on the Alameda side of the Alameda-Oakland Estuary. The Tidelands Parcel consists of existing and former tide and submerged lands that were originally granted to City by the State of California by Statutes 1913, Chapter 348, and since amended, most recently (as of the Effective Date) by the Naval Air Station Alameda Public Trust Exchange Act, Statutes 2000, Chapter 734 (as amended, "Granting Act"), subject to the public trust for commerce, navigation and fisheries ("Public Trust"), and to the terms and conditions of the Granting Act, as amended ("Statutory Trust"). The Public Trust and the Statutory Trust are referred to collectively herein as the "Trust."

C. In 1984, City and Alameda Gateway, Ltd. ("AGL") entered into the Tidelands Lease dated April 20, 1984 of a portion or all of the Tidelands Parcel (as subsequently amended, the "Tidelands Lease"). At that time and on the Effective Date AGL owned real property immediately adjacent to the Tidelands Parcel, also with a street address of 2900-3000 Main Street, and more particularly described as Assessor's Parcel Numbers 074-0905-1-6 and 074-0905-32-1 (called the "AGL Property" in this Lease, whether such real property continues to be owned by AGL or is owned by some other person). Beginning in November, 1993, AGL entered into a series of lease agreements with Tenant by which AGL leased portions of the AGL

Property and subleased portions of the Tidelands Parcel to Tenant. The most recent of those lease agreements was the Lease dated April 1, 1998, as amended through Lease Amendment No. 12 dated December 8, 2006 (the "AGL Lease"), which commenced on April 1, 1998 and remained in effect on the Effective Date.

D. The Tidelands Lease provided for a 25 year term, with an option to renew for another 25 years if certain conditions were met. In 2000, City and Tenant entered into a Nondisturbance and Attornment Agreement effective February 15, 2000 ("Attornment Agreement") under which City agreed that, in the event the Tidelands Lease was terminated, the City would not disturb Tenant's possession of its leased premises and would succeed to the interests of AGL under the AGL Lease with respect to the portions of the Tidelands Parcel subleased to Tenant or be deemed to have entered into a new lease with Tenant of such portions. On April 19, 2009, the Tidelands lease expired, and City declined to renew the term on the ground of AGL's nonperformance of certain obligations, which decision was upheld in subsequent litigation filed by AGL. Accordingly, as of April 20, 2009, City commenced a direct landlord-tenant relationship with Tenant with respect to the portions of the Tidelands Parcel being subleased to Tenant by AGL on April 19, 2009 ("Sublease Premises"). The portions of the AGL Property being leased to Tenant pursuant to the AGL Lease on April 19, 2009 are sometimes called the "AGL Premises."

E. On the Effective Date City and Tenant replaced the Attornment Agreement and AGL Lease previously governing their landlord-tenant relationship with respect to the Sublease Premises with the Original Lease.

F. The Main Street terminal (the "Ferry Terminal") of the Alameda-Oakland ferry operated by the San Francisco Bay Area Water Emergency Transportation Authority ("WETA") is located on City property immediately west of the Premises. Pier 5 is a pier lying partly within the Tidelands Parcel, partly within the property occupied by the Ferry Terminal, partly on City property to the west of the Ferry Terminal, and partly on property currently owned by the federal government. The City anticipates acquiring the latter portion of Pier 5 and the land underlying it from the federal government. The portion of Pier 5 lying within the Tidelands Parcel is to the extent shown on Exhibit A included in the Premises, as more particularly provided in Section 1 of this Lease.

G. The Premises, as defined in Section 1, includes a portion of a building ("Sawtooth Building") that lies in part on the Premises and in part on the AGL Property. The Sawtooth Building is shown on Exhibit A.

H. On October 15, 2014, an Affiliate of Tenant, Alameda Commercial Properties, LLC, a California limited liability company ("ACP"), acquired the AGL Property and owns it on the Amendment Date. For convenience, this Lease may continue to use the term "AGL Property," which term shall continue to apply to the AGL Property notwithstanding any change in ownership of the AGL Property. Also on October 15, 2014, the AGL Lease was terminated and Tenant now leases the portion of its premises located on the AGL Property from ACP. On October 25,

2016, ACP acquired from the Union Pacific Railroad Company the railroad right of way that formerly divided portions of the AGL Property. References in this Lease to the "ACP Property" shall mean the AGL Property together with the railroad right of way acquired by ACP.

Text of Agreement

In consideration of the foregoing and the promises and other provisions of this Lease below, the parties agree as follows.

1. Premises. City hereby leases to Tenant, and Tenant hereby leases from City, for the Term of this Lease and at the rental and upon the provisions set forth in this Lease, (a) the area shown as bounded by the BSY Premises Boundary on the diagram attached as Exhibit A, and including: (b) all electricity, water, sewer, gas and the other utilities existing on, in or under such area; (c) all piers and improvements existing on such area; and (d) all replacements, upgrades, improvements, and additions to such utilities, piers and improvements. (All of the foregoing are called the "Premises.") The portion of the Premises added effective on the Amendment Date is shown as the "2017 Premises Addition" on Exhibit A. The remainder of the Premises shown on Exhibit A were the Premises on the Effective Date.

2. Access.

a. Use of Road. Access to the Premises from Main Street is presently from the main entrance (the "Main Gate") to the ACP Property and then to the Premises, as shown on Exhibit A. Such Main Gate is located on the ACP Property. The access traverses ACP Property from the Main Gate to the border of the Tidelands Parcel via the "ACP Road." (The ACP Road is shown on Exhibit A.)

b. No Warranty. Tenant acknowledges and agrees that: (1) the ACP Road is located on the ACP Property and as such is owned by ACP, and that the ACP Road is made available for Tenant's use through Tenant's separate lease with ACP; (2) the City makes no representation or warranty that the ACP Road will continue to be made available to Tenant; (3) Tenant is responsible for securing access rights over the ACP Road; and (4) loss of such access rights shall not relieve Tenant of its obligations under this Lease or give rise to any liability on the part of the City. City shall have no obligation to provide alternative access to Tenant in the event of the loss of Tenant's access rights in the ACP Road, nor shall City be liable, by way of rent reduction or otherwise, for any loss of such access rights.

c. [This Section 2.c intentionally omitted.]

d. Loss of Utilities. Tenant shall be solely responsible for securing Tenant's rights to continue using the electricity, water, sewer, gas or other utility or service that is provided the Premises from the ACP Property (the "ACP Utilities"). The City makes no representation or warranty that the ACP Utilities will continue to be made available to Tenant. The loss of Tenant's rights to use the ACP Utilities shall not relieve Tenant of its obligations under this Lease or give rise to any liability on the part of the City. City shall have no obligation to provide an alter-

native location for any utility or service event of the loss of Tenant's rights to use the ACP Utilities, nor shall City be liable, by way of rent reduction or otherwise, for any loss of such rights. Nothing contained in this Section 2.d modifies the Reciprocal Easement Agreement.

e. [This Section 2.e intentionally omitted]

f. Access to Shoreline Pathway Area. Access of the City to the shoreline pathway area located outside the Premises and immediately north of Tenant's modular office building (shown as "Shoreline Pathway" on Exhibit A), is presently through the Ferry Terminal. If Tenant blocks access of City through the Ferry Terminal to the shoreline pathway area (e.g. by a fence and locked gate) or such access is otherwise insufficient for purposes of City's employees and contractors maintaining and repairing such area, then City may have access through Tenant's Premises to such shoreline pathway area for such purposes, provided City does not unreasonably interfere with Tenant's uses of the Premises.

g. In Lieu Access and Parking if Mitchell-Mosely. Tenant acknowledges that City's proposed extension of Mitchell-Mosely Road may reduce in size or eliminate portions of the Premises located south of the line shown as "Border of Southerly Portion" on the diagram attached as Exhibit A. The portion of the Premises located south of such line is called the "Southerly Portion." If City elects to construct Mitchell-Mosely Road or some other public road entirely or partially in the Southerly Portion, then: (i) Tenant will not oppose City taking all or any part of the Southerly Portion for such road purposes, but may oppose any taking of any other portion of the Premises; (ii) if the City's construction will take or alter Tenant's then-existing access to the Premises, City will provide Tenant with alternate access to the Premises reasonably suitable for Tenant's then existing uses of the Premises, such alternate access to be in lieu of Tenant's then-existing access; (iii) Tenant shall not be entitled to any compensation for any City taking of Tenant's existing access or for any taking of the portion of the Premises shown as Former Common Area ("Former Common Area") on Exhibit A; and (iv) Tenant shall be entitled to compensation for any remaining portions taken to the extent required by such eminent domain, relocation and other laws as may apply. City will construct the alternate access to the same or better standard as the eliminated access had been constructed one year prior to City taking the Premises for construction of Mitchell-Mosely Road, and will provide Tenant continuous, suitable access to the Premises during construction. As between City and Tenant, Tenant shall not be entitled to any reduction in Base Rent by reason of the City's exercise of its right to provide alternate access under this Section 2.g or City's taking of part or all of the Southerly Portion for a public road pursuant to this Section 2 .g. Nothing contained in this Section 2.g or elsewhere in this Lease modifies or affects any right of ACP to just or other compensation for any taking by City of any portion of the ACP Property for Mitchell-Mosely Road or for any other purpose.

3. Rent.

a. Base Rent. Tenant shall pay City monthly Base Rent in advance on or before the first day of each calendar month during the Term. "Base Rent" is the monthly base rent for the Premises. For the Lease Years commencing on the Original Commencement Date until the Amendment Date, Base Rent is $36,916.00. Commencing on the Amendment Date with the

addition to the Premises of the 2017 Premises Addition, Base Rent shall increase by $2,870, from $36,916 to $39,786, and will remain fixed at that amount through December 31, 2017, subject to modification for additions to or deletions from the Premises, as such additions or deletions may be permitted by this Lease or otherwise agreed upon between City and Tenant, and subject to such other modifications as are provided elsewhere in this Lease. Base Rent after such five Lease Years shall be adjusted as provided in Section 8. "Lease Year" means each consecutive twelve-month (12-month) period during the Term, commencing on the Original Commencement Date.

b. Additional Rent. Tenant shall pay, as additional rent, all amounts of money, other than Base Rent, required to be paid to City by Tenant under this Lease ("Additional Rent"), whether or not such amounts are designated "additional rent," including late charges and interest payable pursuant to Sections 3.c and 3.d, respectively. Additional Rent shall be in addition to Base Rent and shall not be included in or part of the Base Rent, except as otherwise expressly provided to the contrary in this Lease. If such amounts are not paid at the time provided in this Lease, they shall nevertheless be collectable as Additional Rent with the next installment of monthly Base Rent thereafter falling due, but nothing herein contained shall be deemed to suspend or delay the payment of any amount of money at the time the same becomes due and payable under this Lease, or limit any other remedy of City.

c. Late Charges. Tenant acknowledges that Tenant's failure to pay City the Base Rent and Additional Rent, after notice and the lapse of five business days without cure, will cause City to incur costs not contemplated by this Lease, the exact amount of which costs will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any installment of rent or any other sum due from Tenant shall not be received by City within five business days following City's notice to Tenant that the same has not been paid when due, Tenant shall pay City a late charge equal to 3% of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs City will incur by reason of a late payment by Tenant. Acceptance of such late charge by City shall in no event constitute a waiver of Tenant's Default with respect to such overdue amount, nor prevent City from exercising any of the other rights and remedies granted hereunder or by law.

d. Interest. In addition to the late charge provided in Section 3.c, any amount due to City from Tenant, if not paid within three business days after City's notice to Tenant that the amount has not been paid when due, shall bear interest at the rate of 1 and ½ percent per month (18% per year) from the day after such third business day until such amount is paid. Payment of interest shall not excuse or cure any Default hereunder by Tenant.

e. Place, Etc. All payments due from Tenant to City under this Lease shall be made to City in lawful money of the United States of America at City's address for notices provided in Section 33.f, or to such other person or at such other place as City may from time to time designate in writing to Tenant.

4. Reciprocal Easement Agreement. As a condition of the City's entry into this Lease, on or before the Amendment Date, City and ACP executed and recorded the reciprocal easement

agreement ("Reciprocal Easement Agreement") and easement quitclaim ("Easement Quitclaim") on the terms and in substantially the form of those attached as Exhibits E and F, respectively. The following shall apply during the Term:

a. Tenant shall perform all of City's obligations under the Reciprocal Easement Agreement, including, without limitation, any obligation to maintain the Utilities located on the Premises, to reimburse the owner of the ACP Property for any Utilities consumption or Maintenance Expenses (as defined in the Reciprocal Easement Agreement), and to refrain from terminating or interfering with Utilities serving the ACP Property except as provided in the Reciprocal Easement Agreement.

b. Tenant may not exercise the consent and approval rights of the City under the Reciprocal Easement Agreement, except with the written consent of the City. City's consent or approval shall be in its Discretion, except as otherwise provided in the Reciprocal Easement Agreement or this Lease. Under this Lease, Tenant may request the City's approval to relocate, alter, improve, or cease use of Utilities located on the Premises in accordance with Section 13 and the other terms of this Lease. Any City approval of Tenant's request for such relocation, alteration, improvement or cessation of use shall also constitute City approval for purposes of the Reciprocal Easement Agreement.

c. Subject to the foregoing, Tenant shall have the same rights as the City to exercise the City's rights under the Reciprocal Easement Agreement to use utilities and access located on the ACP Property.

d. Tenant shall not cause any of the City's easements under the Reciprocal Easement Agreement to lapse for nonuse without the prior consent of the City, which shall be sought at the earliest possible date. Tenant shall immediately notify City if it anticipates the prolonged nonuse of any easement, or if such nonuse has actually occurred for a period of six months.

5. Term. The term of this Lease ("Term") commences at 12:01 a.m. on January 1, 2013 (the "Original Commencement Date") and continues until midnight on December 31, 2032, subject to extension as provided in Section 6, and to such earlier termination as may be provided in Section 7 or elsewhere in this Lease. The following (the "Surviving Obligations") shall survive the termination of this Lease:

a. Sections 14.c, 14.j (Waiver) and Section 14.k (Indemnity), with respect to any damages, injury or death occurring prior to termination;

b. Section 23;

c. Section 28;

d. Section 33;

e. Obligations and liabilities of a party that arise before the termination of this Lease; and

f. The remaining provisions of this Lease to the extent pertinent to the Sections and matters described in Sections 5.a through 5.e, inclusive.

6. Options to Extend Term.

a. If this Lease is not otherwise terminated pursuant to its terms or by law, Tenant shall have a recurring option ("Option") to extend the Term for successive periods of twenty Lease Years (each twenty-year period is an "Extension Term"), provided that no Event of Default of Tenant shall have occurred and be continuing on the date the Option is exercised. Tenant shall be deemed to have automatically exercised each Option unless Tenant elects not to exercise an Option by giving City notice to such effect at least 180 days before expiration of the then-current Term, in which event this Lease shall terminate upon expiration of the then-current Term.

b. If an Option would otherwise cause the Term to extend more than 66 Lease Years after the date on which the parties agree to the Option, then the Term shall be extended only to the date 66 Lease Years after the Original Commencement Date.

c. On the first day of each Extension Term (each an "Extension Date"), the amount of monthly Base Rent shall be adjusted as provided in Section 8.b through Section 8.j below. In all other respects this Lease shall remain unchanged and in full force and effect during each Extension Term. The Extension Dates shall be on the 20th, 40th, and 60th anniversaries of the Original Commencement Date.

7. [This Section 7 intentionally omitted]

8. Base Rent Adjustment.

a. Fixed Rent Increases. On the fifth anniversary of the Original Commencement Date, and every five years thereafter except the Extension Dates, the Base Rent payable by Tenant shall be increased to 110% of Base Rent payable immediately prior to the date of the increase. Thus, Base Rent shall be increased to 110% of the prior Base Rent on the 5th, 10th, 15th, 25th, 30th, 35th, 45th, 50th, 55th and 65th anniversaries of the Original Commencement Date, but not on the 20th, 40th or 60th anniversaries of the Original Commencement Date, since the 20th, 40th and 60th anniversaries are Extension Dates.

b. Market Adjustment. If Tenant exercises an Option under Section 6, then on the Extension Date, Base Rent shall be adjusted to the Fair Market Rent of the Premises as of the "Valuation Date," which is the 180th day before the Extension Date. (Each such adjustment is a "Market Adjustment"). The Market Adjustment shall be in accordance with the remaining provisions of this Section 8. For purposes of Sections 8.b through 8.j:

i. **Fair Market Rent.** "Fair Market Rent" means the monthly amount that a willing tenant would pay a willing landlord on the Valuation Date for the use, occupancy and possession of the Premises under all the terms and conditions of this Lease on the basis set forth in the following provisions of this Section 8.b and otherwise in accordance with the then-current standards of appraisal practice.

ii. **Excluded Improvements.** The improvements set forth in Exhibit B and any improvements made to the Premises after the Original Commencement Date that were paid for by Tenant shall be excluded and not considered in determining Fair Market Rent. Notwithstanding the foregoing, all improvements made to the Sawtooth Building shall be included and considered in determining Fair Market Rent, regardless of whether Tenant paid for them. An improvement was not paid for by Tenant if City gave Tenant a rent credit (or otherwise reimbursed Tenant) for the cost of the improvement, or if Tenant is required to make the improvement under its maintenance, repair or other obligations under this Lease. Improvements to the Premises paid for by City and constructed at any time between the Original Commencement Date and the Extension Date shall be included and considered in determining Fair Market Rent. For purposes of this paragraph, City did not pay for any improvements during the period from the Effective Date to the Amendment Date, whether under Section 2.d or otherwise.

iii. **Personal Property and Fixtures, Etc.** The following are not included in determining Fair Market Rent: drydocks, floats and the like; Tenant's modular office building, trailers, and cranes (movable and overhead); any equipment or other trade fixtures installed by Tenant at Tenant's expense or which Tenant has a right to remove under this Lease or by law; and Tenant's moveable equipment and other personal property.

iv. **Permitted Uses**. The Fair Market Rent shall be based on use of the Premises for Vessel Repair and on any other uses of the Premises approved by City pursuant to Section 10 except Minor Uses, but not on any other potential use of the Premises. A "Minor Use" is a use other than Vessel Repair of any portion of the Premises: that has been approved by the City; occupies no more than 10% of the land area of the Premises; and which, together with all other Minor Uses, does not exceed 25% of the land area of the Premises. For purposes of calculating these percentages, "land area" excludes piers and submerged lands. Any portions of the Premises occupied by Minor Uses shall be assumed to be available for Vessel Repair for purposes of determining Fair Market Rent. For purposes of this Section 8.b.iv, uses approved by City shall include those approved on the Valuation Date, those approved between the Valuation Date and the Extension Date, and (if the Extension Date has not yet occurred) those requested by Tenant and likely to be approved by City prior to the Extension Date.

v. **Shipyard Market Area.** In determining Fair Market Rent, the geographic area of the market for leases for Vessel Repair uses shall be limited to the west coast of the United States, which for this purpose is the coast of California, Oregon, Washington and Alaska (excluding Hawaii).

vi. **Small Boatyard Exclusion**. In determining Fair Market Rent, any vessel repair facility shall be disregarded that does not include a drydock or a permanently installed

ship lift in a fixed location capable of lifting vessels in the ordinary course of the facility's business. For purposes of this paragraph, a mobile vessel lift, such as a travelift on wheels, is not a ship lift or drydock.

vii. Navy Ship Construction Yard Exclusion. In determining Fair Market Rent, shipyards primarily devoted to construction of new vessels for the U.S. Navy shall be disregarded.

viii. In determining Fair Market Rent, the appraisers shall not look to any prior fixed increases in the Base Rent pursuant to Section 8.a or other provision of this Lease as evidence of Fair Market Rent.

c. Appraisal Process. Following Tenant's exercise of an Option, the process for establishing the Fair Market Rent of the Premises for a Market Adjustment shall commence on the date a party gives notice to the other party initiating such process ("Notice Date"). If City and Tenant have not agreed on the Fair Market Rent of the Premises for a Market Adjustment within 30 days after the Notice Date, then the Market Adjustment shall be determined by the following process which, to the extent involving the Third Appraiser, shall be a binding arbitration under the California arbitration law, CCP Sections 1280 et seq., as the same may be amended ("Arbitration Law"), but subject to Sections 8.b through 8.j of this Lease, which shall prevail over anything to the contrary in the Arbitration Law. The notice establishing the Notice Date may be given by either party at any time after the date which is 180 days prior to the Extension Date. The right of either party to give notice initiating the appraisal process cannot be waived.

i. Designation of Appraisers.

A. No later than 50 days after the Notice Date, City and Tenant shall each select an appraiser who satisfies the requirements of Section 8.h to determine the Fair Market Rent and notify the other of its selection.

B. No later than 80 days after the Notice Date, the parties' appraisers shall jointly select a third appraiser ("Third Appraiser") to act pursuant to Section 8.c.iv who satisfies the requirements of Section 8.h. At least 15 days before the parties' appraisers complete the selection of the Third Appraiser, the proposed Third Appraiser shall make all disclosures required by CCP Section 1281.9 or equivalent provision of the Arbitration Law. Each party may disqualify the first proposed Third Appraiser with or without cause by written notice to the other party, the parties' appraisers and the proposed Third Appraiser within 15 days after service of the proposed Third Appraiser's disclosure statement. If a party disqualifies the first proposed Third Appraiser, then the parties' appraisers shall select a second proposed Third Appraiser within 15 days after the disqualification. The second proposed Third Appraiser shall make all required disclosures within 5 days after his or her tentative selection by the parties' appraisers. Each party shall have 15 days after service of the disclosures to disqualify the second proposed Third Appraiser by written notice to the other party, the parties' appraisers, and the second proposed Third Appraiser, which disqualification shall only be for cause, as documented in the notice. If the second proposed Third Appraiser is disqualified, the parties and their appraisers may repeat

the process used for the second proposed Third Appraiser until they select a Third Appraiser who is not disqualified. However, except as the parties may otherwise agree, after the first to occur of disqualification of the first proposed Third Appraiser or 110 days after the Notice Date, either party may petition the Superior Court for Alameda County pursuant to CCP Section 1281.6 (or equivalent provision) to appoint a Third Appraiser who satisfies the requirements of Section 8.h to act as arbitrator and Third Appraiser pursuant to Sections 8.b through 8.j of this Lease. In the event of such a petition, a party may petition the Court to disqualify a Court-appointed arbitrator only upon a showing of cause. Except as otherwise provided in this Section 8.c.i.B, CCP Sections 1281.9 and 1281.91 (or equivalent provisions) shall apply to the selection of the Third Appraiser.

ii. Agreed Statement. The parties shall jointly prepare and submit to their respective appraisers an agreed statement of material facts ("Agreed Statement") by no later than 50 days after the Notice Date. The Agreed Statement shall include: (1) a list of improvements excluded from consideration under Section 8.b.ii; (2) an illustrative plat or survey of the Premises as the Premises exists at the time the Agreed Statement is prepared; (3) the square footages of the Premises as a whole and of distinct areas of the Premises (for example, submerged lands, piers, uplands, and buildings) as they exist at the time the Agreed Statement is prepared; (4) the Valuation Date; (5) the requirements of this Lease for the Market Adjustment (a copy of Sections 8.b through 8.j, as the same may be amended); and (6) any other factual information relating to the Premises or the terms of the Lease that the parties agree is pertinent to the appraisal. The square footages of the Premises on the Original Commencement Date are shown in the Table of Areas on Exhibit A. The area shown for land on the Table of Areas includes the land beneath Tenant's modular office building as existing on the Original Commencement Date, but not the land beneath the Sawtooth Building as existing on the Original Commencement Date. (Nothing contained in the preceding sentence modifies the inclusion in the Premises of the portions of the Sawtooth Building shown as being within the BSY Premises Boundary on Exhibit A.)

iii. Submittal of Appraisals. On the date 110 days after the Notice Date or on such other date as the parties may agree, the parties' appraisers shall simultaneously exchange (A) their respective determinations of Fair Market Rent, together with (B) such appraisal report complying with minimum legal appraisal standards in support of the determination as the party making the determination shall elect to provide. If the difference between the two determinations is equal to or less than ten percent (10%) of the higher determination, the Fair Market Rent shall be the average of the two determinations.

iv. Third Appraiser. If the difference between the two determinations is more than ten percent (10%) of the higher determination, then the Third Appraiser shall select one of the two determinations as the Fair Market Rent pursuant to this Section 8.c.iv no later than 140 days after the Notice Date.

A. The sole responsibility of the Third Appraiser will be to determine which of the determinations made by the parties' two appraisers is most accurate and then to se-

lect that determination as the Fair Market Rent. The Third Appraiser may not propose or determine a middle ground or any modification of either of the determinations made by the parties' appraisers.

B. Prior to selecting a determination by a party's appraiser, the Third Appraiser may elect (but shall not be required) to perform a site visit accompanied by the parties' appraisers and the parties. The Third Appraiser may ask questions at the site visit and at other times may ask written questions of the parties' appraisers or make written requests of the parties appraisers for further information or explanation, addressing any written questions or requests to both parties' appraisers at the same time. A party shall not communicate with the Third Appraiser in electronic or written form except to respond to such written questions and requests of the Third Appraiser, serving a copy of each response on the other party concurrently with providing the response to the Third Appraiser, or in connection with (and limited to) arrangements for the Third Appraiser's retention. The Third Appraiser may also elect to meet with the parties' appraisers no more than once, in addition to a site visit, to ask questions, make requests and discuss their respective appraisal reports. The Third Appraiser shall have no power to require discovery and shall not independently obtain information or evidence pertaining to the Fair Market Rent, but shall instead rely solely on information provided by the parties pursuant to this Section 8.c.iv. Except to answer such questions and requests of the Third Appraiser and participate in such site visit and meeting, a party shall be limited to its original appraisal report and may not submit any further information to the Third Appraiser, either orally or in written or electronic form. A party (including its appraisers, attorneys and other representatives) shall not orally communicate with the Third Appraiser except in the presence of the other party or its representative or in connection with (and limited to) arrangements for the Third Appraiser's retention.

C. The Third Appraiser shall render his or her decision and award in writing with counterpart copies to each party, and shall have no power to modify the provisions of this Lease. The Third Appraiser's selection of one of the two determinations by the parties' appraisers pursuant to the foregoing provisions of this Section 8.c.iv shall be final and binding.

D. The fees and other out-of pocket expenses (if any) of the Third Appraiser incurred in connection with the arbitration proceeding shall be paid by the party whose rent determination is not selected within 30 days after the Third Appraiser notifies the parties of the Third Appraiser's decision. If the Third Appraiser requires an advance payment of or deposit against the Third Appraiser's fees or other expenses, then each party shall advance one-half of the required sum within the time specified by the Third Appraiser, and shall later be reimbursed by the party responsible for the full costs of the Third Appraiser after the Third Appraiser has selected a party's rent determination. Each party shall pay the fees and expenses of its own appraiser and attorneys.

E. The Third Appraiser will be acting in an arbitration role, and thus the Third Appraiser will have the immunity of a judicial officer from civil liability arising pursuant to CCP Section 1297.119 (or equivalent provision), which states: "An arbitrator has the immunity of a judicial officer from civil liability when acting in the capacity of arbitrator under any statute or contract."

d. Market Adjustment Cap and Floor. Notwithstanding anything to the contrary in Sections 8.b and 8.c, if the Fair Market Rent determined pursuant to Sections 8.b and 8.c exceeds the Prior Base Rent by more than fifteen percent (15%) of the Prior Base Rent, then the Market Adjustment shall be one hundred and fifteen percent (115%) of the Prior Base Rent. If the Fair Market Rent is lower than the Prior Base Rent by more than ten percent (10%) of the Prior Base Rent, the Market Adjustment shall be ninety percent (90%) of the Prior Base Rent. The "Prior Base Rent" is the Base Rent payable immediately prior to the Extension Date.

e. Noncompliance with Time Limits. If a party fails to designate an appraiser and notify the other party of its designation within the time required by Section 8.c.i.A, and if the other party timely complies with Section 8.c.i.A, then the compliant party shall provide the noncompliant party with notice and an opportunity to cure. If (i) the noncompliant party fails to cure within 10 days after the notice is given, or (ii) if a party fails to provide the appraiser's determination of Fair Market Rent to the other party within the time required by Section 8.c.iii, then the Fair Market Rent determination by the compliant party's appraiser shall be the Fair Market Rent, provided, however that in no case shall the Fair Market Rent exceed 115% of the Prior Base Rent or be less than 90% of the Prior Base Rent, as more particularly provided in Section 8.d.

f. Date Adjusted Base Rent Applies. The Market Adjustment shall apply as of the Extension Date, regardless of the date on which the Fair Market Rent is actually determined. If the Fair Market Rent is determined after the Extension Date, any difference between the Base Rent paid to the City and the Base Rent due shall be paid to the appropriate party no later than 30 days after the Fair Market Rent is determined. If the difference is an amount owing by City to Tenant, Tenant may elect to credit the amount owing against Base Rent or Additional Rent otherwise due City.

g. Rent Adjustment in Year 40. Notwithstanding any other provision of Sections 8.b through 8.j, the Market Adjustment on the fortieth (40th) anniversary of the Original Commencement Date shall be the greater of: (i) the Fair Market Rent determined in accordance with the appraisal process set forth in Sections 8.b through 8.j; or (ii) one hundred and fifteen percent (115%) of the Prior Base Rent. The rent cap and floor in Section 8.d shall not apply to the Market Adjustment on the 40th anniversary of the Original Commencement Date.

h. Appraiser Qualifications. Each of the parties' appraisers and the Third Appraiser shall (A) be a Member of the Appraisal Institute (M.A.I.), or, if the M.A.I. designation is eliminated, the closest available equivalent, (B) hold all required Federal and California licenses and certifications, and (C) have at least fifteen years full-time appraisal experience involving primarily commercial properties in the San Francisco Bay Area. The Third Appraiser shall in addition comply with all ethics standards and disclosures required by the Arbitration Law.

i. Minimum Rent. Notwithstanding any other provision of this Section 8, the monthly Base Rent shall not be less than the minimum rent defined in this paragraph ("Minimum Rent").

i. The Minimum Rent is initially set at $36,916.00 per month.

ii. In the event of an assignment in conjunction with a sale of Tenant's business pursuant to Section 17.c, the Minimum Rent shall be reset to the monthly Base Rent in effect on the date of the sale.

iii. The Minimum Rent shall be adjusted for increases or decreases in the size of the Premises since the Original Commencement Date in accordance with Section 8.j.

j. Base Rent Adjustments for Increases in the Size of the Premises. If the size of the Premises is increased in accordance with the terms of this Lease (as the same may be amended), the Base Rent shall be adjusted in accordance with the following.

i. If the Parties agreed on the amount of Base Rent resulting from the increase in the size of the Premises, then such agreement shall govern.

ii. If the increase in the size of the Premises was the result of Tenant's exercise of a right of first refusal pursuant to Section 30 or otherwise, then the amount of rent set forth in the bona fide offer shall be the amount of the increase in the Base Rent.

iii. If neither i nor ii preceding applies, then the Base Rent shall be increased by the product of the Rent Rate times the number of square feet added to the Premises. The "Rent Rate" is the monthly Base Rent existing immediately prior to the date of the increase or decrease, divided by the total number of square feet comprising the "Rentable Area" of the Premises on the date of the increase or decrease. The "Rentable Area" will be the total square feet of the following portions of the Premises: the land, Sawtooth Building, piers, and ramp, but not any submerged land, ship lift or dry dock. Such Rentable Area shall be calculated on the same basis as that used to prepare the table of areas on Exhibit A. (See also Section 8.c.ii.)

9. Property Taxes. Tenant agrees to pay and discharge promptly all lawful taxes properly levied by the state, county, city or any tax or assessment levying body to which Tenant is subject by reason of its use and occupancy of the Premises, including, but not limited to, any possessory interest tax, any parcel tax and all taxes, assessments and charges on goods, merchandise, fixtures, appliances, equipment, furniture and property owned by Tenant in or about the Premises, including but not limited to all DMV fees and any property taxes on Tenant's modular buildings.

a. However, notwithstanding anything to the contrary in the previous sentence, City shall reimburse Tenant for fifty percent (50%) of the "Shared Taxes," which are all possessory interest taxes, parcel taxes (including the Alameda Unified School District parcel tax and City of Alameda Health Care District (hospital) parcel tax), and other real property taxes and assessments on the Premises, on Tenant's possessory interest in the Premises or interest under this Lease, or on Tenant's possession, use or occupancy of the Premises. Shared Taxes do not include any business personal property tax or other tax on any of the following owned by Tenant: goods, merchandise, trade fixtures, appliances, equipment, furniture and personal property. City shall reimburse Tenant for its 50% of a Shared Tax within thirty (30) days after City's receipt

from Tenant of a copy of the tax bill reflecting the Shared Tax and evidence of Tenant's payment of the Shared Tax. Each party will consult with the other before providing information on this Lease or tenancy to the Alameda County Assessor's Office or other taxing authority, to assist in providing complete and accurate information.

b. City will reimburse Tenant for 100% of any possessory interest tax, parcel tax (including the AUSD and hospital taxes) or other Shared Tax owing for all or any portion of the period April 20, 2009 to but not including the Original Commencement Date.

c. Tenant agrees not to permit or suffer any liens to be imposed upon the Premises as a result of its activities without promptly discharging the same; provided, however, that Tenant may, if it so desires, contest the legality of such taxes and liens without being in breach of this Lease. Tenant shall promptly notify the City of any corrected or revised tax bill and shall reimburse the City for the City's share of any refund of Shared Taxes received by Tenant.

10. Use. Except as City may otherwise approve, the Premises shall be used and occupied for Vessel Repair, as defined below. Other industrial uses that are secondary to the use being made of the Premises for Vessel Repair, are not inconsistent with the operation of the Premises as a shipyard, would not themselves unreasonably disturb or interfere with the use by the City, its tenants, or the public of the remainder of the Tidelands Parcel or the Ferry Terminal and would not (after giving effect to any mitigation measures being adopted) have a significant adverse effect on health, safety or the environment, may be permitted with the approval of the City, which approval shall not be unreasonably withheld or conditioned. No other uses are permitted except as the City, in its Discretion, may authorize. If Tenant gives notice to City requesting approval of a Minor Use as defined in Section 8.b.iv, and City does not give notice to Tenant denying or conditioning its approval within 30 days after Tenant gave its notice, the Minor Use shall be deemed approved for purposes of this Lease. If Tenant requests approval of a use other than a Minor Use, the use shall not be deemed approved if the City does not respond to the request within 30 days after Tenant gave its notice.

a. "Vessel Repair" means use for either or both of repair and construction of vessels, and uses which are ancillary, accessory or incidental to vessel repair or construction. Tenant's primary use, when Tenant is doing work on the underwater bodies of vessels, shall be vessels for which Tenant uses a drydock or ship lift.

b. Notwithstanding anything to the contrary in the preceding provisions of this Section 10, no use of the Premises shall be made (i) which is prohibited or not permitted by the Trust, or (ii) which is otherwise prohibited by federal, state or local law, ordinance or regulation, or (iii) which would cause a cancellation of all reasonably obtainable fire insurance on the Buildings or the Premises, or (iv) which would be inconsistent with any restrictions on the use of the Premises binding on Tenant, including without limitation any use restrictions imposed by Section 33 of the Amended Agreement between Tenant and the Port of Oakland dated April 1, 2003, to which the City is also a party, for so long as those restrictions remain in effect. Nothing in this Lease shall be construed as relieving Tenant of its obligation to obtain all required regulatory approvals or permits from the City for any proposed use of the Premises, or as affecting the City's authority to deny or condition such required regulatory approvals or permits.

In approving a use, improvement or other activity under this Lease, the City acts in its proprietary, not its regulatory capacity, and such approval is in addition to, and not in lieu of, any required regulatory approvals for the use, improvement or other activity by the City or other regulatory agency.

11. Utilities and Services. As between City and Tenant, Tenant shall pay for all electricity, water, sewer, gas, heat, air conditioning, telephone, refuse collection and other utility-type services furnished to Tenant or the Premises. Wherever practical, such services shall be separately metered or charged to Tenant by the service provider and paid for directly by Tenant. To the extent any of the foregoing services are provided by City, Tenant shall reimburse City for the actual charges of the service provider for Tenant's use or consumption of the service. City shall bill Tenant on a monthly or other periodic basis for such services and payment shall be made by Tenant ten days after Tenant's receipt of City's statement. Without limiting Section 2.d, City shall not be liable in damages or otherwise by reason of the failure or interruption of any utility service furnished to Tenant or the Premises, unless such failure is (a) caused by City or due to City's negligence or other fault, and (b) is not remedied as soon as feasible after emailed or other notice by Tenant to City. Except to the extent the source of the failure of the utility or service is within the reasonable control of Tenant or the owner of the ACP Property, on request of Tenant, City shall join Tenant in taking such commercially reasonable steps to cure the failure as are feasible under the circumstances.

12. Maintenance, Repairs and Alterations.

a. Tenant Responsibility. Subject to Sections 12.b, 13.c, 15, 16, 23 and 25, and except for damage caused by City or its agents, invitees or other tenants, Tenant shall, at Tenant's sole expense, maintain the Premises, including without limitation the Sawtooth Building and any other improvements on the Premises. As more particularly provided in Section 4.a, Tenant shall also perform City's obligations under the Reciprocal Easement Agreement to pay the City's share of maintenance costs for the ACP Road, and to maintain the Utilities located on the Premises. Tenant's maintenance may also include: Tenant maintenance and repair of utilities, access and other improvements serving the Premises which are located on the Tidelands Parcel outside the Premises; and upgrades, replacements and improvements of the items which Tenant may maintain or for which Tenant has maintenance responsibility. Tenant shall not be excused from its obligation to perform maintenance due to any lack of cooperation by the owner of the ACP Property. Tenant shall not be excused from its obligations to maintain the Sawtooth Building, regardless of whether: the maintenance requires that access be provided from, or work be performed on, the ACP Property; or the then-owner of the ACP Property is unwilling to cooperate with Tenant in providing such access or performing such work, or to pay its fair share of the cost.

b. Sawtooth Building. Notwithstanding Section 12.a, the City and not Tenant shall be responsible for maintaining the following:

(A) any utilities or other improvements primarily serving the Ferry Terminal or other area outside the Premises; or (B) absent Tenant's written agreement to the contrary, any improvement constructed pursuant to Section 13.c. Any such maintenance by City shall be on reasonable

advance notice to Tenant, which notice may be via email, telephone or other informal means, and shall not unreasonably disturb Tenant.

c. City Self-Help Right. Should Tenant fail to maintain the Premises or make any repairs as may be required under this Lease after notice and opportunity to cure from City under Section 18.a.ii, such failure by Tenant shall be an Event of Default. While the Event of Default continues and until the maintenance or repairs are made, City shall have the option to enter the Premises at reasonable times and on reasonable informal notice and make or cause the same to be done, and Tenant shall reimburse City for the reasonable cost thereof within 10 business days after Tenant's receipt of City's invoice. The making of such repairs by City shall in no event be construed as a waiver of the duty of Tenant to maintain the Premises or make repairs as provided in this Lease.

d. Electrical and Water Repairs and Improvements. City shall make reasonable efforts to accommodate Tenant's request that a City shutdown (if any) of a major portion or all of the electrical power or water serving the Premises for repairs, maintenance, improvements or other purpose be scheduled for a weekend or other time when Tenant's business is not operating, provided that City shall not be obligated to accommodate a request that requires that City incur a substantial increase in City's costs unless Tenant agrees to reimburse City for the increase.

e. Sea Level Rise. Neither Tenant nor City is required to maintain or protect the Premises against inundation due to sea level rise, but subject to Section 13, either party may elect to do so as an improvement.

13. Improvements.

a. Improvements to Premises by Tenant. Tenant shall not make or permit others to make any substantial alterations or improvements to the Premises without the prior approval of City.

i. If City fails to give notice to Tenant of its approval, conditional approval or denial of approval within 30 days after notice from Tenant requesting approval of an alteration or improvement of the Premises relating to Tenant's Vessel Repair (including protection of the Premises from inundation due to sea level rise or other damage or waste,) or relating to other use of the Premises approved by City under Section 10 (including access, utilities or infrastructure for Vessel Repair or other use), and Tenant gives a second notice to City that City has failed to act timely on Tenant's request for approval and that the failure to act will result in the approval being deemed granted, then such approval shall be deemed granted 10 days after such second notice, unless the City acts on Tenant's request within the 10-day period.

ii. Approval of alterations or improvements to the Premises relating to Vessel Repair or other use approved by City under Section 10 shall be pursuant to Section 33.a, and so shall not be unreasonably withheld. Approval of alterations or improvements to the Premises not

relating to Vessel Repair or other use of the Premises approved by City under Section 10 shall be within the City's Discretion.

iii. In approving or conditionally approving improvements to the Premises, the City may require increases in the minimum insurance coverages under Section 14 of this Lease that are commercially reasonable in light of the increased risk of loss resulting from the new improvements. Improvements to the Premises completed prior to the later of the Effective Date or the City's signature date shown beneath its signature line of this Lease are deemed to have been approved by City. Tenant may elect to install additional fencing and other security systems for the Premises without need of City approval. Nothing in this Lease shall be construed as relieving Tenant of its obligation to obtain all required regulatory approvals or permits from the City for any proposed improvement, or as affecting the City's authority to deny or condition such required regulatory approvals or permits. Any improvements constructed by Tenant on the Premises after the Original Commencement Date shall be owned by Tenant and shall be removed at the termination or expiration of the Term of this Lease to the extent provided in Section 28.

b. Improvements by Tenant Outside Premises. An "Outside Improvement" is any improvement by Tenant of the Tidelands Parcel outside the Premises and any construction of utilities and other infrastructure below ground (except for occasional incidental aspects above ground) at the Ferry Terminal. Any Outside Improvement shall be subject to City's prior approval and shall be within the City's Discretion. In approving or conditionally approving an Outside Improvement, the City may require increases in the minimum insurance coverages under Section 14 of this Lease that are commercially reasonable in light of the increased risk of loss resulting from the new improvements. If City fails to give notice of its approval, conditional approval or denial of approval within 30 days after notice from Tenant requesting approval of an Outside Improvement that Tenant reasonably requires for Vessel Repair or other use of the Premises approved by the City under Section 10, and Tenant gives a second notice to City that City has failed to act timely on Tenant's request for approval and that the failure to act will result in the approval being deemed granted, then such approval shall be deemed granted 10 days after such second notice unless City acts on Tenant's request within the 10-day period. Any Outside Improvements constructed by Tenant shall be owned by City.

c. City Improvements. During the Term, City may construct improvements on the Premises at its expense on 30 days' notice to Tenant: (i) subject to Tenant's prior written approval in such 30 days and to Section 15, which are reasonably necessary to protect the Premises from inundation due to sea level rise, waste, or damage; or (ii) subject to Tenant's prior written approval in such 30 days, which are utilities and other infrastructure located below ground (except for occasional incidental aspects above ground) serving Tenant, such other tenants of the Tidelands Parcel as may then exist, or the Ferry Terminal, or (iii) which have the prior written approval of Tenant in its Discretion. Prior to constructing improvements on the Premises, the City may require increases in the minimum insurance coverages under Section 14 of this Lease that are commercially reasonable in light of the increased risk of loss resulting from the new improvements. Any construction of such improvements shall be on reasonable advance notice to Tenant, which notice may be via email, telephone or other informal means. Neither such improvements nor their construction shall unreasonably disturb Tenant's operations or use of the

Premises or (without Tenant's prior written consent) modify or alter any of Tenant's improvements. Absent tenant's prior written agreement: (x) City shall not look to Tenant for any increase in Base or other rent, reimbursement, or other payment of the cost of any improvement that City constructs pursuant to this Section 13.c; and (y) any such improvement shall not be included in determining Fair Market Rent. Any improvements constructed by City on the Premises shall be owned by City and shall become part of the Premises leased by Tenant but absent written agreement of Tenant to the contrary, shall be maintained by City pursuant to Section 12.b. Section 2.g and the Reciprocal Easement Agreement prevail over anything to the contrary in this Section 13.c.

d. Responsibility for Improvements. Each party who constructs any improvement on the Premises:

i. Shall be responsible for the evacuation, disposal, remediation, testing and other clean-up of any Hazardous Materials which is required by any governmental authority as a result of the testing for, permitting or construction of such improvement.

ii. Shall pay when due all claims for labor or materials furnished to or for such construction.

e. Pier 5 Improvements. For purposes of this Lease, improvements shall include any alterations or additions to Pier 5 for any purpose and the attachment of any drydock to such Pier. For purposes of the preceding sentence, a floating drydock that is moored at such Pier will be deemed attached to such Pier. The floating drydock that Tenant has had tied to Pier 5 for many years prior to 2012 and the HMB-1 floating drydock acquired by Tenant in 2012 are deemed approved by the City. Tenant shall not moor any additional drydock to Pier 5, whether or not such mooring requires any improvements to Pier 5, without the City's prior approval. The City's approval shall be given in the manner provided in Section 13.a.i.

14. Insurance and Indemnity.

a. Required Coverage. Tenant shall obtain and maintain during the entire Term of this Lease, at its own cost and expense, the insurance coverages set forth in this Section 14.a. (The following are minimum coverages; Tenant may elect at its expense to carry higher amounts of such coverages and additional coverages.)

i. Commercial General Liability ("CGL"): coverage (together with excess liability coverage) of at least $2,000,000 per occurrence, $4,000,000 aggregate for bodily injury, personal injury and property damage. In addition, either the CGL or separate coverage shall provide the following coverages.

A. Either (I) Fire Legal Liability coverage of at least $250,000 or (II) Damage to Rented Premises coverage.

B. Commercial Marine Liability: coverage of at least $2,000,000 per occurrence, $4,000,000 aggregate, covering maritime operations and contractual liabilities.

C. **Wharfingers Legal Liability**: coverage of at least $2,000,000 per occurrence for care, custody, and control coverage for damage to vessels and the vessels' cargo while moored at the owner/operator's facility for which the owner/operator is legally liable.

ii. **Protection and Indemnity**: coverage (together with excess liability coverage) of at least $5,000,000 per occurrence, covering bodily injury and property damage arising from the use of a vessel. Either endorse the policy to include sudden and accidental pollution arising from shipyard operations (including remediation costs) with $5,000,000 or more of coverage or provide a separate pollution liability policy with the same coverage.

iii. **Automobile Liability**: coverage for owned, hired, leased and rented vehicles, with limits of not less than $1,000,000.00 for combined bodily injury and property damage per occurrence.

iv. **Fire with extended coverage** (excluding earthquake and flood insurance), covering the portion of the Sawtooth Building included in the Premises (and so excluding cement piers, docks and appurtenances to the Premises) in an amount equal to the replacement cost of such portion with no less than 90% coinsurance, and assuming a replacement cost of no more than $100/sf. The City shall be named as loss payee on any such policy or policies.

v. **Workers Compensation Coverage**: Statutory limits, with Employer's Liability coverage with limit of not less than $1,000,000. Policy shall also include, or separate coverage be provided, for U.S. Longshore and Harbor Workers Act.

vi. **Tenant's Owned Improvements**: Tenant may carry such fire and other insurance on the improvements, modular buildings, drydocks, trailers, floats, cranes, overhead cranes, trade fixtures, equipment, furnishings and personal property owned by Tenant as it may deem appropriate.

vii. The minimum dollar amount of the coverages under Sections 14.a.i through v above shall be adjusted on the fifth anniversary of the Original Commencement Date of this Lease and on every five-year anniversary thereafter except the Extension Dates to an amount determined by multiplying the minimum coverage amount in effect for the month immediately preceding the adjustment date by a fraction. The numerator of the fraction shall be the Consumer Price Index for All Urban Consumers, San Francisco, Oakland, and San Jose Area (1982-1984=100) compiled by the Bureau of Labor Statistics, U.S. Department of Labor (the "CPI") that the Bureau most recently published prior to the adjustment date. The denominator of the fraction shall be the CPI for the corresponding period five years before the CPI that is used for the numerator. In the event the CPI is discontinued, then another index which is generally recognized to be a fair index of consumer prices shall be substituted in calculating this adjustment.

viii. The minimum dollar amount of the coverages under Sections 14.a.i through v above shall be adjusted on the Extension Dates (the 20th, 40th, and 60th anniversaries of the Original Commencement Date), to an amount determined by multiplying the minimum

coverage amount in effect for the month immediately preceding the adjustment date by a fraction, the numerator of which is the Base Rent determined by the process for adjustment of the Base Rent on the Extension Date under Sections 8.b through 8.j, and the denominator of which is the Base Rent for the month preceding the Extension Date.

ix. To allow for subsequent impairments of the insurance markets, the parties' obligations under this Section 14 shall be reduced to the extent that the insurance required by this Section 14 becomes commercially impracticable, but shall return to their previous levels once the coverage becomes commercially practicable again. The level of commercial impracticability shall be subject to the approval of the City's Risk Manager pursuant to Section 33.a on behalf of City.

x. All insurance required under Sections 14.a.i through v above shall be primary insurance, so that any insurance maintained by City shall be in excess of such insurance and shall not contribute with it.

b. Additional Insured. The City of Alameda, its City Council, officers, employees, agents and volunteers, shall be named as additional insureds under the insurance coverages required by Sections 14.a.i through iv preceding. Upon City's written request, Tenant shall add as additional insureds such other Affiliates of City as City shall reasonably request who can be added without substantial increase in Tenant's premium costs. An additional insured named in accordance with the foregoing shall not be held liable for any premium or deductible portion of any loss on the policy or any extension of the policy.

c. Mutual Subrogation Waiver.

i. To the maximum extent permitted by the terms of their respective insurance policies, City and Tenant each hereby waive any claim the waiving party might have against the other party for any damage or other loss that may occur to the waiving party or any person claiming by, through or under the waiving party for injury or death of any person or for theft, destruction, loss, loss of use or damage of any property to the extent (and only to the extent) the claim is actually paid by any insurance proceeds received from an insurance policy maintained by the waiving party, provided that (if City is the waiving party), Tenant has maintained all insurance required by this Section 14 that might cover such claim and the insurers under such policies have complied with all requirements of their policies.

ii. To the extent reasonably feasible under the terms of its policies, Tenant shall cause the coverages required by Section 14.a to be endorsed with a waiver of subrogation against the additional insureds, if the particular policy does not already contain such a waiver, and furnish evidence of such waiver to City pursuant to Section 14.h below.

iii. For purposes of this Section 14, City insurance includes City coverage under a pooled insurance agreement. To the extent reasonably feasible under the terms or practices of its insurance, the City shall cause its insurance covering the Tidelands Parcel (if any), and its workers compensation and employer's liability policies (if any), to be endorsed with a waiver of subrogation against Tenant, its directors, officers, employees, agents and contractors, if

the particular policy or agreement does not already contain such a waiver, or, where applicable, obtain a letter or other evidence from the City's pooled insurance agreement manager indicating that the City's waiver of subrogation is not precluded by the insurance agreement, and furnish evidence of such waiver or letter to Tenant upon request, but no more often than once per year.

iv. Nothing in this Section 14.c shall be construed as obligating the City to carry any insurance or to make any claim on insurance in the event of any damage or loss.

d. Notice of Cancellation. Tenant's insurance policies shall be endorsed to require the insurer to provide the City with at least thirty days' written notice of cancellation.

e. Sufficiency of Insurance. The insurance limits required in this Lease are not represented by City as being sufficient to protect Tenant. Tenant is advised to consult Tenant's insurance broker to determine adequate coverage for Tenant.

f. Self-Insurance and Deductibles. Tenant self-insurance programs, insurance deductibles, or self-insurance retentions in excess of one month's then-existing Base Rent are subject to the approval of the City's Risk Manager pursuant to Section 33.a; provided, however, that an insurance deductible in excess of one month's then-existing Base Rent shall not require the approval of the City's Risk Manager where Tenant submits security in the form of a surety bond or other security acceptable to the City's Risk Manager for the amount of the deductible greater than such one month's then-existing Base Rent.

g. Insurer Acceptability. Tenant's insurers must meet a minimum of either an A.M. Best & Co. rating of A-:VII or a Standard and Poors Rating of at least BBB or, if rated by both A.M. Best & Co and Standard and Poors, both such ratings. In the event that a proposed insurer is not rated by A.M. Best & Co. or Standard and Poors, such insurer must be approved by City's Risk Manager pursuant to Section 33.a.

h. Evidence of Compliance. Upon signing of this Lease and 30 days prior to each annual renewal date of each policy, Tenant shall furnish City with the following for the period then remaining under the policy (when upon signing of this Lease) or for the forthcoming 12-month period (when prior to each renewal date): (a) a certificate of insurance, and (b) a copy of the declarations page. Tenant shall also furnish City with such additional documents and other information substantiating the party's compliance with the foregoing provisions of this Section 14 as City shall reasonably request.

i. Failure to Provide Insurance Coverage. If Tenant fails to comply with its obligations under Sections 14.a through 14.h, inclusive, such failure shall be a Default. After the appropriate notice of the Default and opportunity to cure (Section 18), and the failure of Tenant to cure, such Default shall be an Event of Default entitling the City, at its election and in addition to such remedies as may otherwise be available under this Lease (Section 18), to procure and maintain the required coverage. Tenant shall reimburse City for the premiums and other costs of procuring and maintaining such coverage. Such amounts shall be payable as Additional Rent ten business days after notice that the amount is owing, failing which payment City may exercise the

remedies provided in Section 18.b. The failure by City to pursue the foregoing remedies shall not operate as a waiver or otherwise excuse Tenant from such Default.

j. Tenant Waiver. Tenant hereby waives all claims against City for damage to any property or injury to or death of any person in, upon or about the Premises arising at any time during the Term and from any cause, except to the extent due to City's breach of this Lease or the active negligence, reckless disregard or intentional misconduct of City. The foregoing waiver by Tenant shall include Tenant's attorneys' fees, investigation and expert costs and all other costs and expenses incurred by Tenant in connection with the damage or injury. Tenant further waives any right or claim it may have against City on account of any loss or damage, regardless of fault, to the extent the loss or damage is actually covered and paid under an insurance policy required by this Lease. Tenant further waives any right or claim it may have against City (but not the owner of the ACP Property) arising out of any failure of the owner of the ACP Property to perform any obligation under Tenant's lease or other agreement with said owner, including without limitation any failure to adequately repair or maintain any portion of the Premises, and any failure to provide required access or utilities to the Premises, including any electrical upgrades. The provisions of this Section 14.j shall survive the termination of this Lease with respect to any damages, injury or death occurring prior to such termination.

k. Indemnity. Tenant shall hold City (including its agents and employees) harmless from, indemnify against, and defend from the outset of any proceeding regarding any claim, suit or action for damage to any property or injury to or death of any person in or upon the Premises which arises at any time during the Term and from any cause, including attorneys' fees and costs, except to the extent the claim, suit or action for damage is (i) actually paid by insurance proceeds of Tenant's or City's insurance, (ii) due to a breach by City of this Lease, or (ii) due to the active negligence, reckless disregard or intentional misconduct of City.

15. Damage or Destruction. The provisions of this Section 15 shall apply in the event of damage to or destruction of the improvements on the Premises (including damage or destruction due to fire, earthquake, flood, the elements or other casualty or to any other cause) that materially interferes with Tenant's use of the Premises ("Material Damage").

a. Definitions.

i. "Restore" or "Restoration" shall mean repair or rebuild the damaged or destroyed improvements pursuant to then-applicable Building Code and other governmental requirements, including demolition, debris removal, any upgrading required by law or insurance requirements, engineering and other design, permitting, construction, insurance and the other out-of-pocket costs of the repair or rebuilding.

ii. "Replacement Cost" shall mean the cost to Restore, without deduction for depreciation.

iii. "Insured Loss" shall mean Material Damage with a Replacement Cost that is actually covered by insurance maintained by Tenant.

iv. **"Insurance Proceeds"** shall mean all proceeds of insurance maintained by Tenant actually covering the Material Damage.

b. Assessment. Upon the occurrence of Material Damage, Tenant, in consultation with City and as promptly as reasonably possible, shall: (i) reasonably estimate the scope of work, cost, and time to Restore; (ii) determine the Insurance Proceeds available for the Restoration; and (iii) give notice to City providing City with its estimate and determination of insurance proceeds. If the Restoration can be accomplished in phases enabling Tenant to continue to operate its Vessel Repair business after completion of the first phase, Tenant shall include the phases, their estimated cost and their then-anticipated timing in its estimate. Tenant may defer later phase(s) of Reconstruction when the Insurance Proceeds are insufficient and the earlier phase(s) provide enough Vessel Repair capacity to make Tenant's continued operation of its Vessel Repair business economic. The estimate, any phasing, and the determination of Insurance Proceeds shall be subject to City's approval within 30 days after Tenant's notice. If City fails to give notice to Tenant of its approval or disapproval within such 30 days, and Tenant gives a second notice to City that City has failed to act timely on Tenant's request for approval and that failure to act will result in the City being deemed to have approved, then City shall be deemed to have approved Tenant's estimate, any phasing and the determination of Insurance Proceeds 10 days after such second notice unless City acts on Tenant's request within the 10-day period.

c. Insured Loss. If the Material Damage is an Insured Loss, then Tenant, using the Insurance Proceeds and otherwise at Tenant's expense, shall Restore the improvements as soon as reasonably possible, and this Lease shall continue in full force and effect.

d. Uninsured Loss. If Material Damage that is not an Insured Loss occurs, Tenant may either: (i) Restore the improvements as soon as reasonably possible and in such phases over such time as may have been determined pursuant to Section 15.b with the available Insurance Proceeds and otherwise at Tenant's expense, in which event this Lease shall continue in full force and effect, or (ii) if the Material Damage is not caused by Tenant's negligence, terminate this Lease by giving written notice to City within 30 days after City's approval or disapproval pursuant to Section 15.b. Such termination shall be effective on such date as Tenant may specify in its notice of termination, as the same may be extended by Tenant by notice to City from time to time thereafter, but in the aggregate not to exceed 18 months after Tenant gives its notice of termination. In the event of termination, the proceeds of any insurance on Tenant's property shall be distributed to Tenant. If the Material Damage is due to Tenant's negligence, then the Lease shall remain in full force and effect, unless (y) Tenant's notice to City does not propose Restoration at Tenant's expense, and (z) City elects by notice to Tenant within 60 days after Tenant's notice to City to terminate the Lease in its Discretion.

e. City Option to Contribute. In the event Tenant elects to terminate this Lease, City may elect to pay the Uninsured Portion of the cost to Restore without reimbursement from Tenant by notice to Tenant within 30 days after Tenant gives its termination notice. If City so elects, City shall provide Tenant with assurance reasonably satisfactory to Tenant of City's funds and their timely availability for the work within 10 days after City makes its election to pay. In such event this Lease shall continue in full force and effect, and Tenant shall proceed to make

such repairs as soon as reasonably possible after the required funds are available. Absent agreement to the contrary, City shall not be entitled to reimbursement of any funds it elects to contribute. If City does not elect to pay the Uninsured Portion, this Lease shall terminate as of the date specified in Tenant's termination notice. The "Uninsured Portion" is the reasonably estimated cost of repair less the available Insurance Proceeds.

f. Damage Near End of Term. If any damage or destruction occurs to the Premises during the last two (2) years of the initial Term or the last two (2) years of any Extension Term and the cost to repair the damage exceeds an amount equal to three months of the then-existing Base Rent, then either City or (if the Material Damage is not due to Tenant's negligence) Tenant may elect to terminate this Lease by notice to City within 30 days after Tenant gives notice to the other party pursuant to Section 15.b with Tenant's estimate and determination of Insurance Proceeds.

i. Subject to Section 15.f.ii below, if either party elects to terminate, then the Term shall expire 30 days after the termination notice was given, unless during that 30 days Tenant elects by notice to City to extend the Term to such date as Tenant may specify in its notice. If Tenant so elects, then Tenant may from time to time thereafter further extend the date by notice to City specifying the later date, but neither Tenant's first or any later election to extend the Term may be to a date any later than 18 months after the notice was given electing to terminate this Lease.

ii. If City elects to terminate the Lease by notice to Tenant under Section 15.f above, then during the 30 days thereafter, Tenant may exercise any remaining unexercised Option to extend the Term of this Lease under Section 6, whereupon City's election to terminate this Lease shall no longer be of any further force or effect, this Lease shall not terminate, and the Term will be extended pursuant to Tenant's exercise of its Option.

g. Abatement of Rent. To the extent that City is not paid the Base Rent by insurance, and if the Material Damage is not due to Tenant's negligence, the Base Rent shall be proportionately reduced from the date of the Material Damage until the first to occur of Lease termination or the completion of Restoration, with such proportionate reduction to be based upon the extent to which Tenant's use of the Premises is impaired.

h. Administration of Funds. All Insurance Proceeds shall be deposited in a separate bank account ("Restoration Account") solely for the Restoration established by Tenant at an independent financial institution. Any interest and other amounts earned with the Insurance Proceeds shall be paid into the Restoration Account. Tenant may invest the account's funds in money market funds, treasuries, certificates of deposit and other investments, so long as Tenant keeps the investments separate from its other funds and investments.

i. Tenant shall expend the funds solely for Restoration, and for no other purpose. Tenant shall separately account for such funds and the Restoration, and shall maintain adequate books and records concerning them, including reasonable substantiation of the expenses paid with the funds.

ii. City may elect to audit the Restoration Account and Tenant's records relating to it and the Restoration on reasonable notice and during regular business hours to determine whether Tenant has conformed to the requirements of this Section 15.h. City shall hold the information learned in the course of (and the results of) any such audit in confidence to the maximum extent legally feasible. Tenant shall retain such records for one year after the Restoration is completed, after which Tenant may elect to terminate this Section 15.h and City's audit rights by delivering its accounting records relating to Restoration Expenses to City or, upon City's written authorization, destroying such records.

iii. City shall have the right to access the funds in the Restoration Account for purposes of exercising its self-help right under Section 12.c with respect to any Restoration that is not timely completed by Tenant as required by this Section 15, after notice to Tenant and opportunity to cure under Section 18.a.ii.

i. Limit on Claims. Except for abatement of rent and the rights expressly provided in this Section 15, Tenant shall have no claim against City for any loss suffered by Tenant due to Material Damage, so long as not due to a breach of this Lease or to the active negligence, reckless disregard, or intentional misconduct of City. Tenant and City each expressly waives the provisions of Section 1932 and Section 1933(4) of the California Civil Code and of any subsequent law that terminates a lease on the complete or partial destruction of the demised premises insofar as such Sections or law apply to any Material Damage. The parties intend that the provisions of this Lease control in lieu of such laws. The claim of a party against the other party for damage to the Premises that is not otherwise barred by this paragraph shall be deemed to be related to the subject matter of this Lease for purposes of Section 33.g.

16. Eminent Domain, etc. If all or any part of the Premises shall be taken by exercise of the power of eminent domain or other involuntary governmental acquisition, this Lease shall terminate as to the part so taken as of the date of taking. In the case of a partial taking, Tenant shall have the right to terminate this Lease as to the balance of the Premises by notice to City within 30 days after the date of taking if the portion of the Premises taken (a) reduces Tenant's pier space or (b) is of such extent or nature as substantially to handicap, impede or impair Tenant's use of the balance of the Premises for Tenant's purposes. In the event of a partial taking without such termination, Base Rent and Additional Rent shall be adjusted to reflect the reduction in size and utility to Tenant of the reduced Premises, as objectively determined by agreement of the parties, or, if the parties cannot agree within 10 days after Tenant's notice to City, by the appraisal process described in Sections 8.b through 8.h (except that the parties shall agree to a modified schedule for the appraisal process, which agreement shall not be unreasonably withheld by either party). A taking of all or any part of the Premises by exercise of the power of eminent domain shall not constitute a breach of this Lease, and neither party shall sue or hold the other accountable for the resultant loss of the portion of the Premises so taken. Any award for the taking of all or any part of the Premises under the threat or exercise of such power of eminent domain shall be divided between City and Tenant as provided by law; provided, however, that City shall be entitled to any and all compensation for leasehold bonus value. No termination of this Lease by Tenant under this Section 16 shall affect City's or Tenant's rights to compensation or damages from the taking authority for, on account of, or

arising out of the taking. Either party may elect to contest the taking and to seek compensation for it.

17. Assignment and Subletting.

a. Assignment. Tenant shall not assign this Lease or, subject to Appendix II, assign any interest in the Lease without the prior consent of City. Except as may be otherwise provided in Appendix II, Tenant shall not hypothecate this Lease or any interest herein without the prior consent of City. This Lease shall not, nor shall any interest herein, be assignable as to the interest of Tenant by operation of law due to a voluntary act of Tenant without the consent of City. Any consent required by the foregoing provisions of this Section 17.a shall be given or withheld at the City's Discretion, and any consent given shall not be deemed to waive the requirement of consent as to any subsequent assignment or hypothecation. Any of the foregoing acts without the City's consent shall (after notice and opportunity to cure under Section 18.a and a failure by Tenant to cure) be void and shall, at the option of City, terminate this Lease. In connection with each consent requested by Tenant, Tenant shall submit to City the terms of the proposed transaction, the identity of the parties to the transaction, the proposed documentation for the transaction, current financial statements of any proposed assignee and such other information concerning the proposed transaction and the parties involved therein as City may reasonably request.

b. Subletting. Tenant may sublease some or all of the Premises, provided that one half of any excess rent received by Tenant shall be payable to City. For purposes of this paragraph, "excess rent" shall be all rent and other consideration received by Tenant from the subtenant for the subletting, less that portion of the Base Rent attributable to the subleased portion of the Premises. The portion of the Base Rent attributable to the subleased portion of the Premises shall be calculated by multiplying the Base Rent by the ratio of (i) the area of the subleased portion of the Premises plus the areas of the Premises, if any, such as parking spaces, roads etc. that the Subtenant has rights to use to (ii) the Rentable Area of the entire Premises. Nothing in this paragraph shall be construed as authorizing a subtenant to use the Premises in a manner inconsistent with the terms and conditions of this Lease. No subletting shall release Tenant of Tenant's obligation or alter the primary liability of Tenant to pay the rental and to perform all other obligations to be performed by Tenant hereunder. In an Event of Default by any subtenant in the performance of any of the terms hereof, City may proceed directly against Tenant without necessity of exhausting remedies against such subtenant. No subtenant shall have a right to further sublet. Tenant shall provide City with a copy of each sublease, and any amendment thereto, within 30 days after execution of the sublease or amendment.

c. Assignment with Sale of Tenant's Business. Tenant may assign this Lease in conjunction with a sale of Tenant's business to the assignee if the buyer proposes to continue Tenant's business on the Premises and Tenant gives City 30 days' notice of the sale accompanied by an executed counterpart of an assignment and assumption by which the buyer accepts and assumes this Lease, including the buyer's assumption of all duties of Tenant arising under this Lease, effective upon the last to occur of the sale or 30 days after such notice. Such assignment shall be subject to City's approval within such 30 days after Tenant's notice to City, with such approval limited to whether the assignment satisfies the foregoing requirements of this Section

17.c. If City fails to give notice to Tenant of its approval, conditional approval or denial of approval within such 30 days, then such approval shall be deemed granted. Following approval of the assignment and upon the buyer's assumption of Tenant's Lease in conjunction with the buyer's purchase of Tenant's business in accordance with the first sentence of this Section 17.c, Tenant shall thereupon be relieved, as of the date the assumption is effective, of all future obligations of Tenant under this Lease. Section 17.a shall not apply to an assignment pursuant to this Section 17.c. For purposes of this Section 17.c, a sale of Tenant's business is: a sale of all or substantially all of the assets of Tenant; a merger or other reorganization of Tenant; a sale, either singly or in the aggregate, of more than 50% of Tenant's outstanding common stock; or any transaction whose effect is substantially equivalent to the effect of any of the foregoing.

d. Sublease Termination. Except as City may otherwise agree, the voluntary or other surrender of this Lease by Tenant, the mutual cancellation of this Lease by Tenant and City, or the termination of this Lease by City pursuant to Section 18 as a result of Tenant's Event of Default shall, at the option of City on 30 days notice, terminate all or any existing subtenancies or may, at the option of City, operate as an assignment to City of any or all subtenancies of Tenant.

e. Affiliate Transfer. Tenant may assign this Lease to an Affiliate of Tenant upon ten days written notice to City, accompanied by an executed counterpart of an assignment and assumption by which the Affiliate accepts and assumes this Lease, including the Affiliate's assumption of all duties of Tenant arising under this Lease effective on the date specified in the notice. The Affiliate shall thereupon assume, and Tenant shall be relieved of, all future obligations of Tenant under this Lease, effective as of the date of the assumption. Section 17.a shall not apply to an assignment pursuant to this Section 17.e. For purposes of this Section 17.e, an "Affiliate" is a subsidiary corporation of Tenant or other person within the definition given in Appendix I.

18. Default by Tenant. A "Default" is a failure of Tenant to comply with or perform any of the terms, covenants, or other provisions under this Lease. An "Event of Default" is the occurrence of one or more of the following Defaults, and the failure of Tenant to cure such Default within the applicable grace period.

a. Events of Default. Each of the following events shall constitute an "Event of Default" under this Lease:

i. Tenant fails to pay any Base Rent, Additional Rent, or other sum payable by Tenant hereunder within 10 business days after notice by City that the same has not been paid; provided that if Tenant has failed three or more times in any twelve-month period to pay any Base Rent on or before the due date and notice of such Default has been given by City in three or more of those times, then for the next five years thereafter, Tenant's failure to pay Base Rent on or before the date due shall be an Event of Default irrespective of notice.

ii. Tenant fails to perform or abide by any of the other covenants, agreements or conditions contained in this Lease, and fails to cure its deficiency within 30 calendar days after notice by City of any such failure; except that, if the time reasonably required to cure the

failure is more than 30 days and Tenant notifies City in writing of such fact within the 30-day period, which notice sets forth Tenant's proposed course of action and the estimated time needed to cure, then Tenant's failure to diligently pursue such cure to completion within the time reasonably needed to cure shall be an Event of Default. If Tenant has failed to perform the same obligation three or more times in any twelve-month period and notice of such Default has been given by City in each instance, no cure period shall thereafter be applicable for the next five years.

iii. Tenant becomes insolvent, makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors.

iv. If Tenant files or has filed against it proceedings of any kind under any provision of the Federal Bankruptcy Act or under any other insolvency, bankruptcy or reorganization act, if Tenant is not discharged from the same within 90 days thereafter; or if a receiver is appointed for a substantial part of the assets of Tenant and the receiver is not discharged within 90 days thereafter; or if any levy is made upon this Lease or any estate of Tenant hereunder by any attachment or execution and the same is not discharged within 90 days thereafter.

v. Tenant abandons the Premises.

vi. Tenant fails to vacate the Premises at the end of the Term (as the Term may be extended or earlier terminated pursuant to this Lease).

b. City's Remedies. Upon the occurrence of an Event of Default by Tenant hereunder, City may, at its option and without any further notice or demand, in addition to any other rights and remedies given hereunder or by law, do any one or more of the following:

i. Terminate the Lease on a date specified in a written notice of termination to Tenant.

ii. In the event of any such termination of this Lease for an Event of Default, City may then or at any time thereafter, re-enter the Premises and remove therefrom all persons and property and again repossess and enjoy the Premises, without prejudice to any other remedies that City may have by reason of Tenant's Default or of such termination.

iii. In the event of any such termination of this Lease, and in addition to any other rights and remedies City may have, City shall have all of the rights and remedies provided by Section 1951.2 of the California Civil Code. The amount of damages which City may recover in event of such termination shall include, without limitation, (i) the worth at the time of award (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) of the amount by which the unpaid rent for balance of the Term after the time of award exceeds the amount of rental loss that Tenant proves could be reasonably avoided, (ii) all legal expenses and other related costs, including costs of experts, incurred by City with respect to Tenant's Default, (iii) all costs incurred by City in repairing any damage to the Premises caused by Tenant, and (iv) all costs (including, without

limitation, any brokerage commissions) incurred by City in reletting the Premises which would not have been incurred by City at the end of the Term.

iv. For the purpose of determining the unpaid rent in the event of a termination of this Lease pursuant to this Section 18.b, or the rent due hereunder in the event of a reletting of the Premises pursuant to this Section 18.b, the monthly rent reserved in this Lease shall be deemed to be the sum of the rental due under Section 3.

v. After terminating this Lease pursuant to this Section 18.b, City may remove any and all personal property located in the Premises and place such property in a public or private warehouse or elsewhere at the sole cost and expense of Tenant.

c. Lease in Effect. Even though Tenant has committed an Event of Default and abandoned the Premises, this Lease shall continue in effect for so long as City does not terminate Tenant's right to possession, and City may enforce all its rights and remedies under this Lease, including the right to recover rental as it becomes due under this Lease. Acts of maintenance or preservation, efforts to relet the Premises, or the appointment of a receiver upon initiative of City to protect City's interest under this Lease, shall not constitute a termination of Tenant's right to possession.

d. Remedies Cumulative. The remedies provided in Section 18 of this Lease are in addition to any other remedies available to City, under this Lease, at law or in equity, by statute or otherwise.

e. Collection of Rents from Subtenants. If the Premises or any portion thereof are, at the time of an Event of Default, sublet or leased by Tenant to others, City may, as Tenant's agent, collect rents due from any subtenant or other tenant and apply such rents to amounts due hereunder without in any way affecting Tenant's obligations to City hereunder. Such agency, being given for security, is hereby declared to be irrevocable.

19. Default by City.

a. Defaults. City shall not be in default unless City fails to perform an obligation required of City by this Lease within 30 calendar days after Tenant's written notice to City of the alleged failure. However, if the nature of the City's obligation is such that more than 30 days are reasonably required to cure the failure and City notifies Tenant in writing of such fact within the 30-day period, which notice sets forth City's proposed course of action and the estimated time needed to cure, then City shall not be in default if City promptly commences performance within such 30 day period and thereafter diligently prosecutes performance to completion. The notice and cure period requirements of this Section 19.a shall not apply to a breach of Section 27 (Covenant of Quiet Enjoyment).

b. Remedies. Upon City being in default, Tenant may, at its option and without any further notice or demand, in addition to any other rights and remedies given by this Lease or by law, do any one or more of the following.

i. So long as such default continues beyond the time limits established in Section 19.a, elect to give written notice of a shortening of the Term of this Lease to City. Tenant may elect to shorten the Term to a date reasonably determined by Tenant, but not more than one year after the notice, while Tenant locates and obtains new space. This Lease shall remain in effect and rent shall be payable to City during such shortened Term, with the amount of Base Rent and other rent adjusted to reflect any reduction in the size and usefulness to Tenant of the Premises.

ii. Tenant may itself cure the default, and deduct the reasonable cost of such cure from the next payment(s) of Base Rent or other amounts due under this Lease.

c. Remedies Cumulative. The remedies provided in Section 19 of this Lease are in addition to any other remedies available to Tenant, under this Lease, at law or in equity, by statute or otherwise.

20. Estoppel Certificate.

a. Either party shall at any time, upon not less than 30 days prior notice from the other party, execute, acknowledge and deliver to the requesting party a statement: (1) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the rent and other charges, if any, are paid in advance; (2) acknowledging that there are not, to the knowledge of the party making the statement, any uncured defaults on the part of the requesting party, or specifying such defaults, if any, which are claimed; and (3) certifying such other matters within the knowledge of the party making the statement as the requesting party may reasonably request. Any such statement may be conclusively relied upon by any prospective purchaser, lender, or other third party.

b. A party's failure to deliver such statement within such time shall be conclusive upon the party failing to deliver: (1) that this Lease is in full force and effect, without modification except as may be represented by the requesting party; (2) that there are no uncured defaults in the requesting party's performance; and (3) that not more than one month's Base Rent has been paid in advance.

c. If City desires to finance or refinance all or any significant portion of the Premises, Tenant agrees to deliver to any lender designated by City such financial statements of Tenant as may be reasonably requested by such lender. All such financial statements shall be received by such lender in confidence, not disclosed to any other person (unless required by law), and used only for purposes of evaluating Tenant's credit for purposes of such financing.

21. Holding Over. If Tenant remains in possession of the Premises or any part of the Premises after the expiration of the Term, such occupancy shall be a tenancy from month to month at a monthly rental in the amount of the last month's monthly Base Rent during the Term plus all other charges payable hereunder, and upon all of the terms of this Lease. However, if such holding over is without the written consent of City, then the amount of the monthly Base Rent shall be, at City's Discretion, either one hundred and twenty five percent (125%) of the last

month's Base Rent during the Term or the fair market rental rate for like property in the greater San Francisco Bay Area. Additionally, Tenant shall pay City for all damages sustained by reason of Tenant's retention of possession. If Tenant's holdover is without the written consent of City, it constitutes an Event of Default. The provisions of this Section 21 do not exclude City's rights to re-entry or any other right under this Lease or remedy under the law.

22. City's Right of Entry. City and City's agents shall have the right to enter the Premises at reasonable times on reasonable notice for the purpose of: inspecting the same; showing the same to prospective purchasers or lenders; making such repairs to the Premises as are required or permitted by this Lease; performing any other obligation of City to Tenant under this Lease, or any obligation of City required by law, for which entry is reasonably necessary; or such other entry as to which Tenant provides its prior consent. Any such entry shall not unreasonably disturb Tenant, shall minimize as much as possible any disruption of Tenant's business, and shall comply with Section 12, Section 13 and the other provisions of this Lease to the extent the provision applies to the particular entry. City may at any time during the last 120 days of the Term place on or about the Premises any ordinary "For Lease" sign.

23. Environmental. City and Tenant recognize that the Premises were formerly part of the Todd Shipyards. Todd used the Premises for ship construction and repair for many years before CERCLA (the Comprehensive Environmental Response, Compensation and Liability Act) and today's other environmental laws dealing with hazardous materials took effect. Todd Shipyards may have left hazardous materials on the Premises and on the ACP Property.

a. Possible Baseline for Contamination. To determine a possible baseline of Hazardous Materials contamination on the Premises before Tenant took possession of the Premises, AGL earlier caused three samples to be collected from bottom sediments of the Bay and five soil samples which were performed and paid for by AGL, and are described in the report "Re: Baseline Environmental Characterization, Alameda Gateway LTD. Property, 2900 Main St., Alameda" dated July 23, 1996 and prepared by Environmental Control Associates. Upon expiration of this Lease, Tenant shall pay for and perform the same tests as previously performed, in the same areas and at the same depths as originally done. The results of the two sets of tests shall be compared to see whether they indicate possible increases in the levels of Hazardous Materials. The result of the comparison shall be some evidence of possible increases (or the lack of any increase), but shall not be determinative and instead shall be accorded only the weight it deserves when considered together with all other evidence.

b. Tenant Responsibility. Tenant shall use and dispose of any Hazardous Materials which Tenant uses in its business in accordance with all applicable laws, including obtaining and complying with all permits required for such Hazardous Materials. "Hazardous Materials" include any hazardous substance, hazardous waste, toxic, pollutant, contaminant or similar material, including any such material under CERCLA, RCRA, California Proposition 65, or other federal, state or local environmental law.

i. Tenant first took possession of a portion of the Premises in 1994. Additional areas were added in increments over time, much of it reflected in amendments to the AGL Lease. By December 1, 2004, after Amendment No. 11 to the AGL Lease, Tenant had

taken possession of substantially all of the Premises that it occupied on the Effective Date. As between City and Tenant, Tenant shall be responsible for any increase in Hazardous Materials contamination of each portion of the Premises since Tenant first took possession of that portion when such increase arises from (A) activities occurring within, or facilities or materials located on, the portions of the Premises then in Tenant's possession, (B) activities relating to the operation of Tenant's business, or (C) activities within the reasonable control of Tenant.

ii. Tenant's responsibility under Section 23.b.i shall not include increases caused by City's active (but not passive) negligence or worse degree of fault, or any of the following increases so long as not within clauses (A), (B) or (C) of paragraph (i) preceding:

A. Increases caused by fire, earthquake or other casualties, forces of nature (such as climate change or sea level rise), an act of God or other such causes. (Although such causes may occur on or in the vicinity of the Premises, that fact, standing alone, does not bring the increases caused by them within Section 23.b.i.A, B or C .)

B. Increases in contamination existing prior to Tenant's possession caused by water intrusion, chemical reactions, or other naturally-occurring changes during Tenant's possession.

C. Increases caused by a third party.

D. Increases arising outside the Premises, or arising outside the Premises and then coming on the Premises, either above or below ground, such as by migration.

iii. The provisions of this Section 23 apply as between City and Tenant. Tenant and City reserve all rights against AGL and all persons other than the other party concerning any contamination, whether included in the increases for which Tenant or City is responsible under this Section 23 or not.

c. Responsibility Allocation. Tenant shall indemnify, hold harmless, protect and defend the City against any claim arising out of any increase in Hazardous Materials contamination of the Premises for which Tenant is responsible under Section 23.b above. As between City and Tenant, City shall be responsible for all other Hazardous Materials contamination of the Premises, and shall indemnify, hold harmless, protect and defend Tenant against any claim arising out of any such contamination. For purposes of this paragraph, a claim includes any claim, demand, investigation, threat of investigation, remediation, damage, economic or other loss or liability, and defending includes the fees of experts and attorneys and the other expenses of defending against any of the foregoing, regardless of whether litigation is instituted.

24. Permitting. Subject to its rights to approve, conditionally approve or deny Tenant's proposals for construction of improvements to the Premises or outside the Premises under Section 13, City in its proprietary capacity agrees to join or sign Tenant's applications for permits, consents or approvals from governmental agencies and utilities related to Vessel Repair uses and improvements or Premises infrastructure to the extent the proposed use, improvement or infrastructure is consistent with this Lease and the permitting agency or utility requires the land owner to join or sign the application. Tenant shall join City in any such application, regardless of whether such joinder is required by the governmental agency or utility. This Section 24 shall not limit the City's exercise of its police power or regulatory authority to

process, review, approve, condition, or deny any application by Tenant to the City for a permit or other approval. Tenant agrees and acknowledges that City has made no representation or warranty that any regulatory approvals needed or desired by Tenant for the conduct of its business on the Premises can be obtained, including any approvals by City acting in its regulatory capacity.

25. Dredging. To the extent reasonably determined by Tenant as necessary or desirable for berthing of its dry-dock or the operation of its ship lift or business, and subject to Tenant receiving all required regulatory approvals (including any required City approvals), dredging shall be a permitted use included in Vessel Repair, as "Vessel Repair" is defined in Section 10.a. Subject to Section 24, and as between Tenant and City, Tenant shall be solely responsible for obtaining any required permits and all costs and expenses of such permits and of the dredging. Tenant shall indemnify, hold harmless, protect and defend City against any claim arising out of Tenant's dredging on the Premises.

26. Certain Previous Leases & Liabilities.

a. Release of City Prior to April 20, 2009. Effective on the Original Commencement Date, Tenant hereby releases City (but not AGL or any other person) from any liability under the Attornment Agreement or AGL Lease, or any combination of them, arising prior to April 20, 2009. The foregoing release includes (without limitation) a release from liability for all of the following.

i. Any electrical undergrounding, redistribution and other work required by Sections 1, 2, 3, and 4 of Lease Amendment No. 12 dated December 8, 2006 (the "Twelfth Amendment").

ii. Any Embankment work required by Section 7.3 of the Twelfth Amendment.

iii. Any Monitoring Wells Restoration required by Section 7.4 of the Twelfth Amendment.

iv. The return of Tenant's $16,000 security deposit (under Section 19 of the AGL Lease). City hereby assigns all of its right, title and interest to such security deposit (if any) to Tenant.

v. Any obligation to maintain the Sawtooth Building or other portions of the Sublease Premises (including any liability for deferred maintenance).

vi. Any other liabilities arising under the Attornment Agreement or the AGL Lease prior to April 20, 2009, including those of Landlord under Section 25 of the AGL Lease and any liability arising out of the ACP Property.

Nothing in this Section 26.a shall be construed as an admission on the part of the City of any liability or obligation under the Attornment Agreement or AGL Lease.

b. Waiver of Unknown Claims. In connection with the release in Section 26.a, Tenant hereby expressly waives the provisions of Section 1542 of the California Civil Code, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR."

It is understood by Tenant that if the facts or law with respect to which the foregoing release is given hereafter turn out to be other than or different from the facts or law in that connection not known to be or believed by Tenant to be true, then Tenant hereto expressly assumes the risk of the facts or law turning out to be so different, and agrees that the foregoing release shall be in all respects effective and not subject to termination or rescission based upon such differences in facts or law.

c. Mutual Release April 20, 2009 – Original Commencement Date. Effective on the Original Commencement Date, Tenant hereby releases City (but not AGL or any other person), and City hereby releases Tenant (but not AGL or any other person), from any liability under the Attornment Agreement or AGL Lease or any combination of them arising during the "Release Period," which is April 20, 2009 through the day immediately preceding the Original Commencement Date, inclusive.

i. The foregoing release includes:

A. Each party's release of the other party from any liability arising during the Release Period with respect to the matters enumerated in Sections 26.a.i through 26.a.v.

B. Liabilities arising under Section 25 of the AGL Lease, recognizing, however, that such previous Section 25 is superseded by Section 23 of this Lease, and agreeing that Section 23 of this Lease shall apply to and govern during the Release Period, as well as during the Term of this Lease.

C. Any obligation of City to return or reimburse Tenant for any of the $38,485.86 per month of Base Rent Tenant has paid City during the Release Period, and any obligation of Tenant to pay any more than the $38,485.86 per month of Base Rent that Tenant has paid City during the Release Period.

ii. The foregoing provisions of this Section 26.c do not include, and so the parties are not releasing each other, from the following.

A. Any obligation that City may have had or may have to pay possessory interest taxes, parcel taxes and other property taxes on the Tidelands Parcel or Premises during the Release Period, including City's obligations under Section 9.b above.

B. Any liability that may have arisen during the Release Period that was covered by insurance or would have been covered by insurance that the party was required to maintain but failed to maintain. Each party represents and warrants to the other party that the representing party is unaware of any claims that would be covered under such insurance.

d. Prior Agreements; AGL Lease.

i. As of 11:59 p.m. of the day immediately preceding the Original Commencement Date, the following are terminated: the Attornment Agreement; any City succession to the interests of AGL under the AGL Lease with respect to the Sublease Premises or any other portion of the Tidelands Parcel that AGL subleased to Tenant at any time previous to the Original Commencement Date; any new lease between City and Tenant arising under the Attornment Agreement; any participation of City (whether as a party or otherwise) in the AGL Lease; and any applicability of the AGL Lease to the Sublease Premises.

ii. As of the Original Commencement Date: (A) The AGL Lease was in effect between Tenant and AGL as to the portions of the AGL Property leased to Tenant under the AGL Lease but not as to the Sublease Premises, (B) City was not a party to the AGL Lease, and AGL was not a party to this Lease, and (C) City had no right, title or interest in the AGL Lease, including no right, title or interest in the security deposit held by AGL under the AGL Lease. Nothing contained in this Lease amended or modified the AGL Lease as it applied to property owned by AGL in any way.

iii. As of the Original Commencement Date, City and Tenant are parties to this Lease with respect to the portions of City-owned property leased to Tenant by this Lease, and AGL and Tenant were parties to the entirely independent and separate AGL Lease with respect to the portions of the AGL Property leased to Tenant by the AGL Lease.

iv. The parties agree that, in light of the termination on the Original Commencement Date of the agreements described in Section 26.d.i, the Stipulated Judgment entered May 6, 2011 in Alameda Gateway, Ltd. vs. City of Alameda etc. et al, Case Nos. RG09437124 & RG09449257, California Superior Court for Alameda County, by its terms, ceased to apply as between City and Tenant as of the Original Commencement Date.

e. Previous Fair Market Rental Value Determination. There is no longer any need for purposes of the Attornment Agreement or the AGL Lease to determine the fair market rental value of the Premises under Section 8 of the AGL Lease for the period October 1, 2011–September 30, 2013. Accordingly, any process or proceeding to determine fair market rental value under Section 8 of the AGL Lease ceased to have any application to the Premises as of the Original Commencement Date. Tenant, City and AGL were parties to the following two agreements concerning determination of fair market rental value under Section 8 of the AGL Lease: (i) Agreement on Non-Binding Rent Determination dated October 25, 2011; and (ii) letter agreement dated May 26, 2011 suspending the time periods for determining fair market rent. City and Tenant, on its own behalf and on behalf of its affiliate ACP, agree that these two agreements are terminated as of the Effective Date and are of no further effect after the Effective Date.

27. Covenant of Quiet Enjoyment. Subject to applicable laws and the terms and conditions of this Lease, City covenants to Tenant the quiet and undisturbed possession and enjoyment of the Premises throughout the Term of this Lease.

28. Surrender of Premises. At the expiration or earlier termination of the Term, Tenant shall surrender and deliver the Premises to City in as good condition as that in which originally received on the Original Commencement Date subject to: the ordinary wear and tear of Tenant's business; to normal attrition; to any improvements made by City or Tenant in accordance with this Lease and not removed as provided in this Section 28; to any casualty or other Material Damage within Section 15; and to any involuntary governmental acquisition within Section 16.

a. Ownership. As between City and Tenant, all structures, buildings and other improvements (i) affixed to the Premises and (ii) paid for, constructed, or otherwise made by Tenant prior to or after the Original Commencement Date ("Capital Improvements") shall remain the property of Tenant during the Term. Upon expiration or earlier termination of the Term, title to all Capital Improvements shall pass to and vest in City. However, "Capital Improvements" do not include Tenant's furniture, cranes (movable or overhead), equipment, personal property, trailers, floats, drydocks, ship lift, modular buildings (such as Tenant's administration building) and trade fixtures, all of which shall remain the property of Tenant and may be removed by Tenant upon expiration or earlier termination of the Term within the time provided for Tenant's completion of removal in Section 28.b following.

b. Removal. By written notice to Tenant at least 60 days prior to expiration of the Term or no later than 15 days after any earlier termination of this Lease, City may elect in its Discretion to require Tenant to remove some or all of Tenant's furniture, cranes (movable or overhead), equipment, personal property, trailers, floats, drydocks, ship lift, modular buildings, trade fixtures, and other property and any Capital Improvements constructed or otherwise made by Tenant after the Original Commencement Date specified in City's notice at Tenant's sole cost and expense. Tenant shall complete such removal no more than 30 days after the Term's expiration and, if the Lease is being terminated, then no more than 60 days after termination of the Term. Tenant is not required to remove any Capital Improvements not specified in City's notice. Tenant shall repair any damage to the Premises occasioned by the removal of any of its property or by the removal of a Capital Improvement.

c. Pier 5 Conditions Report. To facilitate the implementation of this Section 28 as to Pier 5, Tenant, at its sole expense, shall, within 180 days of the Original Commencement Date, prepare and submit to the City a report documenting the condition of Pier 5 on or about the Original Commencement Date ("Pier 5 Conditions Report") in accordance with a scope of work agreed to by the Parties. If the City has not determined that, based on the agreed scope of work, the Pier 5 Conditions Report is incomplete within 30 days of submittal (or resubmittal) by Tenant, the report shall be deemed complete. If the City determines the report is incomplete, the City shall provide Tenant with a written statement describing with reasonable specificity the reasons for the determination, and Tenant shall provide a revised report addressing the identified deficiency within 30 days of Tenant's receipt of the written statement, or within such other time period as the parties may agree in writing.

29. [Section 29 intentionally omitted]

30. Right of First Refusal to Lease. On the Effective Date portions of the Tidelands Parcel are not leased to a tenant. If during the Term City elects to lease, sublease or otherwise let to a tenant (other than Tenant) any portion of the Tidelands Parcel, or all or any portion of Pier 5 West, then City shall first provide Tenant a right of first refusal to lease such portion of the Tidelands Parcel or such portion of Pier 5 West. Such right shall be at the same price and other terms (with a lease term not to exceed the Term) as those of a bona fide offer received by City. City shall give notice to Tenant of Tenant's right of first refusal before letting the portion, attaching a copy of the bona fide offer. If Tenant does not provide written notice to City of its exercise of this right of first refusal within fifteen (15) days after the written notice from City, then Tenant shall be deemed to have elected not to exercise Tenant's right of first refusal, and City shall be free to let the portion on the same or better terms (for the City) as those of the bona fide offer. If City does not let such other portion on the same or better terms (for the City) as the bona fide offer within 180 days after Tenant's election not to exercise its right of first refusal, or desires to let such other portion for a lower price or on other terms more favorable to a tenant than those of the bona fide offer, then Tenant's right of first refusal shall arise anew. Tenant's right of first refusal, if exercised, shall be subject to compliance with all applicable requirements of the California Environmental Quality Act ("CEQA"), and shall not limit City's discretion to decline to approve a lease with Tenant, to require mitigation, or to approve an alternative to the lease, pursuant to and for the reasons provided in CEQA. Nothing in this Lease shall be construed as creating an obligation on the part of the City to acquire title to any portion of Pier 5 West not presently in City ownership.

31. [Section 31 intentionally omitted.]

32. Mortgaging of Lease by Tenant. This Lease shall be mortgageable by Tenant to the extent provided in and pursuant to Appendix II, which is incorporated in this Lease by this reference.

33. Miscellaneous.

a. Approvals. Except as may be otherwise provided elsewhere in this Lease, whenever this Lease requires a party's consent, approval or similar action, then regardless of whether this Section 33.a is referred to in connection with such consent, approval or similar action, such consent, approval or similar action shall not be unreasonably withheld, conditioned or delayed, and shall in any event be provided or denied within ten days after written request, (i) unless expressly stated to be discretionary or in the party's Discretion, or (ii) except as may be otherwise expressly provided in this Lease. If the consent, approval or similar action is denied or conditioned, the party denying or conditioning shall, upon request, provide a written and reasonably specific statement of the reasons and basis for denial. A request shall not be considered unreasonably withheld, conditioned or delayed if the party to whom the request is made makes a written request for additional information that it reasonably requires to act on the request. Any time period provided in this Lease after which the request is deemed approved shall be tolled by the

request for additional information until such time as the information is provided by the requesting party.

b. Cross-References. A reference to a Section followed by a number, to an Exhibit followed by a letter, or to an Appendix followed by a roman numeral is a reference to the correspondingly numbered provision ("Section") of this Lease, exhibit ("Exhibit") to this Lease, or Appendix to this Lease, respectively, except as otherwise provided. Each Exhibit and Appendix to this Lease is incorporated in this Lease and made a part of it.

c. Effective Date. Upon signature by both parties, this Lease shall take effect as of the Effective Date, notwithstanding any later dates on which the parties may have signed this Lease. While the Effective Date may be earlier or later than the Original Commencement Date, the Original Commencement Date shall nonetheless remain that provided in Section 5.

d. Force Majeure. Each party's performance of its obligations under this Lease is subject to circumstances outside the reasonable control of the party. Such circumstances include earthquake, flood, fire, exceptional severe and adverse weather conditions, sea level rise, civil commotion, acts of terrorism (whether actual or threatened), a strike or other labor dispute, quota, moratorium, government action or other circumstance beyond the reasonable control of the party. To the extent a party's performance is precluded by such a circumstance, a party shall be relieved of its obligation under this Lease, but the party shall otherwise perform such obligation to the maximum extent feasible and as soon as possible. This provision shall not be construed to relieve Tenant of the obligation to pay rent.

e. Memorandum of Lease.

i. This Lease shall not be recorded. On April 6, 2016, Landlord and Tenant recorded a memorandum of the Original Lease. Upon the request of either party, the parties shall execute and record an amendment to the memorandum in the official records for the Property (as the term Property is defined in Exhibit C), which amendment shall reflect changes in the Premises and other pertinent changes in the rights of Tenant effectuated as of the Amendment Date. Tenant shall be solely responsible for all costs associated with recording the amended memorandum of lease, including but not limited to any required transfer tax.

ii. If this Lease is hereafter amended, then upon request of either party, the parties shall promptly execute, acknowledge and record an amendment to the recorded memorandum of this Lease providing notice of the changes made in the terms of the memoranda of lease. If the Term is extended as provided in Section 6, then upon request of either party, the parties shall promptly execute, acknowledge and record an amendment to the memorandum of this Lease providing notice of the addition of the Extension Term substantially in the form attached as Exhibit D.

iii. If the recordation of any amended memorandum of lease is in connection with Tenant's financing, such memorandum of the Extension Term shall be delivered through the escrow established for Tenant's financing, at the closing of which escrow such amended memorandum shall be recorded in the official records of Alameda County immediately before

the recordation of any security instruments executed and required to be recorded in connection with Tenant's financing. A failure to request or record an amendment to the memorandum of this Lease shall not adversely affect the validity of Tenant's exercise of any option to extend the term.

iv. Within 30 days of the City's written request to Tenant, Tenant shall execute a discharge or termination of any recorded memorandum of this lease and its amendments suitable for recordation and in such form as City may reasonably request, and deliver such executed discharge or termination to either of (at Tenant's election) the City or an escrow established jointly by Tenant and City, for recordation upon or after (but not before) expiration or earlier termination of the Lease.

f. Notices. Any notice shall be in writing and shall be given to the other party at the address or addresses provided for such party below the signature lines of this Lease or at such address or addresses as such party may later by notice specify for such purpose. A notice shall be effective on the first to occur of: (a) the day it was received; or (b) (i) if given by fax during regular business hours to a party providing a fax number for this purpose, the day after the date of completed transmission shown in the fax machine's printed transmittal record; (ii) if given by a recognized overnight courier who obtains a signature for the delivery, on the day delivered; (iii) if given by mail, three mail service days after the notice is deposited in the U.S. mail with first-class postage prepaid and properly addressed; and (iv) if given by delivery during regular business hours, effective upon delivery. However, if a notice is effective on a Saturday, Sunday or legal holiday, it shall be deemed effective on the next business day.

g. Attorney's Fees. The prevailing party in any legal action brought under (or concerning any of the subject matter of) this Lease shall be entitled to recover the reasonable fees of its attorneys and experts, court costs and all other expenses of the action. For this purpose, the prevailing party shall be the party who recovered the greater relief, whether such recovery was by abandonment or voluntary dismissal by the other party, pretrial motion, trial, arbitrator's award, final judgment, appeal or otherwise. Such fees and other expenses: shall include the fees and other expenses incurred in enforcing any judgment; may be recovered in any federal, state, bankruptcy, reorganization or other judicial or administrative action or proceeding, including actions for declaratory relief and petitions (such as for relief from automatic stay) and adversary proceedings in bankruptcy or reorganization.

h. Governing Law. This Lease and any matter or dispute arising out of this Lease or any of the subject matter of this Lease shall be governed by, interpreted and enforced in accordance with the laws of the State of California, whether sounding in tort, contract, statute or otherwise and notwithstanding any conflicting choice of law principles of California or any other forum.

i. Severability. If any portion of this Lease is finally determined to be invalid or unenforceable for any reason by a court of competent jurisdiction, then such portion shall be deemed severed from this Lease to the extent of the invalidity or unenforceability, and the remainder of this Lease shall remain in full force and effect.

j. Entire Agreement. This Lease contains the entire agreement between the parties, superseding all prior and contemporaneous agreements, understandings, representations and all other verbal, electronic and written communications. This Lease may not be amended or modified in any way except in writing signed by both parties. This Lease replaces and supersedes the Original Lease as of the Amendment Date, provided, however, that nothing in this Lease shall be construed as limiting or otherwise altering any obligations or liabilities of the parties that arose under the Original Lease prior to the Amendment Date. The License Agreement dated January 1, 2014 between City and BSY pursuant to which BSY has been occupying portions of the 2017 Premises Addition is hereby terminated, effective as of the Amendment Date.

k. Non-Waiver. No waiver by either party of any provision of this Lease shall be deemed a waiver of any other provision or of any subsequent breach by the other party of the same or any other provision. A party's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of such party's consent to or approval of any subsequent act by the other party. The acceptance of rent hereunder by City shall not be a waiver of any preceding failure of Tenant to pay rent, other than the failure of Tenant to pay the particular rent accepted, regardless of City's knowledge of such preceding failure to pay rent at the time of acceptance of such rent.

l. Inurement. Subject to Section 17, this Lease shall bind the parties, their personal representatives, successors and assigns.

m. Independent Contractors. The relationship between the parties is one of landlord and tenant acting as independent contractors, and not one of partnership, joint venture, agency, employment, trust or other joint or fiduciary relationship. Excepting the Reciprocal Easement Agreement, this Lease is not for the benefit of AGL, ACP or any other third party. This Lease shall not be enforceable by any such third party, nor shall this Lease be deemed to give any right or remedy to any such third party, whether such third party is referred to in this Lease or not.

n. Construction.

i. Captions. The captions in this Lease are included only for convenience and are not intended to limit, extend, or describe the meaning of any provision.

ii. Gender and Number. For purposes of this Lease, as the context may require: the masculine, feminine and neuter each includes the other, the plural includes the singular, and the singular includes the plural.

iii. Definitions. The definition of an initially capitalized word applies whenever such word is used in this Lease, regardless of whether the definition is provided when the defined term is first used or thereafter.

o. Individual Warranty. Each individual signing this Lease on behalf of a corporation, partnership, city or other legal entity, by his or her signature of this Lease, warrants

partnership, city or other entity to enter into this Lease. Without modifying or limiting the foregoing sentence, upon request of either party, the other party shall provide evidence reasonably satisfactory to the requesting party that the signatory on behalf of the other party is duly authorized to enter into and execute this Lease.

In Witness Whereof, the parties have executed this Lease on the respective dates indicated below, effective as of the Effective Date.

Tenant: Bay Ship & Yacht Co.,
a California corporation

By: _____
Alan Cameron,
General Manager
and duly authorized signer

By: _____
William C. Elliott,
President
and duly authorized signer

Date of Signature by Tenant:
May 25, 2017

City: City of Alameda,
a California charter city

By: _____
Jill Keimach
City Manager
and duly authorized signer

Date of Signature by City:
_____, 2017

Approved as to form:

_____
Janet Kern, City Attorney

Addresses for Notices (Sec. 33.f):

Tenant:
Bay Ship & Yacht Co.
Attn: General Manager
2900 Main Street #2100
Alameda, CA 94501
Fax: (510) 337-0154

City:
City of Alameda
Attn: City Manager
2263 Santa Clara Avenue, Room 320
Alameda, CA 94501

With a copy to:
City of Alameda
Attn: City Attorney
2263 Santa Clara Avenue, Room 280
Alameda, CA 94501

Appendices:

I. Definitions

I. Definitions
II. Mortgaging of Lease by Tenant

Exhibits:

A. Diagram of Premises of Bay Ship & Yacht Co.
B. Excluded BSY Improvements
C. City Property Description
D. Form of Amendment to Memorandum of Lease (Extending Term)
E Reciprocal Easement Agreement
F Easement Quitclaim

Appendix I

Definitions

The following words and the words defined elsewhere in this Lease shall, when initially capitalized, have the meaning given in the definition below, whether such initially capitalized word is used before or after the definition. (However, the terms "includes, including etc." and "person" shall have the meanings given below regardless of whether they are initially capitalized.)

Access Road. See Section 2.e.

ACP. See Recital H.

ACP Property. See Recital H.

ACP Road. See Section 2.a.

ACP Utilities. See Section 2.g.

Additional Rent. See Section 3.b.

Affiliate of a specified person means a person who directly (or indirectly through one or more intermediaries) controls, is controlled by or is under common control with the specified person. For this purpose, another person controls the specified person when the other person possesses, directly or indirectly, the power to direct or cause the direction of the management, policies or actions of the specified person.

AGL. See Recital C.

AGL Lease. See Recital C.

AGL Premises. See Recital D.

AGL Property. See Recital C.

Agreed Statement.. See Section 8.c.ii.

Amendment Date. See Recital A.

Arbitration Law. See Section 8.c.

Attornment Agreement. See Recital D.

Base Rent. See Section 3.a.

BSY. See Preamble.

Capital Improvement. See Section 28.a.

CCP. The California Code of Civil Procedure.

CGL. See Section 14.a.i.

City. See Preamble.

Original Commencement Date. See Section 5.

CPI. See Section 14.a.vii.

Default. See Section 18.

Discretion means in the sole and absolute discretion of the specified person.

Easement Quitclaim. See Section 4.

Effective Date. See Preamble.

Event of Default. See Section 18.

Excess rent. See Section 17.b.

Exhibit. See Section 33.b.

Extension Date. See Section 6.c.

Extension Term. See Section 6.a.

Fair Market Rent. See Section 8.b.i.

Ferry Agreement. The Services Transfer Agreement dated February 25, 2011 between the City of Alameda, the Alameda Reuse and Redevelopment Authority, and WETA.

Ferry Terminal. Recital F.

Granting Act. See Recital B.

Hazardous Materials. See Section 23.b.

Includes, including, etc. The words "includes", "including" and other derivations of the same term, regardless of whether initially capitalized, mean "including without limitation thereto", except as otherwise expressly provided in this Lease.

Insured Loss. See Section 15.a.iii.

Insurance Proceeds. Section 15.a.iv.

Lease. See Preamble.

Leasehold Mortgage. See Appendix II.

Lease Year. See Section 3.a.

Main Gate. See Section 2.a.

Market Adjustment. See Section 8.b.

Material Damage. See Section 15.

Minor Uses. See Section 8.b.iv.

Notice Date. See Section 8.c.

Option. See Section 6.a.

Outside Improvement. See Section 13.b.

Person, even if not initially capitalized, means any individual or any corporation, partnership, limited liability company, trust, trustee, estate, association or other legal entity or person.

Preamble. The first paragraph of this Lease.

Pier 5. The portion of Pier 5 located in the Premises. See also Recital F.

Pier 5 Conditions Report. See Section 28.c.

Pier 5 West. The portion of Pier 5 located westward of the end of Pier 5 at the western boundary of BSY's Premises, including the westernmost portions with only pilings remaining and the water area immediately adjacent to the northern side of Pier 5 to the same distance northward as the water area shown adjacent to Pier 5 on Exhibit A, but excluding the Main Street Channel/Main Street Rights Area depicted on Exhibit O to the Ferry Agreement.

Premises. See Section 1.

Public Trust. See Recital B.

Reciprocal Easement Agreement. See Section 4.

Release Period. See Section 26.c.

Rent Rate. See Section 8.j.iii.

Rentable Area. See Section 8.j.iii.

Replacement Cost. See Section 15.a.ii.

Restoration Account. See Section 15.h.

Restore. See Section 15.a.i.

Sawtooth Building. See Recital G.

Section. See Section 33.b.

Shared Taxes. See Section 9.a.

Shoreline Pathway. See Section 2.f.

Statutory Trust. See Recital B.

Sublease Premises. See Recital D.

Tenant. See Preamble.

Term. See Section 5.

Third Appraiser. See Section 8.c.i.B.

Tidelands Lease. See Recital C.

Tidelands Parcel. See Recital B.

Trust. See Recital B.

Twelfth Amendment. See Section 26.a.i.

Uninsured Portion. See Section 15.e.

Valuation Date. See Section 8.b.

Vessel Repair. See Section 10.a.

WETA. See Recital F.

Appendix II

MORTGAGING OF LEASE BY TENANT

Section 1. Tenant's Right to Mortgage Lease. Tenant shall have the right, at any time and from time to time, to mortgage, grant a deed of trust on, encumber and/or pledge the interest of Tenant under this Lease to one or more banks or other institutional lenders (together with any successors or assigns, (**"Leasehold Mortgagee"**) in accordance with the provisions set forth below in this Section 1. Tenant agrees to furnish City with a true, correct and complete copy of each such mortgage, deed of trust, encumbrance or pledge (each, a "**Leasehold Mortgage**") regardless of whether or not City's consent is required. Such Leasehold Mortgage(s) may encumber all or any portion of Tenant's interest: under this Lease, in any improvements on the Premises owned by Tenant, and in any subleases and other occupancy agreements; and may also cover all or any portion of the ACP Property. In no event shall any Leasehold Mortgage encumber City's fee interest in its underlying property.

(a) Tenant shall have the right, at any time and from time to time, without City's consent or approval, to enter into one or more Leasehold Mortgages to secure the financing of: (i) improvements of the Premises or their infrastructure, whether located on or off the Premises; (ii) relocating of WETA from the Ferry Terminal; (iii) drydocks, equipment, fixtures, personal property and other assets to be located on the Premises for use in Tenant's Vessel Repair business conducted on (or used for a substantial portion of the time on) the Premises; and/or (iv) refinancing of existing debt secured by the Premises, so long as substantially all of the financing proceeds (net of financing and closing costs) are either: (i) used to pay off then-existing debt secured by (A) the Premises or (B) the Premises and the ACP Property, but not (C) debt secured only by the ACP Property; and/or (ii) invested in the Premises in one of the ways described in the preceding provisions of this paragraph (a).

(b) Tenant shall have the right, at any time and from time to time, with City's prior written consent to enter into one or more Leasehold Mortgages to secure financing or refinancing secured by property or businesses in the City of Alameda owned by BSY or an Affiliate. Such Leasehold Mortgages may be approved by the City Manager and signed by the City Manager on behalf of the City if the City Manager, in consultation with the City Attorney, determines that the Leasehold Mortgage meets either Section 1(b)(i) or 1(b)(ii) following:

(i) The Leasehold Mortgage satisfies all of the following requirements.

A. The proceeds of the financing (net of financing and closing costs) will be used for (I) the ACP Property or real property adjoining the Premises or the ACP Property owned by BSY, ACP or an Affiliate; (II) drydocks, equipment, fixtures, personal property and other assets located on, and for use in the business conducted on, such real property, and/or (III) a business located on such real property, including the acquisition, development, construction on, and/or improvement of such real property or other assets.

B. All real property collateral is primarily used for industrial, commercial or maritime purposes, and not for residential purposes.

C. The financing is from an institutional lender (such as a commercial bank) regularly engaged in the business of making loans secured by first priority liens or other first priority security interests (I) in real or personal property used for commercial purposes and/or

(II) in businesses. Commercial purposes include use for industrial, office, retail and other business purposes.

D. The financing satisfies such institutional lender's underwriting requirements.

E. The Loan to Value Ratio is 85% or less.

(ii) The Leasehold Mortgage refinances existing financing on the Premises, or on the Premises and the ACP Property, so long as the refinance satisfies Sections 1(c)(i)(C) through (E) above, inclusive.

iii. City consent to a Leasehold Mortgage not within Section 1(b)(i) or 1(b)(ii) immediately preceding shall be given by the City Council.

(d) The "Loan to Value Ratio" is the principal amount of the Secured Loans divided by the fair market value of the Collateral.

i. The "Secured Loans" are all loans secured by the Premises. When a loan is secured by the Premises and, in addition, by all or a portion of the ACP Property and/or other property, "Secured Loans" includes all loans secured by any one or more of the Premises and the other property(ies) securing the loan.

ii. "Collateral" means all real and tangible personal property securing the Secured Loans.

iii. The fair market value shall be as determined by an independent appraiser selected by the Leasehold Mortgagee, if the Leasehold Mortgagee is obtaining an appraisal. Such appraiser may value the Premises and the ACP Property as a single unit if both the Premises and the ACP Property will secure the Secured Loans. If any portion of the Collateral has not been independently appraised by the Leasehold Mortgagee, then Tenant may elect to either (A) retain an independent appraiser approved by City who is experienced in making appraisals of that type of Collateral in the San Francisco Bay Area, or (B) to use the value most recently reported to or determined by the Alameda County Assessor, if any, as the fair market value. The City's consent to any Leasehold Mortgage shall not be deemed an admission by the City as to the accuracy or appropriateness of any appraisal, appraisal methodology, or appraised value prepared or utilized pursuant to this paragraph for any other purpose, including, without limitation , for purposes of valuing the Premises in connection with a rent adjustment under this Lease.

(e) Tenant's Request. Any Tenant request for consent shall be accompanied by detailed information regarding the proposed financing, including information sufficient for City to evaluate the loan to value ratio, use of an institutional lender, and the uses of loan proceeds.

(f) Expediting. The parties recognize that, in order to meet loan commitment deadlines of proposed Leasehold Mortgagees, timely consideration of proposed financings will be needed. To facilitate meeting of such deadlines, Tenant agrees to use good faith, diligent efforts to expedite submittal of all materials required by City for timely review and consideration of any proposed financing

request, and City agrees to use good faith diligent efforts to promptly review and respond to all such requests for approval.

(g) City Consent.

(i) Where consent under this Section 1 is authorized to be given by the City Manager, such consent shall not be unreasonably withheld or delayed. The City Manager may request that Tenant demonstrate that the debt service coverage ratio for the proposed Leasehold Mortgage and all other loans of Tenant and its Affiliates is at least 1.2 to 1.0, and failure of Tenant to do so shall be deemed reasonable grounds for withholding consent.

(ii) Where consent under this Section 1 must be given by the City Council, the City Council may grant or withhold consent in its Discretion.

Section 2. City's Covenants. City agrees, for the benefit of Tenant and each Leasehold Mortgagee, to comply with the following provisions, all of which shall be binding on Tenant and each Leasehold Mortgagee, as set forth herein:

(a) There shall not be entered into between City and Tenant any agreement of cancellation, termination, surrender, acceptance of surrender, amendment or modification of this Lease without the prior written consent of the Leasehold Mortgagee, whose consent shall not be unreasonably withheld. This Lease shall not merge into the fee underlying the Premises without the prior written consent of such Leasehold Mortgagee.

(b) City, upon giving Tenant any notice under this Lease, including, without limitation, notice of Tenant Default, shall at the same time serve by one of the methods specified in Section 33.f of this Lease, copies of such notice upon each Leasehold Mortgagee whose address has theretofore been provided to City by Tenant in writing (the accuracy of which address shall be Tenant's sole responsibility). No notice served upon Tenant (including, without limitation, a notice of termination of this Lease) shall be effective unless a copy thereof has been served upon each Leasehold Mortgagee at the address provided by Tenant. Following receipt of any such notice of Tenant Default (and provided that the Leasehold Mortgagee (i) expeditiously pursues its cure rights as herein described and (ii) continues to pay all Rent and other sums payable by Tenant under this Lease while the cure is pending), each such Leasehold Mortgagee shall have the right to remedy the Tenant Default, or cause the same to be remedied, within the same time allowed to Tenant therefor, plus, in the case of monetary Defaults, an additional 30 days, and in the case of non-monetary Defaults, an additional 60 days or such longer time period as may be provided under Section 2(c) of this Appendix II.

(c) With respect to those events of non-monetary Default the curing of which requires entry upon the Premises, then (i) whenever a Leasehold Mortgagee desires to cure a Tenant Default, there shall be added to the period otherwise provided to the Leasehold Mortgagee for the cure of the Tenant Default the additional period needed by the Leasehold Mortgagee in the exercise of reasonable diligence to enter upon the Premises; (ii) whenever a Leasehold Mortgagee seeks to have a receiver appointed for the interest of Tenant under this Lease, so as to have the receiver cure such Tenant Default, then there shall be added to the period otherwise provided to the Leasehold Mortgagee for the cure of such Tenant Default, the additional period needed by the Leasehold Mortgagee to effect, with reasonable diligence, the appointment of such receiver and the entry by such receiver upon the Premises;

and (iii) whenever a Leasehold Mortgagee elects to foreclose upon the interest of Tenant under this Lease, there shall be added to the period otherwise provided to the Leasehold Mortgagee for the cure of such Tenant Default, such additional period as is needed, in the exercise of reasonable diligence, for the effectuation of the foreclosure sale.

(d) If a noncurable breach of this Lease occurs, a Leasehold Mortgagee shall have the right to begin foreclosure proceedings and to obtain possession of the Premises, so long as Leasehold Mortgagee complies with the conditions set forth below:

(1) Notifies City, within thirty (30) days after receipt of City's notice of a Tenant Default, of its intention to effect this remedy;

(2) Diligently institutes steps or legal proceedings to foreclose on or recover possession of the leasehold (after Leasehold Mortgagee has completed its customary pre-foreclosure due diligence requirements), and thereafter prosecutes the remedy or legal proceedings to completion with due diligence and continuity; and

(3) Keeps and performs, during the foreclosure period (including the pre-foreclosure due diligence period), all of the covenants and conditions of this Lease requiring the payment of money, including, without limitation, payment of all Base Rent, all Additional Rent, any utility charges, real property taxes, personal property taxes and insurance premiums required by this Lease to be paid by Tenant and which become due during the pre-foreclosure or foreclosure period.

(e) Any Leasehold Mortgagee or other purchaser at a foreclosure sale under a Leasehold Mortgage who acquires title to the leasehold estate shall immediately provide City with written notice of such transfer. Such Leasehold Mortgagee or other purchaser shall be subject to the following terms and conditions:

(1) So long as the Leasehold Mortgagee shall have observed all of the conditions of this Section 2, then the following breaches, if any, relating to the prior Tenant shall be deemed cured: (i) attachment, execution of or other judicial levy upon the leasehold estate, (ii) assignment for the benefit of creditors of Tenant, (iii) judicial appointment of a receiver or similar officer to take possession of the leasehold estate or the underlying fee-owned property or (iv) filing any petition by, for or against Tenant under any chapter of the Federal Bankruptcy Code;

(2) By its acceptance of the leasehold estate, such Leasehold Mortgagee or other purchaser (i) assumes this Lease as to the entire leasehold estate, but only during the period when such Leasehold Mortgagee or other purchaser owns such leasehold estate, (ii) covenants with City to be bound hereby during such period of ownership, and (iii) agrees to execute and deliver to City a commercially reasonable lease assumption agreement evidencing such acceptance and assumption, but only during the period when such Leasehold Mortgagee or other purchaser owns such leasehold estate, in a form reasonably acceptable to City; and

(3) Such Leasehold Mortgagee or other purchaser shall have the right to further assign this Lease without City's consent.

(f) City shall accept performance by or on behalf of any Leasehold Mortgagee who has

complied with the notice provisions of this Section 2 as if the same had been performed by Tenant.

(g) Leasehold Mortgagee shall have the right, to the extent Tenant agrees in writing, to appear in a legal action or proceeding on behalf of Tenant.

(h) It is expressly agreed that each Leasehold Mortgagee has the right to act for and in the place of Tenant, to the extent permitted by the applicable Leasehold Mortgage or otherwise agreed to by Tenant in writing. Without limiting the foregoing, each Leasehold Mortgagee may, to the extent permitted in its Leasehold Mortgage, exercise options and otherwise exercise the rights of Tenant.

(i) In the event of conflict between the rights of multiple Leasehold Mortgagees, the rights of the respective Leasehold Mortgagees shall be determined in the order of priority of their Leasehold Mortgages.

(j) The name of the Leasehold Mortgagee may be added as a loss payee of any fire and extended coverage insurance carried by Tenant, provided insurance proceeds are first used for repair and restoration as required by this Lease, unless a Leasehold Mortgagee's security has been impaired and such Leasehold Mortgagee is legally entitled to the application of the insurance proceeds to the unpaid indebtedness of Tenant, in which case such insurance proceeds shall be paid to the Leasehold Mortgagee up to the amount of the unpaid indebtedness secured by any such Leasehold Mortgage(s).

(k) Except as otherwise provided in Section 2(b) and Section 2(d)(3) of this Appendix II with respect to payment of Rent, the Leasehold Mortgagee shall not be liable for the performance of Tenant's obligations under this Lease unless the Leasehold Mortgagee has succeeded to and has possession of the interest of Tenant under this Lease.

(l) If an actual or prospective Leasehold Mortgagee shall require City to deliver a customary ground lessor estoppel certificate as part of such Leasehold Mortgagee's financing arrangement with Tenant, City shall execute, acknowledge and deliver such ground lessor estoppel certificate, which ground lessor estoppel certificate shall include, without limitation, the provisions set forth in Section 2(t) of this Appendix II. At the option of such Leasehold Mortgagee, such ground lessor estoppel certificate shall be in the form of an agreement between City and such Leasehold Mortgagee.

(m) Whenever requested in writing by any Leasehold Mortgagee, City shall, within 30 days after such request, execute, acknowledge and deliver to such Leasehold Mortgagee, a certificate certifying (i) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified and stating the modifications), (ii) the dates, if any, to which the Base Rent, Additional Rent and other sums payable under this Lease have been paid, (iii) the expiration date of the Term of this Lease, (iv) whether or not to the knowledge of City, there is then existing any Default of Tenant or Event of Default under this Lease (and, if so, specifying same), (v) whether there are any outstanding notices of Default or termination, and the nature thereof, and (vi) if notice of a Tenant Default has been given, the period remaining for the cure of said Default as then estimated by City.

(n) The making of any Leasehold Mortgage shall not be deemed to constitute an assignment or Transfer of this Lease or of the leasehold estate, nor shall any Leasehold Mortgagee, as

such, be deemed to be an assignee or transferee of this Lease or the leasehold estate so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Tenant under this Lease to be performed.

(o) City agrees, whenever requested by any Leasehold Mortgagee, to confirm, in writing, the receipt of any notice from such Leasehold Mortgagee.

(p) The Leasehold Mortgagee shall have the option to be assigned this Lease in the event that Tenant, Tenant's trustee or Tenant's assignee elects to reject this Lease pursuant to Section 365(a) of the Bankruptcy Code. In the event that the Leasehold Mortgagee exercises its option to have this Lease assigned to it, such a rejection by Tenant, Tenant's trustee or Tenant's assignee, whether by election, pursuant to operation of law or otherwise, shall not terminate this Lease if the Leasehold Mortgagee cures any outstanding Defaults of Tenant under this Lease other than Defaults of Tenant that are personal to Tenant and cannot be cured by a party other than Tenant, such as transfer and bankruptcy.

(q) No Leasehold Mortgage shall encumber or create any lien or charge against City's fee interest in the underlying property.

(r) City consents to a provision in any Leasehold Mortgage or otherwise for an assignment of rents from subleases of the Premises to the holder thereof, effective on the date on which the Leasehold Mortgagee has succeeded to and takes possession of the interest of Tenant under this Lease under Sections 2(d) and 2(p) of this Appendix II.

(s) The foreclosure of a Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in any Leasehold Mortgage, or any conveyance of the leasehold estate created hereby from Tenant to any Leasehold Mortgagee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not breach any provision of or constitute a Default under this Lease and shall not require City's consent, and upon such foreclosure, sale or conveyance and Leasehold Mortgagee's execution and delivery to City of a lease assumption agreement in a form consistent with the requirements of Section 2(e)(2) of this Appendix II, City shall recognize the Leasehold Mortgagee, or such other purchaser at such foreclosure sale, as Tenant hereunder.

(t) In the event that Tenant's interest under this Lease is terminated by City for any reason including, without limitation, Tenant's Default or rejection of this Lease by a trustee in bankruptcy or a debtor in possession (and provided there is an unsatisfied Leasehold Mortgage of record) or in the event Tenant's interest under this Lease shall be sold, assigned or transferred pursuant to the exercise of any remedy of any Leasehold Mortgagee, or pursuant to judicial or other proceedings, City, at Leasehold Mortgagee's expense, shall prepare and promptly enter into a new lease of the Premises with such Leasehold Mortgagee or its nominee, purchaser, assignee or transferee, promptly following written request by such Leasehold Mortgagee or such nominee, purchaser, assignee or transferee given within sixty (60) days after such sale, assignment or transfer for the remainder of the term of this Lease with substantially the same agreements, covenants and conditions (except for any requirements which have been fulfilled by Tenant prior to termination) as were contained herein and with priority equal to that hereof; provided, however, that such Leasehold Mortgagee shall promptly cure any Default of Tenant susceptible to cure by such Leasehold Mortgagee, and provided further that if more than one Leasehold Mortgagee requests such new lease, the Leasehold Mortgagee holding the most senior Leasehold Mortgage shall prevail. Upon execution

and delivery of such new lease, City shall cooperate with the new Tenant, at the expense of such new Tenant, in taking such action as shall be necessary to cancel and discharge this Lease and to remove Tenant named herein from the Premises. In such event the ownership of improvements to the Premises to the extent owned by Tenant shall be deemed to have been transferred directly to such transferee of Tenant's interest in this Lease.

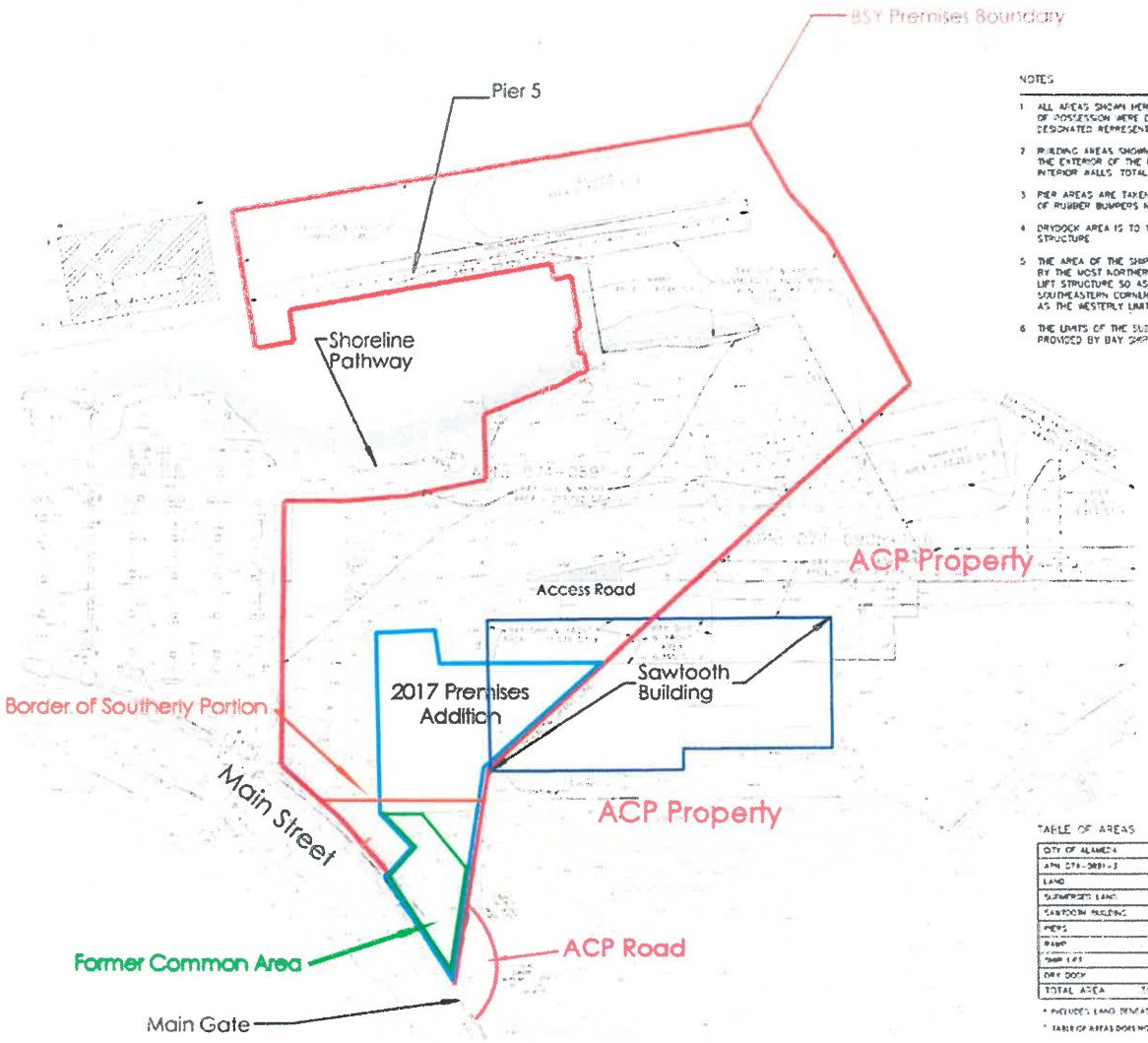
Exhibit A
to Lease between City of Alameda & Bay Ship & Yacht Co.

Diagram of Premises of Bay Ship & Yacht Co.

Exhibit A consists of the attached diagram entitled: Exhibit A to City-BSY Lease: Premises of Bay Ship & Yacht Co.

Exhibit A to City-BSY Lease
Premises of Bay Ship & Yacht Co.

4/24/17



NOTES

1. ALL AREAS SHOWN HEREON ARE THE RESULTS OF A FIELD SURVEY. LIMITS OF POSSESSION WERE DESCRIBED AND SHOWN TO FIELD SURVEYORS BY DESIGNATED REPRESENTATIVES OF BAY SHIP & YACHT.
2. BUILDING AREAS SHOWN HEREON ARE DERIVED FROM MEASUREMENTS TO THE EXTERIOR OF THE PERIMETER WALLS AND TO THE CENTERLINE OF THE INTERIOR WALLS. TOTAL GROSS SQUARE FOOTAGE = 87,194 S.F.±
3. PIER AREAS ARE TAKEN AT THE EDGE OF CONCRETE AND ARE EXCLUSIVE OF RUBBER BUMPERS NOT PART OF THE STRUCTURE.
4. DRYDOCK AREA IS TO THE OUTER EDGES OF WALLS AND FLOOR STRUCTURE.
5. THE AREA OF THE SHIP LIFT IS DERIVED FROM EXTENDING LINES FORMED BY THE MOST NORTHERLY, SOUTHERLY AND EASTERLY EDGES OF THE SHIP LIFT STRUCTURE SO AS TO FORM 90° ANGLES AT THE NORTHEASTERN AND SOUTHEASTERN CORNERS. THE EDGE OF THE EXISTING BULKHEAD IS USED AS THE WESTERLY LIMIT.
6. THE LIMITS OF THE SUBMERGED LANDS WAS DERIVED FROM DRAWINGS PROVIDED BY BAY SHIP & YACHT.

TABLE OF AREAS

CITY OF ALAMEDA		ALAMEDA GATEWAY	TOTAL AREA
APN 074-0801-3		APN 074-0905-1-6	
LAND	219,202 S.F.	45,053 S.F.	264,255 S.F.
SUBMERGED LAND	100,508 S.F.	44,429 S.F.	144,937 S.F.
SAWTOOTH BUILDING	11,078 S.F.	6,395 S.F.	17,473 S.F.
PIERS	29,328 S.F.	4,467 S.F.	33,795 S.F.
RAMP	4,144 S.F.	0	4,144 S.F.
SHIP LIFT	0	13,263 S.F.	13,263 S.F.
DRY DOCK	30,008 S.F.	0	30,008 S.F.
TOTAL AREA	394,269 S.F.	113,600 S.F.	507,869 S.F.

* INCLUDES LAND BENEATH MODULAR OFFICE BUILDING
* TABLE OF AREAS DOES NOT INCLUDE PIER 5 WEST

Exhibit A

Exhibit B
to Lease between City of Alameda & Bay Ship & Yacht Co.

Excluded BSY Improvements

Construction of the following improvements was completed on varying dates, all prior to the Original Commencement Date. All such improvements are excluded for purposes of Section 8.b.ii of the Lease.

1. Inside Sawtooth Building.

None.

(Any overhead cranes are Tenant trade fixtures.)

2. At Pier 5 & Pier 2.

(a) Pier 5's sewer service.

(b) Nothing excluded from Pier 2.

3. Ship Yard, Parking Lot and Remainder of the Premises.

(a) The dry berth improvements (where the vessels brought up by the ship lift are worked on), including their rails, utilities and foundation.

(b) BSY's modular administration building.

(c) All water, electrical, sewer, storm water, compressed air and other utilities *inside* these areas of the Premises.

(d) Pavement of the yard, parking lot and road.

(e) The fencing surrounding the Premises.

Exhibit C
to Lease between City of Alameda & Bay Ship & Yacht Co.

City Property Description

Those parcels of land in the City of Alameda, County of Alameda, State of California, described as follows:

PARCEL A:

COMMENCING at Station 179 on the Peralta Grant Line, as said station and line are delineated and so designated on that certain map entitled "Map of Alameda Marsh Land, as partitioned among the owners thereof in the Suit No. 8923, and entitled Pacific Improvement Company, Plaintiff vs. James A. Waymire, et al., Defendants, Superior Court of Alameda County, State of California," filed July 30, 1900, in the office of the County Recorder of Alameda County, in Map Book 25, pages 74 to 78; thence due north 801.06 feet to the true point of commencement; thence due north 341.2 feet, more or less, to a point on the U.S. Pierhead Line as said Pierhead Line is described in that certain Indenture and Lease dated September 1, 1946 to United Engineering Company, a corporation, Lessee, recorded March 5, 1959, Series No. AQ/26093; thence along said Pierhead Line the following courses and distances: North 79° 03' 59" east 335.74 feet to a point designated as No. 12 on said line; thence north 73° 56' 45" east 1148.51 feet, more or less, to a point on said Peralta Grant Line; thence along said last named line south 24° 15' west 124.58 feet, more or less, to a point thereon known as Station No. 175; thence along said last named line south 46° 30' west 659.55 feet to Station No. 176 on said line; thence along said line south 47° 15' west 482.91 feet to Station No. 177 of said Grant line; thence south 10° 15' west along said Grant Line a distance of 143.43 feet to a point; thence westerly on a curve concave to the left, having a radius of 1487.42 feet, (the tangent to said curve at last mentioned point bears north 47° 15' 56" west) an arc distance of 616.92 feet to the true point of commencement, (the tangent to said curve at last mentioned point bears north 71° 01' 46" west).

PARCEL B:

A parcel of land situate in the City of Alameda, County of Alameda, State of California, and further described as follows:

COMMENCING at Station No. 179 on the Peralta Grant Line as said station and line are delineated and so designated on that certain map entitled "Map of Alameda Marsh Land, as partitioned among the owners thereof in the suit No. 8923, and entitled Pacific Improvement Company, Plaintiff, vs. James A. Waymire, et al., Defendants, Superior Court of Alameda County, State of California," filed July 30, 1900, in the office of the County Recorder of Alameda County in Map Book 25, pages 74 to 78;

THENCE Due North 1142.26 feet more or less to a point on the U.S. Pierhead Line, as said Pierhead Line is described in that certain lease executed September 1, 1946, between the City of Ala-

meda and United Engineering Company, a corporation (and assigned to Todd Shipyards Corporation) and also described in City of Alameda Resolution No. 6578, acknowledging exercise of right to renew said lease, said point being the TRUE POINT OF BEGINNING;

THENCE continuing Due North 175.00 feet;

THENCE North 75° 30' 25" East 1100.00 feet;

THENCE Due South 175.00 feet more or less to a point on said U.S. Pierhead Line;

THENCE along said Pierhead Line South 73° 56' 45" West 765.19 feet to a point designated as No. 12 on said line;

THENCE continuing along said Pierhead Line South 79° 03' 59" West 335.74 feet to the TRUE POINT OF BEGINNING.

Containing 4.542 acres, more or less.

Exhibit D
to Lease dated December 31, 2012
between City of Alameda & Bay Ship & Yacht Co.

Form of Amendment to Memorandum of Lease (Extending Term)

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Henn, Etzel & Moore, Inc.
Attn: Robert L. Henn
180 Montgomery St., Suite 700
San Francisco, CA 94104

(Space Above For Recorder's Use)

[FIRST] AMENDMENT TO MEMORANDUM OF LEASE

This [First] Amendment to Memorandum of Lease (this "Amendment") is dated as of ___ _____, 2____, and is by and between the City of Alameda, a California municipal corporation ("Landlord"), and Bay Ship & Yacht Co., a California corporation ("Tenant").

RECITALS:

A. Landlord and Tenant entered into that certain Lease on _____, 2012, which was amended and restated on _____ , 2017 (the "Lease"), with respect to certain premises located in the City of Alameda, County of Alameda, State of California. A memorandum of the Lease was originally recorded in the Official Records of Alameda County, California, on April 6, 2016, as Instrument No. 2016081890 (the "Memorandum"). [On_____, Landlord and Tenant recorded an amendment to the Memorandum as Instrument No. _____] All initially capitalized terms used in this Amendment without definition have the respective meanings given them in the Lease.

B. On _____, 20__, Tenant duly exercised an option in Tenant to extend the term of the Lease, thereby extending the term of the Lease until _____, 20__.

C. By this Amendment, Landlord and Tenant desire to record a memorandum of such extension of the term of the Lease.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Extension of Lease Term. The Term of the Lease is hereby extended for an additional _____ years, from _____, 20__, through and including _____, 20__, on all of the terms and conditions set forth in the Lease.

2. Lease Incorporated. The purpose of this Amendment is solely to provide notice of the extension of the term of the Lease. All of the terms, conditions and covenants of the Lease are incorporated herein by this reference and are not amended, modified or varied in any way by this Amendment. The terms of the Lease shall govern in the event of any conflict with this Amendment.

3. Counterparts. This Amendment may be executed in multiple counterparts, each of which shall be deemed an original but all of which, together, shall constitute one and the same instrument.

In witness whereof, the parties hereto have executed this [First] Amendment to Memorandum of Lease as of the date first above written.

LANDLORD:

City of Alameda, a
California municipal corporation

By:_____
_____, City Manager

APPROVED AS TO FORM:

By:_____
_____, City Attorney

ATTEST:

By:_____
_____, City Clerk

TENANT:

Bay Ship & Yacht Co.,
a California corporation

By:_____
Name:_____
Its: President

By:_____
Name:_____
Its: Secretary

Exhibit E
to Lease between City of Alameda & Bay Ship & Yacht Co.

Recording requested by, and when recorded mail to:

Janet Kern
Office of the City Attorney
City of Alameda
2263 Santa Clara Avenue
Room 280
Alameda, CA 94501

Mail tax statements (if any) to:
Alameda Commercial Properties, LLC
2900 Main Street, #2100
Alameda, CA 94501

Space above this line for recorder's use

Reciprocal Easement Agreement

This reciprocal easement agreement (this "Agreement") is effective as of the date of recordation shown above and is between the City of Alameda, a California charter city ("City") and Alameda Commercial Properties, LLC, a California limited liability company("ACP"). ACP, its successors and assigns, is sometimes called an "Owner." City, its successors and assigns, is sometimes called an "Owner." The two Owners are together sometimes called the "Owners."

Recitals

A. The Properties described in Recitals B and C following are shown on the diagram attached as Exhibit A and more particularly described in Exhibits B and C.

B. City is the owner of that certain real property situated in the County of Alameda, State of California, more particularly described in Exhibit B ("Tidelands Parcel"), consisting of both lands and waters.

C. ACP is the owner of that certain real property situated in the County of Alameda, State of California, more particularly described in Exhibit C ("ACP Property"), consisting of both lands and waters. The ACP Property and Tidelands Parcel are sometimes together called the "Properties" in this Agreement, and each is sometimes called a "Property."

D. City desires an access easement over the ACP Property to the Tidelands Parcel. City also desires easements for utilities located on the ACP Parcel that serve the Tidelands Parcel. ACP desires easements for utilities located on the Tidelands Parcel that serve the ACP Property. All of the foregoing are as more specifically provided below in this Agreement.

E. Although under different ownership, the Tidelands Parcel and ACP Property have been used as an integrated whole for industrial uses since at least World War II. One consequence is that the utilities installed to date have been located without regard to the differing ownership of the two Properties. On the date of this Agreement, the two Properties are continuing to be used as an integrated whole. City has leased all but a small portion of the Tidelands Parcel to Bay Ship & Yacht Co., a California corporation ("BSY") pursuant to the Amended and Restated Lease dated _____, 2017 between City and BSY ("City-BSY Lease"). BSY is an affiliate of ACP, and is a primary user of the common utilities. The Owners desire to provide the easements for Access and Utilities described in this Agreement in order to assure each Owner of appropriate Utilities and the City of Access in the event the two Properties are no longer under common control.

Agreement

In consideration of the foregoing, the promises and other provisions of this Agreement and other good and sufficient consideration, the receipt and adequacy of which are hereby conclusively acknowledged, the Owners agree as follows.

1. Definitions.

"Maintain," "Maintenance," "Maintaining" and other derivatives of the same terms mean to keep the access or Utility concerned in good working order and repair. Such terms include the following when reasonably required: repairs, upgrades, replacements, and other work required by applicable code(s), laws or by a governmental authority acting in its regulatory capacity; repair and replacement of damage or destruction caused by an uninsured casualty (including flood and earthquake), by an insured casualty to the extent the damage is in excess of the insurance coverage, or by any person.

"Maintenance Expenses" are the reasonable direct expenses of Maintaining. They include out-of-pocket costs paid third parties and the direct expenses of the Owner performing the Maintenance. Such direct costs include the actual costs of the Owner's employees doing the Work (including their salary, benefits, employment taxes and other expenses), materials used at their cost, equipment rentals at their cost, dump fees and the like, but do not include overhead, general or administrative expenses.

"**Related Persons**" of an Owner are the Owner's employees, agents, contractors, tenants, suppliers, vendors, and any other person deriving by or through any of the foregoing, including subcontractors, subtenants, and their respective suppliers and vendors.

"**Utilities**" include sanitary sewer, storm and other drainage, water (potable, recycled, fire flow, high pressure and other), electricity, gas, compressed air, telephone, cable television, data transmission, internet, and other utilities, including equipment, accessories and other related improvements, whether installed or operated by a public utility, government agency or other person, so long as the utility serves all or any portion of the benefited Property. Neither "Utilities" nor the easements granted by this Agreement include high tension power lines. "Utilities" are limited to those utilities on the burdened Property which serve the benefited Property.

"Person," regardless of whether initially capitalized, means: any individual; any trust, trustee, estate, or association; and any corporation, general or limited partnership, limited liability company or other legal entity.

2. Easement for Access to Tidelands Parcel. ACP grants City a nonexclusive easement in perpetuity for ingress, egress and other vehicular and other access ("Access") to the Tidelands Parcel on and across the area shown as "Access Easement" on Exhibit A and more particularly described in Exhibit D, on the terms and conditions provided in this Agreement. Such easement shall be appurtenant to and for the benefit of the Tidelands Parcel, shall burden the ACP Property, and is called the "Access Easement" in this Agreement.

a. The Access Easement being nonexclusive, ACP and others may also use the ACP Road for access to the ACP Property and for other purposes consistent with City's use of the Access Easement for access to the Tidelands Parcel.

b. ACP shall Maintain the ACP Road and City shall reimburse ACP for its share of Maintenance Expenses, all pursuant to Section 6 below. City's share shall be its Property's use of the Access Easement in proportion to all use of the Access Easement, determined pursuant to Section 6.

c. ACP may install a gate, security guard and take other security measures at the Main Gate to the ACP Property or on the ACP Road. Any security gate or other security measures shall be at ACP's expense, and shall continue to permit City Access to the Tidelands Parcel in a manner which meets the reasonable needs of the Tidelands Parcel, as well as those of the ACP Property.

d. ACP may at its expense relocate the Access Easement, with the City's consent, which shall not be unreasonably withheld, so long as the relocated Access Easement provides suitable access to the Tidelands Parcel.

e. The Access Easement shall terminate upon first to occur of: (i) City has alternate Access to the Tidelands Parcel from Main Street that is constructed and available; or (ii) Mitchell-Mosely Road or other public street is constructed and adjoins the Tidelands Parcel, thereby providing Access to the Tidelands Parcel.

3. Easement for Utilities to Tidelands Parcel. ACP grants City a nonexclusive easement in perpetuity to the Utilities on the ACP Property to the extent they serve the Tidelands Parcel (the "ACP Utilities"), on the terms and conditions of this Agreement. Such easement shall be appurtenant to and for the benefit of the Tidelands Parcel, shall burden the ACP Property, and is called the "Tidelands Utilities Easement" in this Agreement.

4. Easement for Utilities to ACP Parcel. City grants ACP a nonexclusive easement in perpetuity to the Utilities on the Tidelands Parcel to the extent they serve the ACP Property (the "City Utilities"), on the terms and conditions of this Agreement. Such easement shall be appurtenant to and for the benefit of the ACP Property, shall burden the Tidelands Parcel, and is called the "ACP Utilities Easement" in this Agreement.

5. Utilities Easements. The Tidelands Utilities Easement and the ACP Utilities Easement are together sometimes called the "Utilities Easements," and each a "Utilities Easement." The Utilities Easements shall be governed by the following.

a. Each Utilities Easement is limited to subsurface Utilities, except:

i. A subsurface Utility includes meters, manholes and other appurtenances which are level with the ground's surface or (such as a hydrant for fire control) are above-ground, to the extent existing on the date of this Agreement or when constructed as part of a relocation or upgrade made in accordance with this Agreement. However, the Owner of the benefited Property may not require such appurtenances to be constructed on the burdened Property without the approval of the Owner of the burdened Property.

ii. Utilities include the following above ground utilities: (A) such above ground Utilities as are existing on the date of this Agreement, including telecommunications and electric power from the Alameda Municipal Power drop to the main distribution center on ACP Property; and (B) those subsequently constructed as part of a relocation or upgrade made in accordance with this Agreement. However, the Owner of the benefited Property may not require that a new Utility be constructed above ground on the burdened Property without the approval of the Owner of the burdened Property.

b. The Owner of the burdened Property may use the surface of the Utilities Easement at its expense for any lawful purpose, including the construction of buildings over the Utilities Easement and for fencing. However, if the surface use would materially damage or interfere with the operation of the Utility, the Owner of the burdened Property must at its expense relocate the Utility, substitute an existing Utility in a different location providing the benefited Property with equivalent or better service as the existing Utility, or improve the existing Utility so as to avoid the damage and interference. Any fencing shall be so constructed that the benefited Owner may access the easement, e.g. by being provided access through a gate when reasonably requested.

c. The Utilities Easements are to the Utilities in their present locations. Upon a Utility being relocated pursuant to this Agreement, the Utilities Easement as to that Utility shall automatically be deemed relocated to conform to the Utility in its new location, and shall no longer exist in its previous location. If a Utility is no longer used by the benefited Property for a period of two years or more, then the benefitted Property's Utility Easement shall terminate as to that Utility. If a new Utility is installed that serves the benefitted Property, then the Utility Easement shall include the new Utility. However, in all events a Utilities Easement only applies to Utilities serving the benefited Property.

d. The width of a Utility Easement shall be that reasonably required for the Utility located in the easement, as the Utility is sized and exists when its Utility Easement is first created, and as the Utility is upgraded, relocated or otherwise modified pursuant to this Agreement. The Owner of the burdened Property may allow other subterranean compatible uses in the Utility Easement.

e. The Owner of the burdened Property shall Maintain the Utilities located on the burdened Property. All such Maintenance Expenses shall be borne by the Owner of the burdened Property until such time as the Owners have entered into a Maintenance Agreement in accordance with Section 6, at which time Maintenance Expenses shall be allocated in the manner provided in the Maintenance Agreement. Each Owner shall use commercially reasonable efforts to minimize disruptions in the supply of the Utilities burdening its Property to the benefited Property. Each Owner shall provide the other Owner such advance notification of a forthcoming disruption as may be feasible under the circumstances.

f. Each Owner shall pay the current cost of the water, electricity, sewer and other Utilities supplied its property directly to the utility when feasible. Each Owner shall separately meter the Utility at its expense when feasible. If the Owner of a benefited Property has not metered the Utility, the Owner of the burdened Property shall allocate the charges for the Utility in proportion to usage, as such usage is reasonably determined by the Owner of the burdened Property. The owner of the benefited Property shall pay the charges to the burdened Owner no later than 30 days after date of invoice.

g. Except for reasonably required Maintenance pursuant to Section 6 below, at no time shall an Owner or Property voluntarily terminate, reduce or interfere with the supply of a Utility to the other Owner or Property. In the event of an unexpected or involuntary termination, the Owner of the burdened Property shall immediately use reasonable commercial efforts to restore service as soon as possible. Upon request, the Owner of the benefited Property shall cooperate with the burdened Owner to such extent as the burdened Owner may reasonably require.

h. Each Owner of a burdened Property may relocate a Utility at its expense to such other location on the burdened Property or on a public right-of-way as the Owner may determine, provided the Utility in its new location continues to meet the reasonable needs of the benefited Property to the same or greater extent as it did prior to the relocation. A relocation under this Section 5.h may include, without limitation, a partial or complete consolidation or co-location of Utilities.

i. An Owner, at its expense, may increase the capacity or otherwise upgrade an existing Utility, provided that such upgrade will not adversely affect the other Owner's use of the Utility or the uses of the benefited Property served by the Utility.

j. Upon reasonable request (and at the expense) of the benefited Owner, the burdened Owner shall increase the capacity of a relocated Utility and provide such other upgrades, alterations and improvements to the Utility at the benefited Owner's expense as the benefited Owner may reasonably request, so long as such upgrades, alterations and improvements are compatible with the burdened Owner's Property, including the existing and reasonably anticipated improvements and uses of the burdened Property.

l. The Owner of the benefited Property may have reasonable access to the Utilities and their easements located on the burdened Property on the following terms. The benefited Owner: (i) shall provide reasonable advance notice (which may be informal) to the burdened Owner; (ii) shall not perform any Work on the Utility without the prior written approval of the

burdened Owner (which the burdened owner may deny in its sole and absolute discretion so long as the burdened Owner is performing the Maintenance required by this Agreement and there is no immediate threat to health, safety or property); (iii) shall not unreasonably disturb the occupants of, supply of Utilities to or other uses of the burdened Property; and (iv) shall indemnify, defend, protect and hold harmless the Owner of the burdened Property from and against any and all claims, demands, damages and liabilities arising out of the access by the benefited Owner and its Related Persons, including any mechanics liens and other encumbrances on the burdened Property arising out of work by the Owner of the benefitted Property on the burdened Property.

6. Allocation of Maintenance Expenses; Damage.

a. ACP shall reasonably determine the allocation of Maintenance Expenses for the ACP Road in accordance with Section 2.b, subject to the approval of City, which approval not to be unreasonably withheld or delayed.

b. City shall pay its share of Maintenance Expenses to ACP monthly, within 30 days after date of invoice.

c. Prior to the Tidelands Parcel and ACP Property ceasing to be under the common control of ACP and its affiliate BSY, whether due to a conveyance of the ACP Property to another party, the termination of the City-BSY Lease, City and ACP shall use their best efforts to negotiate and enter into an agreement concerning the Maintenance of the Utilities ("Utilities Maintenance Agreement") . No later than the earlier of (i) 90 days prior to a conveyance of the ACP Property (or a substantial portion thereof) to a third party not affiliated with BSY, and (ii) the date a notice of termination of the City-BSY Lease is given or received by BSY, ACP shall initiate negotiations for a Utilities Maintenance Agreement by providing written notice to the City. The Utilities Maintenance Agreement shall, at a minimum, provide for the equitable allocation of Maintenance Expenses for the Utilities between the Owners, and shall require that any transferee of all or a substantial portion of the ACP Property assume ACP's rights, obligations and liabilities under the Utilities Maintenance Agreement as a condition of transfer.

d. Any damage done to the Access Easement or to a Utility by an Owner or one or more of its Related Persons shall be repaired by the burdened Owner to the condition that it was in prior to the damage. The cost shall be paid entirely by the Owner who caused (or whose Related Party caused) the damage.

7. Tenants; Related Persons. Each Owner has and expects to have tenants of its Property. Each Owner may delegate its rights and obligations under this Agreement to its tenants, but, without limiting the generality of Section 9, remains liable to the other Owner if a tenant does not perform or breaches this Agreement. Each Owner shall provide notice to the other Owner of any rights or obligations delegated to a tenant.

8. Without Charge. Except as otherwise provided elsewhere in this Agreement, the use of the easements granted in this Agreement shall be without charge.

9. **Indemnity**. Each Owner shall indemnify, defend, protect and hold harmless the other Owner from and against any claim, suit or action for damage to any property or injury to or death of any person caused by the first Owner or its Related Persons on the Property of the other Owner. Each benefited Owner shall indemnify, defend, protect and hold harmless the burdened Owner from and against claims demands, damages and liabilities arising out of the exercise on the burdened Property of the rights granted under this Agreement by the benefited Owner or its Related Persons.

10. **Insurance**. Each Owner shall be responsible for and maintain its own insurance, which may include liability, fire & extended coverage, and workers compensation insurance.

11. **Mortgages**. A "Mortgage" is recorded mortgage or deed of trust against all or any portion of a Property. Breach of any of the covenants or restrictions contained in this Agreement shall not defeat nor render invalid the lien of any Mortgage made in good faith and for value as to all or any portion of a Property. However, all the provisions of this Agreement shall be binding and effective against any owner of any portion of such Property whose title is derived through foreclosure sale, trustee sale or otherwise through a Mortgage.

12. **No Dedication, Etc.** Nothing contained in this Agreement is intended to confer upon any person other than an Owner of a portion or all of a Property any rights, powers or remedies. The easements granted by this Agreement are private, not public. City is acting in its proprietary capacity, and not in its regulatory capacity, with respect to the matters set forth in this Agreement. Neither an easement nor anything else contained in this Agreement shall be deemed to be a gift or dedication of all or any portion of the easement or of any Property to the City, to the general public, for the general public or for any public use or purpose whatsoever. Each easement and this Agreement shall be strictly limited to and for the uses and purposes expressed in this Agreement and not for any other use or purpose.

13. **No Merger.** There shall be no merger of any easement or right created by this Agreement by reason of the fact that all or any portion of any Property or easement may be owned or held directly or indirectly by or for the account of the same person. No such merger shall occur unless and until all persons at the time having an interest in the Property and the easement (including the holders of any Mortgage having an interest in, or an encumbrance on, all or any portion of such Property or easement) shall join in a written instrument effecting such merger and duly record the instrument.

14. **No Effect on Existing Easement Rights**. Nothing in this Agreement shall be construed as terminating, superseding, waiving or otherwise limiting any prescriptive easement, easement by necessity, or other easement or similar rights that, prior to the effective date of this Agreement, an Owner may hold in the Property of the other Owner.

15. **Amendments**. This Agreement may be amended, modified or cancelled in whole or in part only by written agreement of the Owners or their successors or assigns.

16. **Miscellaneous**.

a. Choice of Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of California.

b. Severability. If any clause or other portion of this Agreement is determined invalid or unenforceable for any reason by a court of competent jurisdiction, then such portion shall be deemed severed to the extent of the invalidity or unenforceability, and the remainder of this Agreement shall remain in full force and effect. In all other respects this Agreement shall be treated as (and all the rights, duties, and powers arising under this Agreement shall be treated as part of) a single, indivisible contract.

c. Construction.

i. Gender, Number, Etc. Unless the context clearly requires otherwise, in this Agreement: (a) the plural and singular numbers will each be deemed to include the other; (b) the masculine, feminine, and neuter genders will each be deemed to include the others; (c) "shall," "will," "must," "agrees," and "covenants" are each mandatory; (d) "may" is permissive; (e) "or" is not exclusive; and (f) "includes", "including" and other derivations of the same term, regardless of whether initially capitalized, are not limiting and so shall mean "including without limitation thereto," regardless of whether or not stated to be without limitation.

ii. Sections; Exhibits. All references in this Agreement to a "Section" are to the corresponding Section of this Agreement, except when the reference is expressly stated to be to a Section of another Agreement or is otherwise provided in this Agreement.

iii. Recitals. The recitals set forth before the recital of consideration above are correct and are included in (and a part of) this Agreement.

iv. Definitions. The definition of an initially capitalized word applies wherever such word is used in this Agreement, regardless of whether the definition is provided when the defined term is first used or thereafter.

d. Independent Contractors. The relationship between the Owners is one of independent contractors, and not one of partnership, joint venture, agency, trust or other joint or fiduciary relationship.

IN WITNESS WHEREOF, the Owners signing below have caused this Agreement to be executed effective on the date of recordation first shown above.

CITY

CITY OF ALAMEDA, a California charter city

By: _____
Jill Keimach, City Manager

Approved as to legal form:

_____
Janet Kern, City Attorney

ACP

ALAMEDA COMMERICAL PROPERTIES, a California Limited Liability Company,

By: _____
Alan Cameron, Member-Manager

Exhibit A: Diagram
Exhibit B: Legal description of Tidelands Parcel
Exhibit C: Legal description of Tidelands Parcel
Exhibit D: Legal description of Access Easement

Exhibit F
to Lease between City of Alameda & Bay Ship & Yacht Co.
Easement Quitclaim

Recording requested by, and when recorded mail to:

The Henn Law Firm, P.C.
Attn: Robert L. Henn
425 California St., Suite 1700
San Francisco, CA 94104
Tel. 415-537-7700

Mail tax statements (if any) to:
Alameda Commercial Properties, LLC
2900 Main Street, #2100
Alameda, CA 94501

Space above this line for recorder's use

Quitclaim Deed

For valuable consideration, receipt of which is hereby acknowledged, the City of Alameda, a municipal corporation of the State of California, does hereby remise, release and forever quitclaim to Alameda Commercial Properties, LLC, a California limited liability company, the real property in the State of California, County of Alameda, City of Alameda described in Exhibit "A" attached hereto.

In witness whereof, such City has executed this Quitclaim Deed.

Dated: _____, 2017

City of Alameda, a municipal corporation

By: _____
Jill Keimach, its City Manager

APPROVED AS TO FORM:

By:_____
Janet Kern, City Attorney

ATTEST:

By:_____
Lara Weisiger, City Clerk

Exhibit A

Legal Description

[This will be the legal description in the easement for a street or highway granted to the City of Alameda, a municipal corporation of the State of California ("City") by the Southern Pacific Company recorded on March 18, 1942 at Book 4156, Page 470, of the Official Records of the County of Alameda, and shown on the Kier & Wright ALTA survey of the ACP Property.]

Acknowledgements

On _____ before me, _____
_____, personally appeared _____
_____
_____,
Who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(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.

_____ (Seal)
Signature of Notary Public

On _____ before me, _____
_____, personally appeared
_____
_____,

Who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(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.

_____ (Seal)
Signature of Notary Public