

# Staff Report 56

## GRANTEE:

City of Pittsburg

## PROPOSED ACTION:

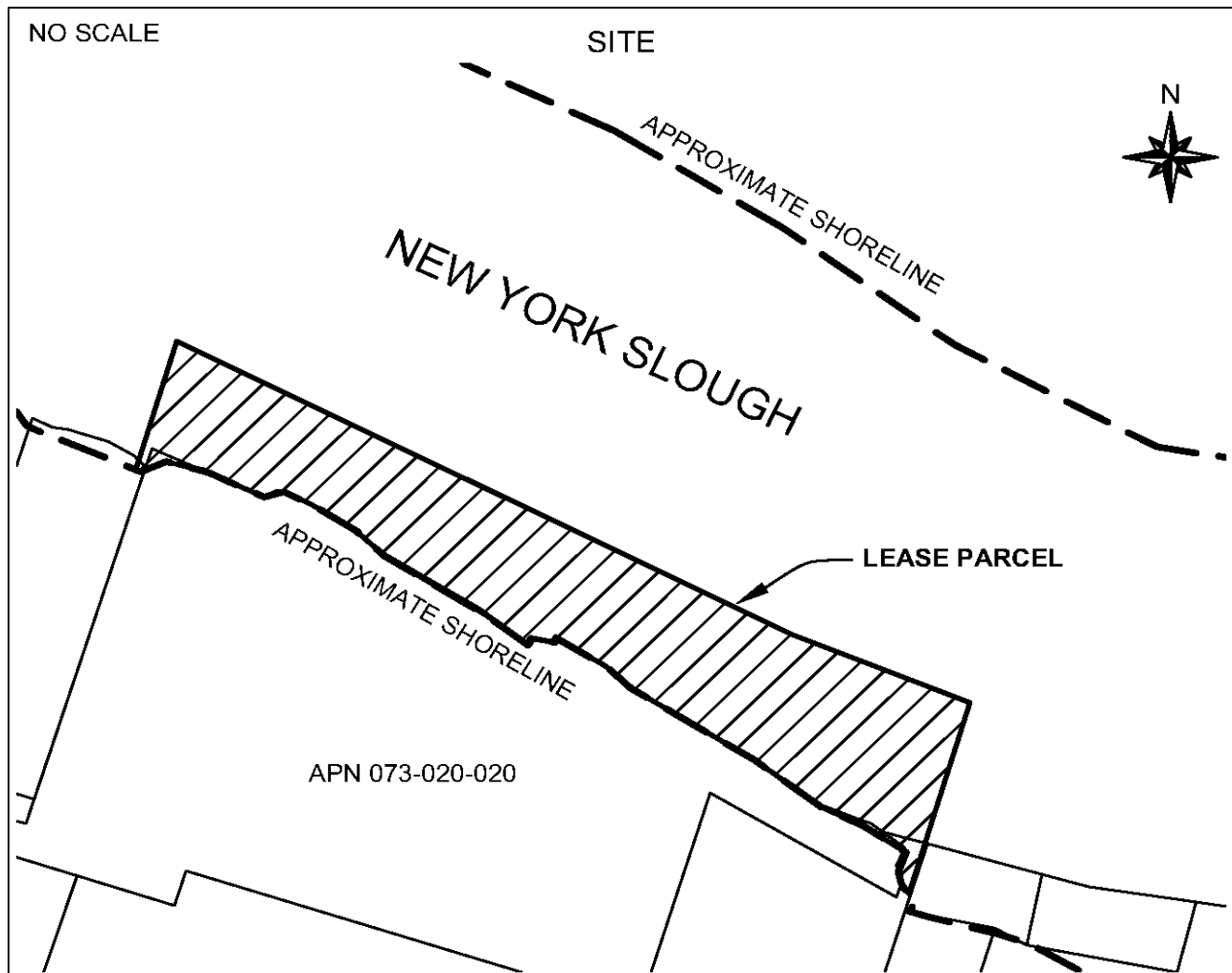
Approval of an Industrial Use lease between the City of Pittsburg and Isle Capital Corporation, and a sublease between Isle Capital Corporation and Koch Carbon, LLC, pursuant to Chapter 422, Statutes of 2011.

## AREA, LAND TYPE, AND LOCATION:

Approximately 6.8 acres of legislatively granted Public Trust Lands located in New York Slough, Pittsburg, Contra Costa County (as shown in Figure 1 and Figure 2).

**Figure 1. Location**



**Figure 2. Site Map**

NOTE: This depiction of the site premises is based on unverified information provided by the Grantee or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

## BACKGROUND AND PROPOSED LEASE AND SUBLEASE

The City of Pittsburg (City) is a trustee of sovereign tide and submerged land granted by the Legislature pursuant to [Chapter 422, Statutes of 2011](#). This statute granted the City all tide and submerged lands within the City boundaries to hold and manage in trust, subject to a series of conditions. One of these conditions, as established by Section 3, subdivision (j), of Chapter 422, states:

*The trustee shall not authorize a capital outlay project, lease, or agreement for port industrial facilities, including, but not limited to, a*

*marine terminal, pipeline, or other related energy facility, on the trust lands without first requesting and receiving the approval of the commission. Prior to approving a capital outlay project, lease, or agreement, the commission shall consult with other governmental agencies, and the commission shall not approve the project, lease, or agreement, unless the commission determines that the project is in, and for, the best interest of the people of the state and consistent with applicable provisions of law.*

In keeping with this condition, the City submitted a proposed industrial use lease and an associated sublease to the Commission for approval on April 4, 2025 (attached as Exhibit A).

The proposed lease would succeed an existing lease, known as PRC 7872, which was authorized by the Commission on February 27, 1996 ([Item 1, February 27, 1996](#)) to Isle Capital Corporation (Lessee) for docking facilities associated with a dry bulk marine terminal. This lease would be terminated prior to its expiration to allow the City to issue the proposed lease, which would become immediately effective upon termination of the existing lease. Additionally, the sublease between the Lessee and Koch Carbon, Inc. (Sublessee), which was originally approved by the Commission on the same day that PRC 7872 was authorized, will be replaced with a new sublease between the same parties.

The proposed lease authorizes the Lessee to continue using four separate marine structures utilized in the shipping of dry bulk material; these structures are collectively known as the "Industrial Wharf." The Industrial Wharf facilitates the loading and unloading of dry bulk materials to and from the Lessee's Dry Bulk Marine Transfer and Storage Terminal located on the adjacent upland property. The proposed sublease would allow the Sublessee to continue operating and maintaining the Dry Bulk Marine Transfer and Storage Terminal and the Industrial Wharf. Commission staff have reviewed both the proposed lease and the proposed sublease.

Prior to approving the proposed lease and sublease, the Commission must consult with other governmental agencies, and determine that the project is in, and for, the best interest of the people of the State and consistent with applicable provisions of law.

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **AUTHORITY:**

Section 3, subdivision (j), of Chapter 422 requires the Commission to consider and approve any capital outlay project, lease, or agreement for Port industrial facilities on lands granted to Pittsburg before the project, lease, or agreement becomes effective. The proposed industrial use lease qualifies as an agreement for Port industrial facilities.

### **PUBLIC TRUST AND STATE'S BEST INTERESTS:**

Consistent with the requirements of Chapter 422, Commission staff has consulted with the California Department of Fish and Wildlife, United States Army Corps of Engineers, and the San Francisco Bay Regional Water Quality Control Board. These agencies have not expressed any issues with the proposed lease and sublease.

Additionally, Chapter 422 requires that any lease of trust lands be consistent with the City's [Trust Lands Use Plan](#), for fair annual rent, and for a term that does not exceed 49 years (Section 3, subd. (d).). Consistent with these requirements, the proposed lease has a term of 29 years and 10 days and contains provisions escalating rent over time and reappraising it to fair market rate. Likewise, the City has determined that the proposed lease is consistent with its Trust Lands Use Plan. Staff concurs with this determination because the Trust Lands Use Plan recognizes the historic and ongoing industrial uses of tidelands.

The proposed lease and sublease facilitate waterborne commerce, which is a use that is consistent with the Public Trust. Additionally, the proposed lease includes an annual Community Benefit Fee, the payment of which will contribute to the City's climate resiliency efforts and projects to improve public access to the waterfront. Furthermore, revenue generated by the proposed lease will be used to fund the City's public access and waterfront development projects and will contribute to management and maintenance of the City's granted lands and public facilities thereon. Thus, based on the information provided by the City and staff's analysis, the proposed lease and sublease are consistent with applicable provisions of law and the uses described in Chapter 422. Additionally, as the Lessee and Sublessee will maintain the property's use for loading, unloading, and storing goods moved in maritime commerce, the proposed lease and sublease benefit the regional and statewide economy. Therefore, staff believes the proposed lease and sublease are in, and for, the best interests of the people of the State and consistent with

applicable provisions of law. Staff recommends that the Commission approve the proposed lease and sublease.

## **OTHER PERTINENT INFORMATION:**

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1. This proposed action is consistent with the “Meeting Evolving Public Trust Needs” and “Committing to Collaborative Leadership” Strategic Focus Areas of the Commission’s 2021–2025 Strategic Plan
2. Staff recommends that the Commission find that approval of the lease agreement is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 14, section 15301.

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15061.

3. Approval of a sublease is not a project as defined by the California Environmental Quality Act (CEQA) because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, sections 15060, subdivision (c)(3), and 15378, subdivision (b)(5).

## **EXHIBITS:**

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- A. Proposed Lease
- B. Proposed Sublease

## **RECOMMENDED ACTION:**

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It is recommended that the Commission:

### **CEQA FINDING:**

Find that approval of the lease agreement is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, title 14, section 15301.

**PUBLIC TRUST AND STATE'S BEST INTERESTS:**

Find that the proposed lease and sublease will not substantially interfere with Public Trust needs and values at this location, at this time, and for the term of the lease or the sublease; is consistent with the common law Public Trust doctrine; and is in the best interests of the State.

**AUTHORIZATION:**

1. Find that the proposed lease and sublease, substantially in the form provided in Exhibit A and Exhibit B, respectively, are in, and for, the best interest of the people of the State and are consistent with applicable provisions of law.
2. Approve the proposed lease, in substantially the same form provided in Exhibit A, between the City of Pittsburgh and Isle Capital Corporation.
3. Approve the proposed sublease, in substantially the same form provided in Exhibit B, between Isle Capital Corporation, and Koch Carbon, LLC.

# **Exhibit A**

## **TIDELANDS LEASE AGREEMENT by and between the**

**THE CITY OF PITTSBURG**

**and**

**ISLE CAPITAL CORPORATION**

This LEASE AGREEMENT ("**Lease**" or "**Agreement**" or "**Tidelands Lease**"), dated as of June 20, 2025 is entered into by and between the City of Pittsburg, a municipal corporation ("**City**") and Isle Capital Corporation, a California corporation, acting as trustee, For Benefit of the LA/VC Trust, d.b.a. Pittsburg Marine Terminal ("**Tenant**"). City and Tenant are hereafter each referred to as a "**Party**" and collectively referred to as the "**Parties**."

#### RECITALS

A. California Senate Bill 551 (SB 551) of 2011 enacted a grant of sovereign tidelands and submerged lands ("**Tidelands**") within City boundaries to the City of Pittsburg. Through SB 551 the City is the trustee for APN 073-020-022, approximately 6.8 acres of Tidelands situated in New York Slough, located in the City of Pittsburg, as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "**Property**").

B. Within the Property are four separate marine structures used for transport of dry bulk material (collectively, the "**Industrial Wharf**"). The Industrial Wharf is for loading and unloading dry bulk materials of the Dry Bulk Marine Transfer and Storage Terminal located on the upland property of Tenant adjacent to the Property. Each structure consists of a platform and, with respect to structures 1, 2 and 3 on Exhibit B, a walkway or catwalk over the water to access the platform. One such platform (structure 4 on Exhibit B) is itself anchored on the adjacent property of the Tenant. The walkway or catwalk of structure 2 on Exhibit B is adjacent to a curved rail anchored on both ends on the upland property of the Tenant. The ship loader for the Tenant's Business, as the term "Business" is defined in Recital C below, is also displayed on Exhibit B although the ship loader is not on the Property or part of the Industrial Wharf.

C. Tenant desires to lease the Property to continue operating and maintaining the Industrial Wharf in connection with the Dry Bulk Marine Transfer and Storage Terminal located adjacent to the Property (the "**Business**").

D. The Property is subject to that certain tidelands Trust Lands Use Plan adopted by the City on January 20, 2009 and amended from time to time, in accordance with Public Resources Code Sections 6361 through 6369.3, as may be amended from time to time, (the "**TLUP**").

E. Tenant and the California State Lands Commission (the "**Commission**") previously entered into an Industrial Use General Lease No. PRC 7872, dated December 2, 1996 for a parcel having an APN of 073-020-022, for lease of the Property (the "**Prior Lease**").

F. Tenant has entered into a new sublease with Koch Carbon, LLC that shall be effective on the date that this Tidelands Lease becomes effective. Tenant desires to terminate the Prior Lease before its expiration date of December 2, 2026 and enter into a new Industrial Tidelands Lease with the City of Pittsburg for continued operation of the Business.

G. The Prior Lease allows for early termination; however, for continued utilization of the Industrial Wharf, SB 551 requires a new Industrial Tidelands Lease ("**Tidelands Lease**") and approval by the Commission. Accordingly, this Tidelands Lease shall not become effective until the date of the last to occur of the approval by the City of Pittsburg City Council, approval by the Commission, and the full execution of the Tidelands Lease (the "**Effective Date**" or "**Commencement Date**"). The Prior Lease shall terminate on the date that this Tidelands Lease



becomes effective. In accordance with the terms of the Prior Lease, Tenant has previously paid rent to the City the amount of \$148,775.11 (the “**Prior Payment**”) for the period December 2, 2024, through December 1, 2025. The Parties wish to transition to a July – June annual payment term to align with fiscal year accounting; and

H. The City has determined that this Tidelands Lease is consistent with the TLUP and is in conformity with the public trust uses permitted by the SB 551, and is willing to mutually release Tenant from the Prior Lease, subject to, and concurrent with, Commission approval of and execution of this new Tidelands Lease for Property to the Tenant on the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Tenant hereby agree as of the Effective Date as follows.

## **ARTICLE I DEFINITIONS; DEMISE OF PROPERTY**

1.1 Definitions. For purposes of this Agreement, the following terms shall have the meanings set forth in this Section. Additional definitions are set forth in the Recitals and the text of this Agreement.

- a) “**Additional Rent**” is defined in Section 2.3.
- b) “**Agreement**” is defined in the first paragraph above.
- c) “**Anniversary Date**” is defined in Section 2.2.1.
- d) “**Applicable Laws**” is defined in Section 4.4.
- e) “**Business**” is defined in Recital C.
- f) “**City**” is defined in the first paragraph above.
- g) “**Claims**” is defined in Section 3.2
- h) “**Commencement Date**” is defined in Recital G.
- i) “**Commission**” is defined in Recital E.
- j) “**Default Rate**” is defined in Article X.
- k) “**Dry Bulk Marine Transfer and Storage Terminal**” means the Pittsburg Marine Terminal located in the City of Pittsburg, County of Contra Costa, California on Tenant’s property adjacent to, and upland of, the Property described on Exhibit A.
- l) “**Dry Bulk Material**” means cement, cementitious materials, aggregate (sand and gravel), gypsum/bauxite, scrap metal, limestone, lumber, grains, petroleum coke, and any other

non-hazardous materials as classified by the United State Environmental Protection Agency or its successor.

- m) “**Effective Date**” is defined in Recital G.
- n) “**Entitlements**” is defined in 4.1(b).
- o) “**Events of Default**” is defined in Section 13.
- P) “**Force Majeure**” is defined in Section 14.1.
- q) “**Hazardous Materials**” is defined in Section 7.4.1.
- r) “**Hazardous Materials Claims**” is defined in Section 7.2(c).
- s) “**Hazardous Materials Laws**” is defined in Section 7.4.2.
- t) “**Impositions**” is defined in Section 3.1.
- u) “**Improvements**” is defined as any change, alteration or addition to the Property made during the Term of this Agreement or during the term of the Prior Lease including the Industrial Wharf.
- v) “**Indemnitees**” is defined in Section 3.2.
- w) “**Lease**” is defined in the first paragraph above.
- x) “**Lease Termination**” is defined in Section 2.1.
- y) “**Liens**” is defined in Section 5.1.
- z) “**Notice of Default**” is defined in Section 13.2.1
- aa) “**Party**” or “**Parties**” is defined in the first paragraph on page 1 above.
- bb) “**Prior Lease**” is defined in Recital E.
- cc) “**Prior Payment**” is defined in Recital G.
- dd) “**Property**” is defined in Recital A.
- ee) “**Remedial Work**” is defined in Section 7.2(e).
- ff) “**Rent**” is defined in Section 2.2.1.
- gg) “**Security Deposit**” is defined in Section 2.6.
- hh) “**Tenant**” is defined in the first paragraph above

ii) "**Term**" is defined in Section 2.1.

jj) "**Transfer**" is defined in Section 12.1.

kk) "**TLUP**" is defined in Recital D.

1.2 Incorporation of Recitals. The Parties acknowledge the accuracy of the Recitals set forth above, and all such Recitals are hereby incorporated into this Agreement.

1.3 Creation of Lease. City hereby leases to Tenant, and Tenant hereby leases from City, the Property for the Term subject to the terms and conditions and for the purposes set forth in this Agreement.

## **ARTICLE II**

### **TERM OF LEASE; RENT; SECURITY DEPOSIT; COMMUNITY BENEFIT**

2.1 Term. The term of this Agreement (the "**Term**") shall commence on the Commencement Date, and unless terminated earlier pursuant to the provisions hereof, expire twenty-nine (29) years and ten (10) days later on June 30, 2054. The expiration of the Term or the sooner termination of this Agreement is referred to herein as the "**Lease Termination**." The Parties agree to execute and record a Memorandum of this Lease and termination of the Prior Lease in the Official Records of Contra Costa County in accordance with Section 14.5.5 of this Agreement.

2.2 Rent.

2.2.1 Tenant made Prior Payment for \$148,775.11 for the December 2, 2024 – December 1, 2025 period. A total of \$67,254.50 of the Prior Payment (portion that covers June 20, 2025 – December 1, 2025) shall be deducted as a credit to Tenant's payments through the end of said period as shown in the table below.

Unless this Agreement is sooner terminated an annual payment as escalated in Section 2.2.2 below shall become due on July 1st, (the "**Anniversary Date**") in the year 2025, and on each Anniversary Date thereafter through June 30, 2054 (hereinafter the "Rent").

The following table assumes a 3% Escalation Percentage beginning July 1, 2025 and shall serve as an example of Rent calculation as the lease is adjusted to the July – June fiscal year. When calculating Rent, the actual Escalation Percentage as defined in Section 2.2.2 shall be applied beginning on July 1, 2025 and each Anniversary Date through the end of the Term.

		Total Cost per Period	Applicable Credit	Rent Due
June 20, 2025	June 30, 2025	\$4,483.63	\$4,483.63	\$0
July 1, 2025	June 30, 2026	\$153,238.36	\$62,770.87	\$90,467.49
July 1, 2026	June 30, 2027	\$157,835.51	\$0	\$157,835.51

Rent is payable to the City at the address shown in Section 14.5.2 or such other place as the City may designate in writing. In the event the Tenant fails to pay Rent by the close of business on the due date or the Tenant's check is returned by the financial institution on which it is drawn for

insufficient funds, the Tenant shall pay the City (i) Two Hundred Fifty Dollars (\$250) as a late fee and (ii) the maximum rate of interest permitted by law, accrued daily on such late Rent due to the City, which must be paid together with the payment of the Rent.

2.2.2 On the Anniversary Date in the year 2025, Rent for the period July 1, 2025 – June 30, 2026 as defined in Section 2.2.1 shall increase by the percent increase (further defined below as the “**Escalation Percentage**”) in the Consumer Price Index (CPI) for All Urban Consumers for the San Francisco-Oakland-San Jose, California metropolitan area as published by the Bureau of Labor Statistics for the United States Department of Labor.

On each Anniversary Date thereafter, Rent shall increase by the Escalation Percentage in the Consumer Price Index (CPI) for All Urban Consumers for the San Francisco-Oakland-San Jose, California metropolitan area as published by the Bureau of Labor Statistics for the United States Department of Labor. In no case shall the rent increase exceed five percent (5%) in any one year. However, to the extent that the Escalation Percentage exceeds five percent (5%) in any one year, such excess shall be added to the next following adjustment period(s) that would otherwise be adjusted at less than five percent (5%), but in no case exceeding five percent (5%) in any one year.

Subject to the provisions and limitations as outlined above in this Section 2.2.2 above, beginning on the Anniversary Date in the year 2025, and on each Anniversary Date thereafter, using the April CPI for that year and the prior year, the following formulas shall be used to determine the Escalation Percentage and the escalated Rent for the upcoming year (July 1st through June 30th)

Escalation Percentage = (current April CPI – Prior April CPI) / Prior April CPI

escalated Rent for the upcoming year = (1 + Escalation Percentage) x current Rent

Example: Escalation Percentage: = (351.247-339.411)/339.411 = 0.03  
Rent: (1 + 0.03) x \$148,775.11 = \$153,238.36

2.3 **Additional Rent.** In addition to Rent, the Tenant shall pay and discharge when due all Impositions described in Article III, all insurance premiums, utility costs, all City fees and all other liabilities and obligations that the Tenant assumes or agrees to pay or undertake pursuant to this Agreement (the “**Additional Rent**”).

2.4 **Fair Market Rental Value Reappraisals.** The Rent set forth above shall be reset on the tenth and twentieth anniversary dates of this Agreement (the “**Reappraisal Dates**”) as follows:

2.4.1 The fair market value of the Property shall be appraised as though vacant and exclusive of all Improvements including the Industrial Wharf, unencumbered, suitable, and available for industrial development and based on the assumption of the Property’s unity in use value with the adjoining upland site, as though it too were vacant and exclusive of the leasehold improvements, unencumbered, suitable and available for industrial development. Unity in use is defined as the concept that submerged lands used in conjunction with an adjoining upland industrial use, where their combined use requires an interdependency between land and water, creates a submerged lands unit value equal to that of the adjoining uplands. The value estimate is to be predicated on the assumption that the Property is not affected by the presence of potentially

hazardous materials that may adversely affect its value, marketability, or utility. Such new Rent shall thereafter (on each Anniversary Date) be adjusted pursuant to Section 2.2.2 above, to establish the annual rent.

2.4.2 If the Parties are unable to agree upon the fair market rental value of the Property one (1) year prior to a Reappraisal Date, such value shall be established by the appraisal of a qualified, mutually agreeable appraiser (licensed or certified by the State of California and who shall be an MAI (Member, Appraisal Institute) or the equivalent familiar with real estate values in Contra Costa County, California. In the event that the Parties are unable to agree upon an appraiser eleven (11) months prior to such Reappraisal Date, then, upon written demand by either Party, such value shall be established by each Party appointing an appraiser with the two appraisers thus appointed choosing a third appraiser, qualified as set forth above, who shall review the appraisals of the first two and shall determine no later than three (3) months prior to the Reappraisal Date, a value within the range of appraisal values thus provided which value shall be binding on the Parties. Each Party shall bear one half the costs of the deciding appraiser and the full cost of their respective appraiser. If no reappraisal is performed pursuant to this section, then the Rent shall continue to be adjusted pursuant to Section 2.2.2

2.4.3 In no event shall Rent decrease by more than 2%. Such new Rent shall thereafter (on each Anniversary Date) be adjusted pursuant to Section 2.2.2.

2.5 Tenant Responsibility for Costs and Expenses of Lease. It is the intent of the Parties that, except as expressly provided in Sections 7.2 (Tenant's Covenants), 8.1 (Indemnity) and 9.1 (Damage or Destruction), the Rent shall be an absolutely net return to the City and that the Tenant shall pay all costs and expenses relating to the Property of any kind or nature whatsoever. Such costs and expenses shall include, without limitation, all amounts attributable to, paid or incurred in connection with the ownership,

operation, repair, restoration, maintenance and management of the Property; real property taxes; rent taxes; gross receipt taxes (whether assessed against the City or assessed against the Tenant and collected by the City, or both); water and sewer charges; insurance premiums (including earthquake, if economically feasible in the discretion of the Tenant); utilities; refuse disposal; lighting (including outside lighting); fire detection systems including monitoring, maintenance and repair; security; janitorial services; labor; air-conditioning and heating; maintenance and repair costs and service contracts; costs of licenses, permits and inspections; and all other costs and expenses paid or incurred with respect to the Property.

2.6 Security Deposit. Upon execution of this Agreement, the Tenant shall pay to the City a security deposit in the amount of one hundred fifty thousand dollars (\$150,000) (the "Security Deposit"). Provided that Tenant is not in default under this Agreement, the City shall return the Security Deposit to the Tenant upon termination. The City has no obligation to pay or earn interest on the Security Deposit, but if interest is paid thereon, such interest will become part of the Security Deposit. Notwithstanding the above, the City shall use its best efforts to put the Security Deposit in an interest bearing account of the City's choice within thirty (30) days of its receipt by the City.

2.7 Use of Security Deposit. If the Tenant is in default with respect to any provision of this Agreement, the City may, but has no obligation to, use the Security Deposit or any portion of the

Security Deposit to cure such default or to compensate the City for any damage or reasonable expense sustained by the City and resulting from such default, but only after providing the Tenant with an opportunity to cure such default pursuant to the provisions of Section 13.2. The City shall provide the Tenant with evidence of damages incurred as a result of a default by the Tenant. If this Agreement has not been terminated as a result of such default, the Tenant, on demand from the City, shall promptly restore the Security Deposit to the full amount required under Section 2.6.

2.8 Community Benefit. Tenant shall contribute \$25,000 annually to the City of Pittsburgh's climate resiliency and community waterfront access efforts along its waterfront. This amount shall increase by the Escalation Percentage as described in Section 2.2.2. This Community Benefit contribution is payable on July 1, 2025 and each Anniversary Date thereafter to the City at the address shown in Section 14.5.2 or such other place as the City may designate in writing. In the event the Tenant fails to pay the Community Benefit contribution by the close of business on the due date or the Tenant's check is returned by the financial institution on which it is drawn for insufficient funds, the Tenant shall pay the City (i) Two Hundred Fifty Dollars (\$250) as a late fee and (ii) the maximum rate of interest permitted by law, accrued daily on such late payment due to the City, which must be paid together with the payment of the Community Benefit contribution.

### **ARTICLE III TAXES, ASSESSMENTS AND OTHER CHARGES**

3.1 Impositions. Throughout the Term, the Tenant shall pay prior to delinquency, all insurance premiums, utility costs, real property taxes, possessory interest taxes, all city fees, including license and permit fees, sales, use or occupancy taxes, assessments whether general or special, ordinary or extraordinary, unforeseen, as well as foreseen, of any kind or nature whatsoever, pertaining to the Property or part thereof, including, but not limited to (i) any assessment, levy, imposition or charge in lieu of or in substitution for real estate taxes, and (ii) any assessment for public improvements or benefits which is assessed, levied, or imposed upon or which becomes due and payable and a lien upon (a) the Property or any part thereof or any personal property, equipment or other facility used in the operation thereof, (b) the rent or income received by the Tenant from subtenants or licensees, (c) any use or occupancy of the Property or part thereof, or (d) this transaction or any document to which the Tenant is a party creating or transferring an estate or interest in the Property or part thereof. All of the foregoing are hereinafter referred to as "**Impositions**."

3.1.1 Installments. If by law any Imposition is payable, or may be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), the Tenant may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same respectively become due and before any fine or penalty may be added thereto for the nonpayment of any such installment and interest. Any Impositions relating to tax years that are only partially included in the Term of this Agreement will be prorated between the Tenant and the City.

3.1.2 Evidence of Payment. Upon written request by the City, the Tenant shall furnish, in form satisfactory to the City, evidence of payment prior to delinquency of all Impositions payable by the Tenant.

3.2 Tenant Right to Contest. The Tenant shall have the right before any delinquency occurs to contest or object to the amount or validity of any Imposition by appropriate legal proceedings, but such right shall not be deemed or construed in any way as relieving, modifying or extending the Tenant's covenant to pay any such Imposition at the time and in the manner required by law. Any such contest shall be conducted in accordance with and subject to the requirements of all Applicable Laws and otherwise in a manner that does not subject the City's title to the Property to foreclosure or forfeiture. The Tenant shall indemnify, defend, and hold the City and its elected and appointed officers, officials, employees, agents and representatives (all of the foregoing, collectively the "Indemnitees") harmless from and against all liabilities, losses, damages, fines, deficiencies, penalties, claims, demands, suits, actions, causes of action, legal or administrative proceedings, judgments, costs and expenses (including without limitation reasonable attorneys' fees and court costs) (all of the foregoing, collectively "Claims") arising as a result of or in connection with any such contest brought by the Tenant. During any contest of an Imposition, the Tenant shall (by payment of disputed sums, if necessary) prevent any advertisement of tax sale, foreclosure of, or any divesting of the City's title, reversion or other interest in the Property. Upon final determination of the amount or validity of any Imposition contested pursuant to this Section 3.2, the Tenant shall immediately pay such Imposition and all costs and expenses relating to such challenge.

3.3 Tenant Duty to File. The Tenant has the duty of making or filing any declaration, statement or report which may be required by Applicable Laws in connection with the determination, equalization, reduction or payment of any Imposition which is or which may become payable by the Tenant under the provisions of this Article III, and shall notify the City in writing upon making such filing, declaration, statement or report, and the City shall not be responsible for the contents of any such declaration, statement or report; provided however, the City shall cooperate with the Tenant in connection with the foregoing, including joinder in any application pertaining thereto to the extent required under Applicable Law, all at no cost to the City.

#### **ARTICLE IV ALTERATIONS AND NEW CONSTRUCTION**

4.1 Changes and Alterations. During the Term of this Agreement, the Tenant shall not make any Improvement that would materially alter the function or appearance of the Property without the prior written consent of the City, which consent shall be at the City's sole discretion and not be unreasonably withheld or delayed. All alterations and additions shall be made at the Tenant's sole cost and expense and shall comply with all of the following:

- (a) Improvements may not materially impair the value or structural integrity of the Property.
- (b) No Improvements may be undertaken until the Tenant has obtained all required permits and authorizations of any federal, state or local government or departments or subdivisions of any of them, having jurisdiction including, but not limited to, approval from the State Lands Commission (collectively, the "**Entitlements**"). The Parties agree that this Agreement will have no bearing on the City's consideration of the Tenant's application(s) for the Entitlements, and that the City reserves its full discretion to the extent allowed by Applicable Laws with regard to the application(s) for the Entitlements, including the right to deny the application(s), if allowed by Applicable Laws.

- (c) Improvements must be made in a good and workmanlike manner and in accordance with all applicable permits and all Applicable Laws.
- (d) During the construction of any Improvements in, to or of, the Property, or the permitted demolition or new construction or any restoration, the Tenant shall comply with the insurance requirements set forth in Section 8.2, which policy or policies by endorsement thereto, if not then covered, shall also insure any change, alteration or addition or new construction, including all materials and equipment incorporated in, on or about the Property.
- (e) Prior to approval of any construction, change, alteration or repair, the Tenant shall deliver to the City, no less than One Hundred Eighty (180) days before the commencement of such work, written notice of the proposed work, a general description of the proposed work and sufficient information to permit the City sufficient time to review such request and to amend the TLUP if the City deems such amendment necessary prior to approval of such Improvements by the State Lands Commission.
- (f) Prior to beginning work on any construction, change, alteration or repair, Tenant shall file with the City a payment bond. Pursuant to California Civil Code Section 9554, such payment bond must be in a sum not less than one hundred percent (100%) of the total amount payable by the terms of the contract for such construction, change alteration or repair, and must satisfy the other requirements specified in that section. This Section shall only apply if the construction, change alteration or repair is for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind and involves the expenditure of more than twenty-five thousand dollars (\$25,000).

4.2 No Right to Demolish. Notwithstanding any other provisions of this Article IV, the Tenant has no right to demolish the Improvements, once built, unless the Tenant has received the prior written approval of the City, which approval shall not be unreasonably withheld or delayed.

4.3 The City's Right of Inspection. The City, in person or through its agents, upon at least forty-eight (48) hours prior written notice to the Tenant, shall have the right to enter upon the Property for purposes of reasonable inspections performed during reasonable business hours in order to assure compliance by the Tenant with its obligations under this Lease.

4.4 Compliance with Laws. The Tenant shall carry out the construction of the Improvements in conformity with all present or future federal, state, municipal, local, administrative or judicial laws, regulations, ordinances, orders, policy, action, common law, guidelines, permit requirements, directives, judgments, injunctions or decrees or any order or directive issued by any governmental agency, including, to the extent required by the California Labor Code, payment of not less than the latest prevailing rate to workers as determined by the Director of the Department of Industrial Relations of the State of California (all of the foregoing, collectively "Applicable Laws").



## **ARTICLE V MECHANICS LIENS**

5.1 Mechanics Liens. Subject to the right to contest the same prior to payment, Tenant agrees and shall keep the Property free and clear of all mechanics liens, stop notices, and other liens on account of work done by or for Tenant (collectively “**Liens**”). Tenant shall indemnify, defend (with counsel reasonably acceptable to the City) and hold City’s Indemnitees harmless from and against all liability, loss, damages, costs and expenses (including reasonable attorney’s fees) incurred by or brought against Tenant or City for claims of a Lien of laborers or materialmen or others for work performed or materials or supplies furnished to Tenant or persons claiming under it. In the event any lien is recorded, Tenant shall, within twenty (20) days following such recordation, cause such lien to be removed of record by bonding or otherwise.

## **ARTICLE VI MANAGEMENT, USE AND OPERATION OF THE PROPERTY**

6.1 Permitted Uses. Tenant at all times during the Term may use the Property for the operation of the Business as described herein and for no other purposes without the prior written consent of the City. The Tenant shall not use or permit the Property to be used in whole or in part during the Term for any purpose other than as permitted under this Agreement or by the City’s prior written consent.

6.2 Nondiscrimination. Tenant herein covenants by and for itself, its administrators, and assigns, and all persons claiming under or through it, and this Lease is made and accepted upon and subject to the following conditions: that there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Property nor shall the Tenant, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the Property.

6.3 Easements; Reservation of Rights. The City reserves the right to locate and construct its own utilities and to grant nonexclusive easements across the Property for utility and other purposes including the installation, maintenance, repair and replacement of utilities; provided that the exercise of such rights do not unreasonably interfere with the Tenant’s use of the Property for the purposes set forth herein.

6.4 Maintenance and Inspection of the Property.

6.4.1 Maintenance. At the Tenant’s sole cost and expense throughout the Term, Tenant shall operate, maintain and manage the Property including all landscaping and Improvements thereon in good order and repair and in neat, clean sanitary and safe condition in compliance with all local, state and federal laws, statutes and regulations relating to the use, occupancy or operation of the Property. Tenant shall ensure that the Property is served by adequate lighting in accordance with applicable building codes. Tenant shall promptly, at the Tenant’s own cost and

expense, make all necessary repairs, including replacements or renewals when necessary, and all such repairs shall be at least equal in quality to the original work, reasonable wear and tear accepted. Tenant shall keep and maintain all portions of the Property in a clean and orderly condition, free of accumulation of dirt, rubbish, and graffiti. If Tenant fails to maintain the Property in accordance with this Agreement, the City shall have the right, in its sole discretion, to terminate this Agreement pursuant to Article XIII, and/or to perform, or cause to be performed, the maintenance itself at the Tenant's expense.

6.4.2 Inspection. At any time during the Term, upon reasonable advance written notice and during normal business hours, the City may conduct inspections of the Property to confirm that it is being properly maintained as required herein. Following its inspection, the City may deliver to the Tenant written notification of any portions of the Property which the City has determined are not being properly maintained, and the Tenant shall promptly prepare and deliver to the City the Tenant's proposed plan for remedying the indicated deficiencies. The Tenant's failure to deliver a remedial plan and to complete remedial work within a reasonable time as determined by the City in its discretion is a default under this Agreement. The failure of the City to inspect or to notify the Tenant of any deficiency shall not be a waiver of default or of the City's right to enforce the Tenant's maintenance and repair obligations. The Tenant shall defend (with counsel reasonably acceptable to the City), indemnify and hold the Indemnitees harmless from and against any and all Claims arising out of the Tenant's failure to fully and timely fulfill its obligations to maintain and repair the Property as required hereunder.

6.5 City's Right to Perform Tenant Obligations. If following written notice as set forth in Section 13.2.1 and the expiration of any applicable cure period, the Tenant fails to perform its obligations to maintain the Property in accordance with the standards set forth in this Agreement, the City shall have the right, but not the obligation, to perform such work upon delivery of written notice to the Tenant, and the Tenant shall reimburse the City for all expenditures the City incurs in connection with such work together with interest thereon at the Default Rate specified in Article X. The City's election to undertake such obligation shall not operate as a waiver of any other right or remedy the City may have pursuant to this Agreement.

6.6 City Not Obligated to Perform Repairs. Notwithstanding any contrary provision herein, the City shall not be obligated to make any repairs, alterations, additions, improvements or betterments to the Property during the term of this Agreement nor shall the City be obligated to maintain or operate the Property.

6.7 Compliance with Laws. The Tenant, at its sole cost and expense, shall comply with all Applicable Laws pertaining to the use, operation, and management of the Property. The Tenant shall not itself use the Property for any unlawful purpose or perform, permit or suffer any act of omission or commission upon or about the Property or the Property which would result in a nuisance or a violation of law. The Tenant shall use reasonable efforts to not allow any permittees, licensees, guests or invitees to use the Property for any unlawful purpose or perform, allow or suffer any act of omission or commission upon or about the Property or the Property which would result in a nuisance or a violation of law.

6.8 Tenant Right to Contest. The Tenant shall have the right to contest by appropriate proceedings, in the name of the Tenant, and without cost or expense to the City, the validity or application of any Applicable Law. If compliance with any Applicable Law may legally be delayed

pending the prosecution of any such proceeding without the incurrence of any lien, charge or liability against the Property or Tenant's interest therein, and without subjecting the Tenant or the City to any liability, civil or criminal, for failure so to comply therewith, the Tenant may delay compliance therewith until the final determination of such proceeding. The Tenant shall indemnify, defend (with counsel approved by the City), protect and hold the Indemnitees harmless from and against all Claims arising in connection with any such contest brought by the Tenant. The foregoing indemnity obligation shall survive the expiration or earlier termination of this Agreement.

## **ARTICLE VII**

### **CONDITION OF THE PREMISES; ENVIRONMENTAL MATTERS**

#### **7.1     Condition of the Property.**

7.1.1 AS-IS Condition. The Tenant leases the Property in its "AS IS" "WHEREIS" AND WITH ALL FAULTS condition, as such condition exists as of the Commencement Date.

7.1.2 No Representations. The Tenant acknowledges that except as expressly set forth herein, the City makes no representations or warranties expressed or implied regarding the condition of the Property or the fitness or suitability thereof for the Tenant's purposes, including but not limited to, the condition of the soil, its geology, topography, the presence or absence of fill, the presence or absence of Hazardous Materials, drainage, flood zone designation, or compliance with Hazardous Materials Laws, and no patent or latent defect or deficiency in the condition of the Property shall affect the rights of the Tenant or the City hereunder. The Tenant shall rely solely on its own independent investigation and judgment as to all matters relating to the Property. The Tenant acknowledges and agrees that prior to the Effective Date it has made such investigations of the Property, including without limitation such inquiries of governmental agencies, environmental investigations and inspections as Tenant deemed necessary to determine the condition of the Property, and has approved all such characteristics and conditions.

#### **7.2     Tenant's Covenants.** The Tenant hereby covenants and agrees that throughout the Term:

- (a) The Tenant's use and operation of the Property shall be in compliance with all Hazardous Materials Laws, and the Tenant shall not cause the Property or any portion thereof to be in violation of any Hazardous Materials Laws. Notwithstanding anything to the contrary expressly or impliedly contained in this Lease, the Tenant shall have no liability or responsibility whatsoever to the City or any Indemnitees with regard to the presence, as of the Effective Date, of Hazardous Materials in, on or under the Property or any adjacent land, water or other property, or the subsequent release of such Hazardous Materials present on, in or under the Property or any adjacent land, water or other property as of the Effective Date, except to the extent such release is caused by the negligence or willful misconduct of the Tenant or any of the Tenant's agents, employees, invitees, contractors, subcontractors, licensees, permittees, or any person acting on behalf of any of the foregoing.
- (b) The Tenant shall not permit the Property or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials nor shall the Tenant permit the presence or release of Hazardous Materials in, on, under, about or from the Property with the exception of materials customarily used

in construction, operation, use or maintenance of Business facilities, provided such materials are used, stored and disposed of in compliance with Hazardous Materials Laws.

- (c) Upon receiving knowledge of the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials on the Property, or the release or presence of Hazardous Materials on the Property, the Tenant shall immediately advise the City in writing of: (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Tenant or the Property pursuant to any applicable Hazardous Materials Laws; (ii) any and all complaints, claims, citations, demands, inquiries, reports, or notices made or threatened by any third party against the Tenant or the Property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials; (iii) the presence or release of any Hazardous Materials in, on, under, about or from the Property; or (iv) Tenant's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property classified as "Border Zone Property" under the provisions of California Health and Safety Code, Sections 25220 et seq., or any regulation adopted in connection therewith, that may, to the Tenant's knowledge, without any duty of investigation or inquiry, in any way affect the Property pursuant to any Hazardous Materials Laws or cause it or any part thereof to be designated as Border Zone Property. The matters set forth in the foregoing clauses (i) through (iv) are hereinafter referred to as "Hazardous Materials Claims." The City shall have the right to join and participate in, as a party if it so elects, and at the City's own expense, any legal proceedings or actions initiated in connection with any Hazardous Materials Claim.
- (d) Without the City's prior written consent, which shall not be unreasonably withheld, the Tenant shall not take any remedial action in response to the presence of any Hazardous Materials in, on, under, or about the Property (other than in emergency situations or as required by governmental agencies having jurisdiction, in which case the City agrees to provide its consent), nor enter into any settlement agreement, consent decree, or other compromise with respect to any Hazardous Materials Claim.
- (e) If the presence of any Hazardous Material on the Property results in any contamination of the Property in violation of Hazardous Materials Laws, except to the extent such contamination is not caused by the Tenant or any of the Tenant's agents, employees, invitees, contractors, subcontractors, licensees, permittees, or any person acting on behalf of any of the foregoing, the Tenant shall promptly take all actions at its sole expense as are necessary to remediate the Property as required by law; provided that the City's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld. All costs and expenses of any Remedial Work shall be paid by the Tenant, it being understood that the City shall incur no cost, expense or liability in connection with any Remedial Work. The City shall have the right, but no obligation, to join and participate in, as a party if it so elects at the City's cost, any legal proceedings or actions initiated in connection with any Hazardous Material Claims. For purposes of this Agreement, "**Remedial Work**" means all investigation, testing, analysis, monitoring, restoration, abatement, detoxification, containment, handling, treatment, removal, storage, decontamination, clean-up, transport, disposal or other ameliorative work or response action required by (i) any Hazardous Materials Laws, (ii) any order or

request of any federal, state or local governmental agency, or (iii) any judgment, consent decree, settlement or compromise with respect to any and all enforcement, clean-up, removal, remedial or other governmental or regulatory actions or agreements or orders threatened, instituted, or completed pursuant to any Hazardous Materials Laws or any actions, proceedings or claims by such entities or third parties relating to or arising out of the breach of any Hazardous Materials Laws or the presence or release of any Hazardous Material in, on, under or from the Property.

**7.3 Environmental Indemnity.** Tenant shall indemnify, defend (with counsel reasonably acceptable to the City) and hold the Indemnitees harmless from and against all Claims arising during the Term and resulting, arising, or based directly or indirectly in whole or in part, upon (i) the presence, release, use, generation, discharge, transport, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from the Property during the Term caused by the Tenant or any of the Tenant's agents, employees, invitees, contractors, subcontractors, licensees, permittees, or any person acting on behalf of any of the foregoing, (ii) the failure of the Tenant, the Tenant's employees, agents, contractors, subcontractors, licensees, permittees, or any person acting on behalf of any of the foregoing to comply with Hazardous Materials Laws in the operation of Tenant's Business on the Property (specifically excluding, however, any failure of the Property to comply with hazardous Materials Laws irrespective of the operation of Tenant's Business), or (iii) the breach by the Tenant of any of its covenants contained in this Article VII. The foregoing indemnity shall further apply to any residual contamination in, on, under or about the Property or affecting any natural resources caused by the Tenant or any of the Tenant's agents, employees, invitees, contractors, subcontractors, licensees, permittees, or any person acting on behalf of any of the foregoing, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials caused by the Tenant or any of the Tenant's agents, employees, invitees, contractors, subcontractors, licensees, permittees, or any person acting on behalf of any of the foregoing, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws, and shall include, without limitation, any Claims subject to indemnity under this Section 7.3 arising in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work ordered by a court or required by any federal, state, or local governmental agency or political subdivision. This Section 7.3 shall survive the expiration or earlier termination of this Agreement.

**7.4 Definitions.**

**7.4.1 Hazardous Materials.** As used herein, "**Hazardous Materials**" means any substance, material, or waste which is or becomes regulated by any local, state or federal authority, agency or governmental body, including any material or substance which is: (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter Presley-Tanner Hazardous Substance Account Act); (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v)

petroleum; (vi) friable asbestos; (vii) polychlorinated biphenyls; (viii) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20; (ix) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317); (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq. (42 U.S.C. §6903); or (xi) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, et seq., as the foregoing statutes and regulations now exist or may hereafter be amended.

7.4.2 **Hazardous Materials Laws.** As used herein “**Hazardous Materials Laws**” means all federal, state and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials, including without limitation, the laws, statutes and regulations cited in the preceding Section 7.4.1, as any of the foregoing may be amended from time to time.

## **ARTICLE VIII INDEMNITY AND INSURANCE**

8.1 **Indemnity.** The Tenant shall indemnify, defend (with counsel reasonably acceptable to the City) and hold the Indemnitees harmless from and against any and all Claims arising during the Term and arising from or in connection with any of the following: (i) the operation or management of the Property, (ii) any work or thing done on or in the Property, (iii) any condition of any alteration or addition constructed by the Tenant on the Property, (iv) any breach or default by the Tenant in the performance of any covenant or agreement to be performed by the Tenant pursuant to the terms of this Agreement, (v) any negligence or willful misconduct of the Tenant, or any of its agents, contractors, subcontractors, employees, or licensees, (vi) any accident, injury or damage caused to any person occurring during the Term in or on the Property, and (vii) the furnishing of labor or materials by the Tenant or its contractors, subcontractors, employees, or agents. In the event any such action or proceeding is brought against the City by reason of any such Claim, the Tenant, upon notice from the City, covenants to defend such action or proceeding by counsel reasonably satisfactory to the City. The obligations of the Tenant under this Article VIII shall not apply to any Claim or other matter to the extent such arises as a result of the gross negligence, willful misconduct or sole negligence of the Indemnitees. This Section shall survive the expiration or earlier termination of this Agreement.

8.2 **Insurance Requirements.** The Tenant shall procure, at its sole expense, and maintain in full force and effect during the entirety of the Term, the following insurance naming the City as additional insured and/or loss payee:

- a. Comprehensive General Liability insurance with protection against claims for, but not limited to, bodily and personal injury, death and property damage caused by or occurring in conjunction with the operation of the Property and the Business with a policy limit of at least Two Million Dollars (\$2,000,000) per occurrence.
- b. Tenant shall maintain property insurance covering all risks of loss including flood (if required by the City Manager) for 100% of the replacement value of the Property and any Improvements, naming the City as loss payee as its interests may appear.

- c. Workers' Compensation Insurance for any and all persons employed directly or indirectly by the Tenant that complies with the statutory requirements of the state of California, with a policy limit of at least one million dollars (\$1,000,000) per accident.
- d. Automobile liability insurance for owned, hired and non-owned vehicles, covering any loss or liability arising from the operation, maintenance or use of such vehicles, with a combined single limit of at least One Million Dollars (\$1,000,000). Insurance obtained by the Tenant shall have a self-insured retention or deductible or not more than One Hundred Thousand Dollars (\$100,000). If the Tenant undertakes the construction of the Improvements pursuant to Article IV, the Tenant shall ensure that its general contractor carries liability, property damage, workers' compensation, and builder's risk insurance throughout construction of Improvements, naming the Indemnitees as additional insureds and otherwise in compliance with all requirements set forth in this Section 8.2.

## **ARTICLE IX DAMAGE AND DESTRUCTION**

9.1 Damage or Destruction. If during the Term of this Lease the Improvements shall be damaged or destroyed by fire, earthquake or any other casualty of a similar or dissimilar nature, which loss exceeds fifty percent (50%) of the value of such Improvements as existed one (1) day prior to the occurrence of such casualty, or in the event of any substantial casualty loss or damage which does not exceed such value but nevertheless occurs within a period of the three (3) years prior to the expiration of this Lease, then Tenant is hereby granted the right, upon giving sixty (60) days written notice to the City (such notice to be given within sixty (60) days after such casualty loss or damage), to terminate this Lease, provided however that in the event Tenant shall elect to terminate this Lease as herein provided, it shall, at its sole cost and expense, demolish, or dismantle such damaged or destroyed Improvements and restore the Property to substantially its original condition as existed immediately prior to the commencement of the Prior Lease as described in Section 13.3.4. In the event such Improvements shall be destroyed or damaged to an extent less than fifty percent (50%) of its value one day prior to the occurrence of such casualty, or should Tenant elect not to terminate this Lease though such loss or damage exceeds such value, then Tenant shall, at its sole cost and expense, repair or restore such Improvements to substantially its condition immediately prior to such casualty loss or damage. In the event that Tenant elects to, or is obligated to, restore the Improvements, as provided in this Section 9.1, all insurance proceeds paid in respect of such damage or destruction shall be applied to the payment of the costs of the restoration and rebuilding, and Tenant shall undertake such restoration in accordance with the provisions of Article IV of this Agreement. If the Tenant does not exercise such option to restore the Improvements after a casualty loss exceeding 50% as provided in this Section 9.1 above within the sixty (60) day period and after notice (that provides for no less than a 10 day cure period) from the City of such failure by Tenant, then at the City's option, this Agreement shall terminate upon delivery of written notice to the Tenant, and all insurance proceeds paid in respect of such damage or destruction shall be paid to the City.

9.2 Notice Required. In the event of material damage to or destruction of the Property, Improvements, or any part thereof, as set forth above, the Tenant shall promptly give the City written notice of such occurrence and take all actions reasonably required to protect against hazards caused by such damage or destruction. For purposes of this Article IX, damage or destruction shall be deemed to be material if the estimated cost to repair equals or exceeds Fifty

Thousand Dollars (\$50,000), which amount shall increase every year of this Agreement by the same percentage as the increase in the Consumer Price Index for All Urban Consumers for the San Francisco Oakland-San Jose, California metropolitan area as published by the Bureau of Labor Statistics for the United States Department of Labor.

9.3 **City's Right to Terminate.** Notwithstanding any contrary provision of this Article IX, the City shall have the option to terminate this Agreement if all or substantially all of the Property is substantially damaged or destroyed and such damage or destruction resulted from a cause not insured against by the Tenant and/or the City nor required to be insured against by the Tenant and/or the City under this Agreement, unless the Tenant agrees to restore the Property at its sole expense by giving written notice thereof to the City within sixty (60) days after the date of such damage or destruction. City shall have the right to terminate this Agreement immediately upon the expiration of the sixty (60) day period if the Tenant has not provided such notice.

## **ARTICLE X CITY'S RIGHT TO PERFORM TENANT'S COVENANTS**

If the Tenant shall at any time fail to pay any Imposition or other charge payable by the Tenant to a third party as required by this Agreement, or to comply with the requirements set forth in Section 8.2 pertaining to insurance, or to make any other payment or perform any other act on its part to be made or performed hereunder within the time permitted by this Agreement, then the City, after thirty (30) days' written notice to the Tenant and without waiving or releasing the Tenant from any obligation of the Tenant hereunder, may (but shall not be required to): (i) pay such Imposition or other charge payable by the Tenant; (ii) pay for and maintain the insurance policies required pursuant to this Agreement, or (iii) make such other payment or perform such other act on the Tenant's part to be made or performed under this Agreement; and the City may enter upon the Property for such purpose and take all such action thereon as may be reasonably necessary therefor.

All sums paid by the City and all costs and expenses incurred by the City in connection with any such payment or the performance of any such act (together with interest thereon at the Default Rate from the respective dates of the City's making of each such payment) shall constitute Additional Rent payable by the Tenant under this Agreement and shall be paid by the Tenant to the City on demand. The "**Default Rate**" shall mean interest calculated at an annual rate equal to the maximum rate of interest permitted by law.

## **ARTICLE XI MORTGAGES**

11.1 **Non-Subordination of Fee.** Nothing in this Agreement shall be construed as an agreement by the City to subordinate its fee interest in the Property or its right to rent payments hereunder or any other right of the City herein. Except as expressly set forth in this Agreement, the Tenant shall not mortgage its interest in the Property without the City's prior written approval. Notwithstanding anything to the contrary herein, the City shall have no obligation to encumber or otherwise subordinate its fee interest in the Property or approve any mortgage of the Tenant's leasehold estate.



**ARTICLE XII**  
**ASSIGNMENT, TRANSFER, NONDISTURBANCE AND ATTORNMENT**

12.1 Restrictions on Transfer, Assignment and Encumbrance. The Tenant shall have no right to sell, transfer, sublet, assign, encumber, hypothecate or otherwise convey (“Transfer”) its leasehold interest hereunder or any portion of its interest in the Property or any Improvements or this Agreement voluntarily, involuntarily, by operation of law, or otherwise, without the City’s prior written consent, which consent shall not be unreasonably withheld. No voluntary or involuntary assignee, subtenant, or successor in interest of the Tenant shall acquire any rights or powers under this Agreement absent such consent.

12.2 No Involuntary Transfers. Without limiting any other restrictions on transfer contained in this Agreement, no interest of the Tenant in this Agreement, the Property or part thereof shall be assignable or transferable: (i) pursuant to any voluntary or involuntary proceeding under federal or state bankruptcy or insolvency law; (ii) pursuant to any assignment of the Tenant’s assets for the benefit of its creditors; or (iii) pursuant to any order of attachment, garnishment, receivership, or similar action. Any transfer described in this Section 12.2 shall constitute an Event of Default under this Agreement by the Tenant, and the City shall have the right to terminate this Agreement pursuant to Article XIII as a result of any such transfer taking place, in which case this Agreement shall not be treated as an asset of the Tenant.

12.3 Assumption Agreement and Release. No permitted Transfer shall be effective until any curable default hereunder shall have been cured and there shall have been delivered to the City an assumption agreement, executed by the transferor and the proposed transferee, whereby such transferee expressly assumes such obligations as arise and/or accrue at any time after such Transfer takes place; and whereby such transferee assumes liability for the obligations of this Agreement.

12.4 Non-disturbance. Provided that the Tenant is not in default under this Agreement, the Tenant’s possession, use and enjoyment of the Property shall not be interfered with, disturbed or diminished, or otherwise affected in any manner as a result of any act or omission of the City, or any exercise of any remedies under this Agreement.

**ARTICLE XIII**  
**DEFAULT, REMEDIES AND TERMINATION**

13.1 Event of Default. The Tenant shall be in default under this Agreement upon the occurrence of any of the following (“Events of Default”):

- (a) Monetary Obligation. The Tenant at any time is in default hereunder as to any monetary obligation (including without limitation, the Tenant’s obligation to pay taxes and assessments due on the Property or part thereof, subject to the Tenant’s rights to contest such charges pursuant to Section 3.2), and such default continues for thirty (30) days after the date upon which the City shall have given the Tenant a Notice of Default (as defined in Section 13.2.1);

- (b) Insurance. The Tenant fails to obtain and maintain any insurance required pursuant to Section 8.2 of this Agreement, and the Tenant fails to cure such default within thirty (30) days following receipt of Notice of Default;
- (c) Abandonment. The Tenant abandons the Property and ceases to use it for the purposes authorized hereby for a period of at least one hundred eighty (180) days or more or as established pursuant to Section 1951.3 of the California Civil Code except when prevented by Force Majeure.
- (d) Transfer. A voluntary or involuntary Transfer of all or any portion of the Tenant's interest in this Agreement occurs in violation of the provisions of Article XII;
- (e) Non-Monetary Obligations. The Tenant defaults in the performance of any term, provision, covenant or agreement contained in this Agreement other than an obligation enumerated in this Section 13.1, and unless a shorter cure period is specified for such default, the default continues for thirty (30) days after the date upon which the City shall have given written Notice of Default to the Tenant; provided however, if the default is of a nature that it cannot be cured within thirty (30) days, an Event of Default shall not arise hereunder if the Tenant commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith to completion and in no event later than one hundred and eighty (180) days after receipt of a Notice of Default;
- (f) Bankruptcy. The Tenant files a voluntary petition in bankruptcy or files any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or seeks or consents to or acquiesces in the appointment of any trustee, receiver or liquidator of the Tenant or of all or any substantial part of its property, or of any or all of the royalties, revenues, rents, issues or profits thereof, or makes any general assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due;
- (g) Reorganization. A court of competent jurisdiction enters an order, judgment or decree approving a petition filed against the Tenant seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days from the first date of entry thereof, or any trustee receiver or liquidator of the Tenant or of all or any substantial part of its property, or of any or all of the royalties, revenues, rents, issues or profits thereof is appointed without the consent or acquiescence of the Tenant and such appointment remains unvacated and unstayed for an aggregate of sixty (60) days, such sixty (60) day period to be extended in all cases during any period of a bona fide appeal diligently pursued by Tenant;
- (h) Attachment. A writ of execution or attachment or any similar process is issued or levied against all or any part of the interest of the Tenant in the Property and such execution, attachment or similar process is not released, bonded, satisfied, or vacated or stayed

within sixty (60) days after its entry or levy, such sixty (60) day period to be extended during any period of a bona fide appeal diligently pursued by Tenant; or

- (i) Liens. The Tenant's failure to satisfy the requirements of Section 5.1 hereof within the time periods specified therein.

### 13.2 Notice and Opportunity to Cure.

13.2.1 Notice of Default. Upon the occurrence of an Event of Default hereunder, the non-defaulting party shall deliver a written notice to the nonperforming party (the "**Notice of Default**"), stating the nature of the obligation which such nonperforming party has failed to perform, and notifying the nonperforming party of the period of time, if any, in which to cure the default.

13.2.2 Failure to Give Notice; No Waiver. Failure to give, or delay in giving, the Notice of Default shall not constitute a waiver of any obligation, requirement or covenant required to be performed hereunder. No failure or delay by either party in asserting any rights and remedies as to any breach shall operate as a waiver of any breach or of any such rights or remedies. Delay by either party in asserting any of its rights and remedies shall not deprive such party of the right to institute and maintain any action or proceeding which it may deem appropriate to protect, assert or enforce any such rights or remedies.

### 13.3 Remedies Upon Default.

13.3.1 City's Remedies. Upon the occurrence of any Event of Default or, if applicable, an uncured Event of Default, and in addition to any and all other rights or remedies of the City hereunder and/or provided by law, the City shall have the right to immediately terminate this Agreement and/or the Tenant's possessory rights hereunder, in accordance with applicable law to re-enter the Property and take possession thereof and of any Improvements, and except as otherwise provided herein, to remove all persons and property therefrom, and to store such property at the Tenant's risk and for the Tenant's account, and the Tenant shall have no further claim thereon or hereunder. The City's re-entry or taking of possession of the Property shall not be construed as an election on the City's part to terminate this Agreement unless the City shall have given written notice of such intention to the Tenant. In no event shall this Agreement be treated as an asset of the Tenant after any final adjudication in bankruptcy except at the City's option so to treat the same but no trustee, receiver, or liquidator of the Tenant shall have any right to disaffirm this Agreement. Nothing contained in this Section shall be construed to limit the rights or remedies of the City hereunder and/or provided by law, or be construed to preclude the City from initiating any civil action in the pursuit of any available remedy.

13.3.2 Remedies Upon Abandonment. If the Tenant should default under this Agreement and abandon the Property, the City may, at its option, enforce all of its rights and remedies under this Agreement, including the right to recover the Rent as it becomes due hereunder. Additionally, the City shall be entitled to recover from the Tenant all costs of maintenance and preservation of the Property, and all costs, including attorneys' and receiver's fees incurred in connection with the appointment of and performance by a receiver to protect the Property and the City's interest under this Agreement.

**13.3.3 City Right to Continue Lease.** In the event of any default under this Agreement by the Tenant (and regardless of whether or not the Tenant has abandoned the Property), this Agreement shall not terminate (except by an exercise of the City's right to terminate under Section 13.3.1) unless the City makes such election by the giving of any written notice (including, without limitation, any notice preliminary or prerequisite to the bringing of legal proceedings in unlawful detainer) to terminate the Tenant's right to possession. For so long as this Agreement continues in effect, the City may enforce all of the City's rights and remedies under this Agreement, including, without limitation, the right to recover all rent and other monetary payments as they become due hereunder. For the purposes of this Agreement, the following shall not constitute termination of the Tenant's right to possession: (a) acts of maintenance or preservation or efforts to relet the Property; or (b) the appointment of a receiver upon initiative of the City to protect the City's interest under this Agreement.

**13.3.4 Restoration of the Property.** Subject to any permitted holdovers, upon expiration or sooner termination of this Lease, City, upon written notice, may take title to any or all Improvements, including the Industrial Wharf, or City may require Tenant to remove all or any such Improvements at its sole expense and risk or City, upon the default of the Tenant in such removal, may itself remove all or any portion of such Improvements, at Tenant's sole expense. Tenant shall deliver to City such documentation as maybe necessary to convey title to such Improvements, to City free and clear of any liens, mortgages, loans or any other encumbrances. In removing any such Improvements, Tenant shall restore the Property as nearly as possible to the conditions existing immediately prior to their installation or construction. All plans for and subsequent removal of Improvements, and restoration of the Property shall be to the reasonable satisfaction of City and shall be completed with due diligence and within two (2) years of the Lease Termination. In removing any or all of the Improvements. Tenant shall obtain all permits or other governmental approvals as may then be required by lawful authority. It is specifically agreed that should City elect to take title to the Improvements as set forth in this Section 13.3.4, that such improvements include but are not limited to, any conveyance system(s) and such other loading and unloading Improvements affixed to the Property, whether or not such improvements could be classified as "fixtures" or "personal property" under applicable California law, but in no event shall Improvements include the rolling stock, tools or property of the Tenant or subtenants, as the case may be, that were or are used incidentally in connection with the operation of the Business.

**13.3.5 Right to Injunction; Specific Performance.** In the event of a default by the Tenant under this Agreement, the City shall have the right to commence an action against the Tenant for damages, injunction and/or specific performance. The Tenant's failure, for any reason, to comply with a court-ordered injunction or order for specific performance shall constitute a breach under this Agreement.

**13.4 Remedies Cumulative.** No remedy specified in this Article XIII shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy provided hereunder or now or hereafter existing at law or in equity or by statute, and every power and remedy provided by this Agreement may be exercised from time to time and as often as occasion may arise or as may be deemed expedient, subject to any limitations set forth herein.

**13.5 No Election of Remedies.** The rights given in this Article XIII to receive, collect or sue for any rent or rents, moneys or payments, or to enforce the terms, provisions and conditions of this

Agreement, or to prevent the breach or nonobservance thereof, or the exercise of any such right or of any other right or remedy hereunder or otherwise granted or arising, shall not in any way affect or impair or toll the right or power of the City upon the conditions and subject to the provisions in this Agreement to terminate the Tenant's right of possession because of any default in or breach of any of the covenants, provisions or conditions of this Agreement beyond the applicable cure period.

13.6 Survival of Obligations. Nothing herein shall be deemed to affect the right of the City under Article VIII of this Agreement to indemnification for liability arising prior to the termination of this Agreement for personal injuries or property damage, nor shall anything herein be deemed to affect the right of the City to equitable relief where such relief is appropriate. No expiration or termination of the Term by operation of law, or otherwise, and no repossession of the Improvements or any part thereof shall relieve the Tenant of its previously accrued liabilities and obligations hereunder, all of which shall survive such expiration, termination or repossession.

#### **ARTICLE XIV GENERAL PROVISIONS**

14.1 Force Majeure; Extension of Times of Performance. Subject to the limitations set forth below, performance by either Party shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended where delays are due to: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, pandemics, quarantine restrictions, freight embargoes, governmental restrictions or priority, litigation, including court delays, unusually severe weather, acts or omissions of the other Party, acts or failures to act of any public or governmental agency or entity (other than the Parties which shall not excuse delay in performance), or any other cause beyond the affected Party's reasonable control and which could not have been reasonably anticipated by the Party claiming a Force Majeure event (all of the foregoing "**Force Majeure**"). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if written notice by the Party claiming such extension is sent to the other Party within thirty (30) days of the commencement of the cause, and the notice provides details and the basis of the claim as to a Force Majeure event, plus the anticipated length of the proposed delay and such extension is not rejected in writing by the other Party within ten (10) days of receipt of the notice. Neither Party shall unreasonably withhold consent to an extension of time pursuant to this Section. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the Tenant and the City (acting in the discretion of its City Manager unless he or she determines in his or her discretion to refer such matter to the City Council). Each Party expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Effective Date.

14.2 Agreement Subject to TLUP. This Agreement is at all times subject to the TLUP, and no use of the Property will be permitted that is not permitted under the TLUP; provided, that the City shall adopt no amendment or restatement of the TLUP that would have a materially adverse effect on the Tenant's rights under this Lease.

14.3 City's Right to Enter the Property. The City and its agents may enter the Property from time to time with reasonable notice, except in the case of emergency in which case no notice shall be required, to inspect the same, to post notices of non-responsibility and similar notices, and to

discharge the Tenant's obligations hereunder when the Tenant has failed to do so within a reasonable time after written notice from the City.

#### 14.4 Representations of City and Tenant.

14.4.1 The Tenant hereby represents and warrants that all of the following are true and correct as of the Effective Date.

- (a) The Tenant has taken all requisite action in connection with the execution of this Agreement and the undertaking of the obligations set forth herein. This Agreement constitutes the legally valid and binding obligation of the Tenant, enforceable against the Tenant in accordance with its terms, except as it may be affected by bankruptcy, insolvency or similar laws or by legal or equitable principles relating to or limiting the rights of contracting parties generally; and
- (b) The execution of this Agreement and the acceptance of the obligations set forth herein do not violate any court order or ruling binding upon the Tenant or any provision of any indenture, agreement or other instrument to which Tenant is a party or may be bound. Neither the entry into nor the performance of this Agreement will violate, be in conflict with or constitute a default under any charter, bylaw, partnership agreement, trust agreement, mortgage, deed of trust, indenture, contract, judgment, order or other agreement, charge, right or interest applicable to the Tenant.

14.4.2 City hereby represents and warrants that all of the following are true and correct as of the Effective Date.

- (a) The City has taken all requisite action in connection with the execution of this Agreement and the undertaking of the obligations set forth herein. This Agreement constitutes the legally valid and binding obligation of the City, enforceable against the City in accordance with its terms, except as it may be affected by bankruptcy, insolvency or similar laws or by legal or equitable principles relating to or limiting the rights of contracting parties generally; and
- (b) The execution of this Agreement and the acceptance of the obligations set forth herein do not violate any court order or ruling binding upon the City or any provision of any indenture, agreement or other instrument to which the City is a party or may be bound. Neither the entry into nor the performance of this Agreement will violate, be in conflict with or constitute a default under any charter, bylaw, partnership agreement, trust agreement, mortgage, deed of trust, indenture, contract, judgment, order or other agreement, charge, right or interest applicable to the City.

#### 14.5 Miscellaneous.

14.5.1 Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or

unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

14.5.2 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

- (j) personal delivery, in which case notice is effective upon delivery;
- (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;
- (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service; or
- (iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

City: City of Pittsburg  
Attention: City Manager  
65 Civic Avenue  
Pittsburg, CA 94565  
Telephone: (925) 252-4850

Tenant: Isle Capital Corporation  
877 Ygnacio Valley Road, Suite 210  
Walnut Creek, CA 94596  
Telephone: (925) 672-4470

14.5.3 Captions; Construction. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Lease. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree that since both Parties have participated in the negotiation and drafting of this Agreement with the advice of counsel, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

14.5.4 Successors and Assigns. Subject to the restrictions on transfer set forth in Article XII, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. Any reference in this Lease to a specifically named Party shall be deemed to apply to any permitted successor and assign of such Party who has acquired an interest in compliance with this Agreement as if in every case so expressed.

14.5.5 Short Form of Lease. A memorandum of lease substantially in the form attached hereto as Exhibit C shall be executed by the Parties and recorded in the Official Records of Contra Costa County upon the request of either Party.

14.5.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be filed in the Superior Court of Contra Costa County, California or in the Federal District Court for the Northern District of California.

14.5.7 Attorney's Fees. If either Party commences an action against the other to enforce any obligation contained herein, or to interpret any provision hereof, the prevailing party shall be entitled to recover from the other Party reasonable counsel fees, costs and necessary disbursements, as determined by the court having jurisdiction over the action.

14.5.8 Indemnity Includes Defense Costs. In any case where either Party is obligated under an express provision of this Lease, to indemnify and to save the other Party harmless from any damage or liability, the same shall be deemed to include defense of the indemnitee by the indemnitor, such defense to be through legal counsel reasonably acceptable to the indemnitee.

14.5.9 No Third-Party Beneficiaries; Disclaimer of Partnership, Lender/Borrower Relationship. Nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the Parties any rights or remedies hereunder. The relationship of the parties under this Agreement is solely that of landlord and tenant, and it is expressly understood and agreed that the City does not as a result of this Agreement in any way nor for any purpose become a partner of the Tenant or a joint venturer with the Tenant in the conduct of the Tenant's business or otherwise. This Agreement is not intended to, and shall not be construed to, create the relationship of principal and agent, partnership, joint venture, or association as between the City and the Tenant. It is further expressly understood and agreed that this Agreement is not intended to, and shall not be construed to create the relationship of lender and borrower, and the City does not, solely as a result of this Agreement, become a lender to the Tenant.

14.5.10 Entire Agreement. This Agreement, together with Exhibits A, B and C which by this reference are hereby incorporated herein, contains the entire agreement between the Parties relative to the transactions covered hereby. All previous correspondence, communications, discussions, agreements, understandings or proposals and acceptances thereof between the Parties or their representatives, whether oral or written, are deemed to have been integrated into and superseded by this Agreement and are of no further force and effect except as expressly provided in this Agreement.

14.5.11 Waiver; Modification. No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any subsequent breach of the same or any other covenant or provision hereof. No waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the waiving party. This Agreement may be amended or modified only by a written instrument executed by the Parties.



14.5.12 Time is of the Essence. Time is of the essence of this Agreement and of each provision hereof.

14.5.13 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

14.5.14 Action by the Parties. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the City in its capacity as landlord hereunder is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City Manager or by any person who shall have been designated by the City Manager, without further approval by the City Council unless the City Manager determines in his or her discretion that such matter requires consideration by the City Council.

14.5.15 Non-Liability of Officials, Employees and Agents. No member, official, employee or agent of the City or the City shall be personally liable to Tenant or its successors in interest in the event of any default or breach by the City or for any amount which may become due to the Tenant or the Tenant's permitted successors in interest pursuant to this Agreement.

IN WITNESS WHEREOF, the Parties have entered into this Lease as of the Effective Date.

TENANT:

ISLE CAPITAL CORPORATION  
A California Corporation, Acting  
as Trustee, F.B.O. LA/VC Trust,  
d.b.a. Pittsburg Marine Terminal

CITY:

CITY OF PITTSBURG  
a municipal corporation

By: \_\_\_\_\_  
John Bass, Vice President

By: \_\_\_\_\_  
Garrett Evans, City Manager

## EXHIBIT A

### Legal Description and Site Map of the Industrial Lease Area

All that real property situated in a portion of the tide and submerged lands in the New York Slough, adjacent to Rancho Los Medanos as shown on official government plat approved October 27, 1889, County of Contra Costa, State of California and being a portion of that certain "Acceptance Of Public Trust Lands Granted To The City Of Pittsburg" recorded June 24, 2015 as Document No. 2015-0130225, Official Records of Contra Costa County and being further described as follows:

BEGINNING at point number 1130 being an angle point in the Grant Line as shown and so designated on that certain Record of Survey entitled "Record of Survey RS 3661 Tide and submerged lands grant in trust to the City of Pittsburg pursuant to chapter 422, statutes of 2011, City of Pittsburg, Contra Costa County, California, California State Lands Commission" filed for record on December 11, 2014 in Book 149 of Licensed Surveyors Maps, at Page 27, Contra Costa County Records, thence from said **POINT OF BEGINNING** along said Grant Line as shown on said Record of Survey, for the following nineteen (19) courses and distances:

1. North 56°53'19" West a distance of 82.38 feet;
2. North 65°10'12" West a distance of 73.82 feet;
3. North 53°33'40" West a distance of 133.00 feet;
4. North 58°44'37" West a distance of 235.13 feet;
5. North 47°10'29" West a distance of 55.90 feet;
6. North 59°22'13" West a distance of 88.32 feet;
7. South 39°48'20" West a distance of 7.81 feet;
8. North 79°59'31" West a distance of 34.53 feet;
9. South 39°17'31" West a distance of 14.21 feet;
10. North 53°07'48" West a distance of 85.00 feet;
11. North 58°31'42" West a distance of 193.46 feet;
12. North 48°21'50" West a distance of 59.41 feet;
13. North 58°34'13" West a distance of 84.38 feet;
14. North 83°56'47" West a distance of 50.09 feet;
15. South 74°17'29" West a distance of 33.24 feet;
16. North 85°15'55" West a distance of 97.99 feet;
17. North 74°23'20" West a distance of 70.80 feet;
18. South 68°06'29" West a distance of 45.19 feet; and
19. North 67°19'25" West a distance of 8.74 feet to the west boundary line of the Lands of Isle Capital Corporation as described in that certain Grant Deed recorded on March 14, 1994 in Doc # 1994-0072483, Official Records of Contra Costa County;

thence coincident with the prolongation of the said west boundary line North 16°55'11" East a distance of 228.95 feet to the south side of channel as shown in that certain General Lease - Industrial Use recorded June 17, 1977 in Doc# 1997- 0103564, Official Records of Contra Costa County; thence coincident with the said South Side of Channel for the following two (2) courses and distances:

1. South 63°27'58" East a distance of 1108.20 feet; and

2. South 88°09'08" East a distance of 308.41 feet to the prolongation of the east boundary line of said Grant Deed;

thence coincident with the prolongation of the east boundary line of said Grant Deed South 16°55'31" West a distance of 337.11 feet to the said Grant Line; thence coincident with the said Grant Line for the following three (3) courses and distances:

1. North 40°25'38" West a distance of 17.98 feet;
2. North 14°37'15" West a distance of 23.77 feet; and
3. North 21°30'07" East a distance of 35.47 feet to the Point of Beginning.

Containing 6.5 acres of land, more or less.

The Basis of Bearings for this legal description is identical to that certain Record of Survey, RS#3861, filed on December 11, 2014 in Book 149 of Licensed Surveyors Maps at Page 27, Contra Costa County Records.

The distances in this legal description are grid distances. Divide grid distances by 0.99994309 to obtain ground distances.

The area shown in this legal description is in grid.

See Exhibit B, plat to accompany description, attached hereto and made a part hereof.

This legal description was prepared by me or under my supervision pursuant to Section 8729 (2) of the Professional Land Surveyors Act.

  
Daniel R. Seever, PLS 9377

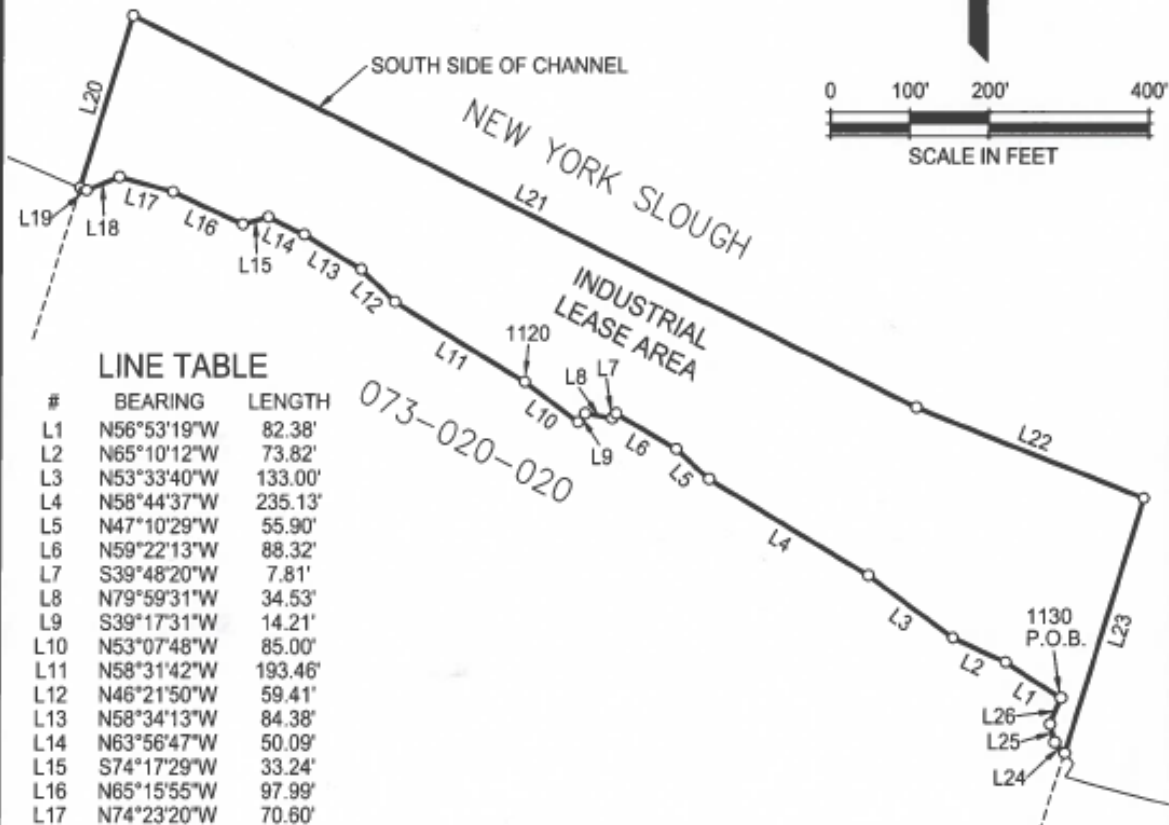
Date: 5/9/2025



Description prepared by:  
**R.E.Y. ENGINEERS, INC.**  
905 Sutter Street, Suite 200, Folsom, CA 95630  
N:\6969 - City of Pittsburg\111 - City Surveyor\Isle Capital Corporation Tre\Isle Capital Corporation Tre LEASE--INDUSTRIAL AREA.docx

## LEGEND

○ DIMENSION POINT NOTHING FOUND OR SET  
 APN ASSESSOR PARCEL NUMBER  
 P.O.B. POINT OF BEGINNING



## LINE TABLE

#	BEARING	LENGTH
L1	N56°53'19"W	82.38'
L2	N65°10'12"W	73.82'
L3	N53°33'40"W	133.00'
L4	N58°44'37"W	235.13'
L5	N47°10'29"W	55.90'
L6	N59°22'13"W	88.32'
L7	S39°48'20"W	7.81'
L8	N79°59'31"W	34.53'
L9	S39°17'31"W	14.21'
L10	N53°07'48"W	85.00'
L11	N58°31'42"W	193.46'
L12	N46°21'50"W	59.41'
L13	N58°34'13"W	84.38'
L14	N63°56'47"W	50.09'
L15	S74°17'29"W	33.24'
L16	N65°15'55"W	97.99'
L17	N74°23'20"W	70.60'
L18	S68°06'29"W	45.19'
L19	N67°19'25"W	8.74'
L20	N16°55'11"E	226.95'
L21	S63°27'58"E	1108.20'
L22	S68°09'08"E	308.41'
L23	S16°55'31"W	337.11'
L24	N40°25'38"W	17.98'
L25	N14°37'15"W	23.77'
L26	N21°30'07"E	35.47'

*2/9/2025*



~~SHEET 1 OF 1~~

## EXHIBIT "B"

### TRUST LAND LEASE INDUSTRIAL LEASE AREA

CITY OF PITTSBURG  
COUNTY OF CONTRA COSTA STATE OF CALIFORNIA

R. E. Y. ENGINEERS, Inc.  
CIVIL ENGINEERS / LAND SURVEYORS  
905 SUTTER ST. STE 200 FOLSOM, CA 95630  
(916) 366-3040 Fax (916) 366-3303

IF A DISCREPANCY EXISTS BETWEEN THIS EXHIBIT AND THE ASSOCIATED DESCRIPTION, THE DESCRIPTION HOLDS. THIS EXHIBIT IS FOR GRAPHIC PURPOSES ONLY.

MWD	1"=200'	5/02/2025	6969,111
DRAWN BY	SCALE	DATE	JOB NO.

EXHIBIT B  
Industrial Wharf Aerial

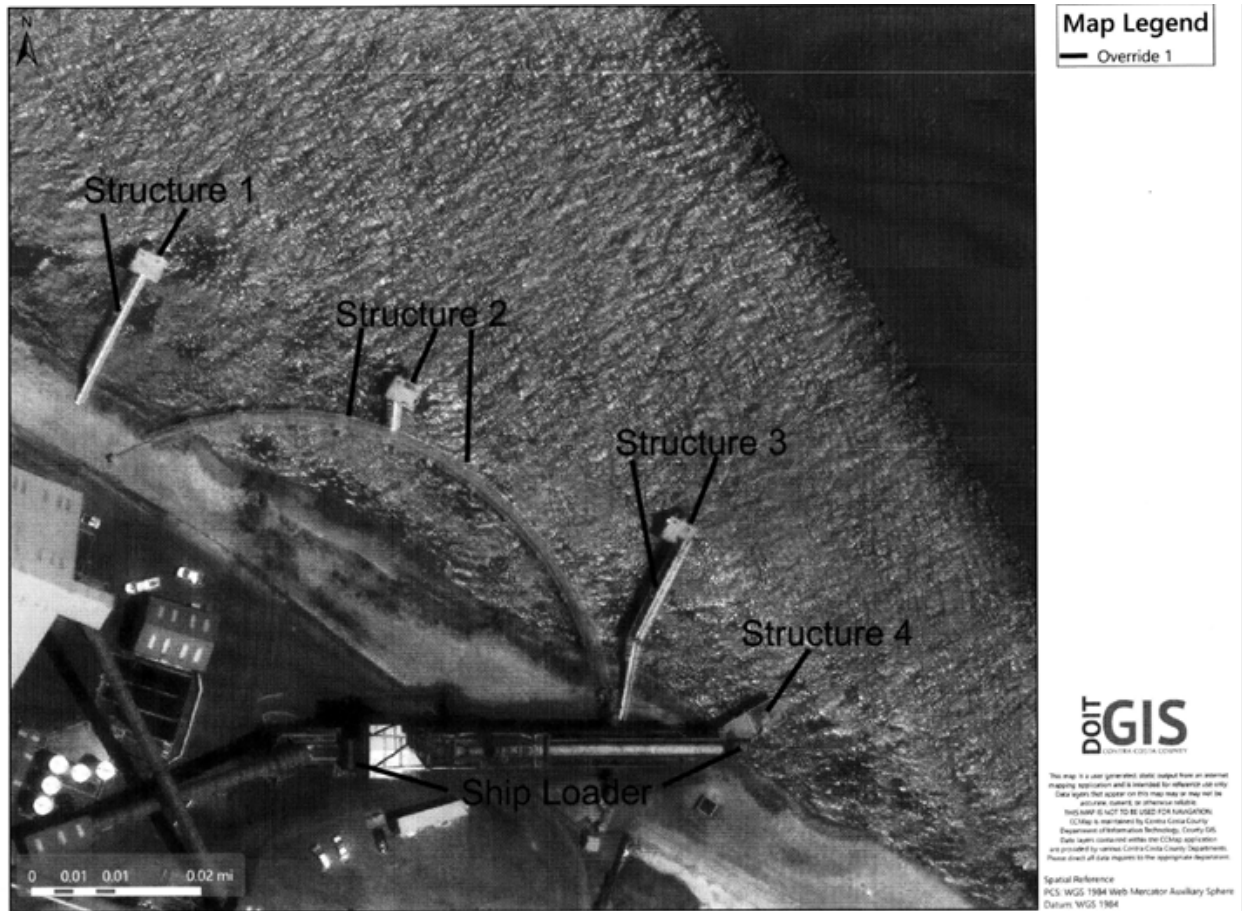


EXHIBIT C  
FORM OF MEMORANDUM OF LEASE

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

City of Pittsburg  
65 Civic Dr.  
Pittsburg, CA 94565  
Attn: City Clerk

EXEMPT FROM RECORDING FEES  
PER  
GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use.

**MEMORANDUM OF LEASE**

This Memorandum of Lease (this "Memorandum"), dated for reference purposes as of \_\_\_\_\_, 2025 is executed by and between the City of Pittsburg, a municipal corporation (the "City") and Isle Capital Corporation, a California corporation, acting as trustee, For Benefit of the LA/VC Trust, d.b.a. Pittsburg Marine Terminal ("Tenant"), in reference to and consideration of that certain Lease dated as of January 21, 2025, by and between City and Tenant (the "Lease").

1. The purpose of this Memorandum is to provide notice of the existence of the Lease which is incorporated herein by this reference. This Memorandum incorporates all of the terms and provisions of the Lease as though fully set forth herein.
2. Tenant and the California State Lands Commission previously entered into an Industrial Use General Lease No. PRC 7872, dated December 2, 1996 (the "Prior Lease") for lease of the Property as such term is defined in Paragraph 3 below which was the subject of a previously recorded memorandum of lease. The Prior Lease has been terminated as of the commencement date of the Lease as detailed in Paragraph 6 below.
3. The City is trustee of tideland situated in New York Sough, located in the City of Pittsburg (the "Property"), as more particularly described in Exhibit A attached hereto and incorporated herein by this reference.
4. The Property is subject to that certain tidelands trust plan adopted by the City on January 20, 2009 in accordance with Public Resources Code Sections 6361 through 6369.3 (as may be amended from time to time, the "Trust Plan").
5. Pursuant to the Lease, the City leases to the Tenant, and the Tenant leases from the City, the Property subject to all of the terms and conditions set forth in the Lease.

6. The Lease term commenced on June 20, 2025 and ends on June 30, 2054.

7. This Memorandum may be executed in counterparts, each of which shall be an original, and all of which together shall constitute one fully-executed agreement.

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the date first set forth above.

**CITY:**

**TENANT:**

CITY OF PITTSBURG

ISLE CAPITAL CORPORATION

By: \_\_\_\_\_  
Garrett Evans, City Manager

By: \_\_\_\_\_  
John Bass, Vice President

Approved as to form:

\_\_\_\_\_  
City Attorney

**SIGNATURES MUST BE NOTARIZED.**

# Exhibit B

## SUBLEASE AGREEMENT

This SUBLEASE AGREEMENT (the “**Sublease**”, or “**Agreement**”), dated as of \_\_\_\_\_, 2025, is entered into by and between Isle Capital Corporation, a California corporation, acting as trustee, For Benefit of the LA/VC Trust, d.b.a. Pittsburg Marine Terminal (“**PMT**” or “**Sublessor**”) and Koch Carbon, LLC, a Delaware limited liability company (“**Koch**” or “**Sublessee**”). PMT and Koch are hereafter each referred to as a “**Party**” and collectively referred to as the “**Parties**.”

### RECITALS

- A. Sublessor and the California State Lands Commission (the “**Commission**”) previously entered into an Industrial Use General Lease No. PRC 7872, dated December 2, 1996 (the “**Prior Lease**”) for a parcel having an APN of 073-020-022 (the “**Property**”).
- B. PMT and Koch previously entered into a sublease for the Property on November 14, 1996 (the “**Prior Sublease**”). Both PMT and Koch desire to terminate the Prior Sublease before its expiration date of December 2, 2026, and enter into a new sublease.
- C. California Senate Bill 551 (SB 551) enacted a grant of sovereign tidelands and submerged lands (including the Property) to the City of Pittsburg (the “**City**”).
- D. PMT, concurrent with the City approval of this Sublease (as required by Section 12.1 of the Tidelands Lease (as defined below)) and any required Commission approval of this Sublease, is pursuing the City and Commission approval of a new Tidelands Lease (the “**Tidelands Lease**”) a copy of which shall be attached to this Sublease as Exhibit A upon its full approval and execution.
- E. The Prior Lease allows for early termination; however, the Tidelands Lease does not become effective until approved by the City of Pittsburg City Council, approved by the Commission, and the full execution of the Tidelands Lease. This Sublease is to receive final approvals concurrent with such approvals of the Tidelands Lease and shall be effective on the commencement date of the Tidelands Lease (the “**Effective Date**”). The Prior Sublease shall terminate on the Effective Date of this Sublease; and
- F. Sublessee desires to sublease the Property to continue operating and maintaining the industrial wharf in connection with the Dry Bulk Marine Transfer and Storage Terminal located adjacent to the Property (the “**Business**”) which Koch operates under a lease between the Parties (the “**Upland Lease**”).



NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Sublessor and Sublessee hereby agree as of the Effective Date as follows.

1. **Incorporation of Recitals.** The Parties acknowledge the accuracy of the Recitals set forth above, and all such Recitals are hereby incorporated into this Agreement.
2. **Creation of Sublease.** Sublessor hereby subleases to Sublessee, and Sublessee hereby subleases from Sublessor, the Property for the Term subject to the terms and conditions of this Agreement.
3. **Sublessee's Acceptance of the Tidelands Lease Terms.** Sublessee hereby acknowledges the Tidelands Lease. Sublessee acknowledges and agrees to the terms of the Tidelands Lease and, except as set forth herein, hereby agrees to abide by and to all such terms, entitlements and conditions of the Tidelands Lease placed on the Tenant of the Tidelands Lease and Sublessee hereby accepts full responsibility for the performance of all such requirements placed on the Tenant in the Tidelands Lease excepting only those requirements outlined in this Agreement as not being the responsibility of Sublessee. Sublessor hereby grants to Sublessee all such rights and entitlements provided to Sublessor as Tenant in the Tidelands Lease. All capitalized terms used herein but not defined herein shall have the meanings ascribed to them in the Tidelands Lease.
4. **Sublessee's Responsibilities to the City in the Tidelands Lease apply to Sublessor.**
  - a. It is the specific intent of the Sublessee and Sublessor, in entering this Sublease, that the Sublessee is assuming (excepting only those outlined as exceptions herein) all responsibilities of the Sublessor to the City, and Sublessee recognizes and acknowledges that any obligations owed by Sublessor to the City in the Tidelands Lease are to be undertaken by Sublessee, and to the extent not outlined as an exception herein, Sublessee will have those obligations to Sublessor.
  - b. Where there is an approval or consent by the City required in the Tidelands Lease to a request or action of Sublessee, Sublessee hereby agrees that Sublessee shall be required to obtain the approval or consent of Sublessor to the same request or action of Sublessee which approval by Sublessor shall not be unreasonable withheld or delayed. In the event Sublessor provides its approval or consent to such request or action and should the City require that such request be submitted to the City by Sublessor rather than Sublessee, Sublessor agrees to take all actions reasonably necessary under the Tidelands Lease (including providing any notices to the City required under the Tidelands Lease) to obtain the consent of the City as required in the Tidelands Lease.

- c. Where there is a requirement in the Tidelands Lease for Tenant's covenants, approval, indemnification or naming of the City on a document (such as, but not necessarily limited to, naming the City as additional insured on insurance policies), Sublessee hereby agrees that Sublessee shall apply such covenant, approval, indemnification or naming to Sublessor in the same form as such covenant, approval, indemnification or naming is required to apply to the City in the Tidelands Lease.
- d. When and where there is a notice, notification or communication requirement to the City in the Tidelands Lease, Sublessee hereby agrees that such notice, notification or communication requirement shall be required to be given to Sublessor to the same extent required to be provided to the City in the Tidelands Lease, and should the City require that such notice, notification or communication be submitted to the City by Sublessor rather than Sublessee, Sublessor agrees to provide the same to the City.

#### **5. Sublessor's Obligations Under the Tidelands Lease**

- a. So long as Sublessee is not in breach of the terms of this Sublease, Sublessor agrees not to take any action, or omit to take any action, that (i) would constitute a breach or cause an Event of Default under the Tidelands Lease; or (ii) would have the effect of terminating the Tidelands Lease.
- b. To the extent that the City, in its role as lessor under the Tidelands Lease, provides any notice to Sublessor (as lessee under the Tidelands Lease), Sublessor will promptly deliver the same to Sublessee.
- c. To the extent Sublessor has any right under the terms of the Tidelands Lease that has been assigned to Sublessee under Section 3 of this Agreement (including, without limitation, any right to declare Force Majeure, terminate the Tidelands Lease, restore the Improvements or cure any Event of Default), Sublessor will only take action on such rights as, and to the extent, directed by the Sublessee.
- d. To the extent that Sublessee intends to exercise any right under the Tidelands Lease granted to it under Section 3 of this Agreement (including, without limitation, the rights granted in Sections 3.2 and 6.8 of the Tidelands Lease), Sublessor will take all actions necessary, at Sublessee's direction and cost, to provide Sublessee with the benefit of any such right.
- e. Sublessor is responsible for all payments required to be made pursuant to Section 2.8 of the Tidelands Lease. Sublessee has no obligation to make any such payments or to reimburse Sublessor for any payments made by it thereunder.

6. **Term.** The term of this Sublease (the “**Term**”) shall coincide with the term of the Tidelands Lease; provided, however, should the Upland Lease be terminated by Koch in accordance with its terms and without Koch’s default of the Upland Lease, this Sublease shall be terminated at the time of such termination of the Upland Lease.
7. **No Representations.** Sublessee acknowledges that Sublessee has had use and possession of the Property since December 2, 1996 and is aware of, and knowledgeable about, the existence, if any, of hazardous materials or any other conditions that might impact the use of the Property. Further, Sublessee acknowledges that Sublessor makes no representations or warranties expressed or implied regarding the condition of the Property or the fitness or suitability thereof for Sublessee’s purposes, including but not limited to, the condition of the soil, its geology, topography, the presence or absence of fill, the presence or absence of Hazardous Materials, drainage, flood zone designation, or compliance with Hazardous Materials Laws, and no patent or latent defect or deficiency in the condition of the Property shall affect the rights of Sublessee or the City hereunder. Sublessee shall rely solely on its own independent investigation and judgment as to all matters relating to the Property. Sublessee acknowledges and agrees that prior to the Effective Date it has made such investigations of the Property, including without limitation such inquiries of governmental agencies, environmental investigations and inspections as Sublessee deemed necessary to determine the condition of the Property, and has approved all such characteristics and conditions.
8. **Removal of Improvements.** Sublessee shall not have the responsibility for the removal of improvements to the Property as required in the Tidelands Lease unless such removal requirement under the Tidelands Lease is caused by a default of Sublessee in its responsibilities hereunder or for Sublessee’s performance as Tenant under the terms of the Tidelands Lease or such removal requirement is caused by an event causing damage or destruction to the Property or improvements as defined in the Tidelands Lease.
9. **Claims.** As granted the City in the Tidelands Lease, Sublessor shall have the right to join and participate in, as a party if it so elects, and at the Sublessor’s own expense, any legal proceedings or actions initiated in connection with any Hazardous Materials Claim.
10. **Indemnity.**
  - a. As with the indemnity requirement in the Tidelands Lease to the City, Sublessee shall indemnify, defend (with counsel reasonably acceptable to Sublessor and the City) and hold the Indemnitees, including Sublessor, harmless from and against any and all Claims arising during the Term and arising from or in connection with any of the following: (i) the operation or management of the Property, (ii) any work or thing done on or in the Property, (iii) any condition of any alteration or addition constructed by Sublessee on the Property, (iv) any breach or default by Sublessee in the

performance of any covenant or agreement to be performed by Sublessee pursuant to the terms of this Agreement, (v) any negligence or willful misconduct of Sublessee, or any of its agents, contractors, subcontractors, employees, or licensees, (vi) any accident, injury or damage caused to any person occurring during the Term in or on the Property, (vii) the furnishing of labor or materials by Sublessee or its contractors, subcontractors, employees, or agents, and (viii) any hazardous materials claim. In the event any such action or proceeding is brought against Sublessor and/or the City by reason of any such Claim, Sublessee, upon notice from Sublessor and/or the City, covenants to defend such action or proceeding by counsel reasonably satisfactory to Sublessor and/or the City as applicable. The obligations of Sublessee under this Paragraph 10(b) shall not apply to any Claim or other matter to the extent such arises as a result of the gross negligence, willful misconduct or sole negligence of the Indemnitees. This Section shall survive the expiration or earlier termination of this Agreement.

- b. Sublessor shall indemnify, defend and hold Sublessee harmless from and against any and all Claims arising during the Term and arising from or in connection with Sublessor's acts or omissions affecting the Property or that cause or constitute an Event of Default under the Tidelands Agreement. The obligations of Sublessor under this Paragraph 10(b) shall not apply to any Claim or other matter to the extent such arises as a result of the negligence, gross negligence, or willful misconduct of the Sublessee. This Section shall survive the expiration or earlier termination of this Agreement

11. **Severability.** If any term or provision of this Sublease or the application thereof to any person or circumstance shall, to any extent, be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Sublease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Sublease shall be valid and be enforced to the fullest extent permitted by law.

12. **Notices.** Except as otherwise specified herein, all notices to be sent pursuant to this Sublease shall be made in writing and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

- (i) personal delivery, in which case notice is effective upon delivery;
- (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;

(iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service; or

(iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

Sublessee: KOCH CARBON, LLC  
4111 East 37th Street North  
Wichita, Kansas 67220  
Attention: President

Sublessor: Isle Capital Corporation  
877 Ygnacio Valley Road, Suite 210  
Walnut Creek, CA 94596

13. **Captions; Construction.** The section headings and captions used herein are solely for convenience and shall not be used to interpret this Sublease. The Parties acknowledge that this Sublease is the product of negotiation and compromise on the part of both Parties, and the Parties agree that since both Parties have participated in the negotiation and drafting of this Sublease with the advice of counsel, this Sublease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.
14. **Successors and Assigns.** This Sublease shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. Any reference in this Sublease to a specifically named Party shall be deemed to apply to any permitted successor and assign of such Party who has acquired an interest in compliance with this Sublease as if in every case so expressed. It is agreed and understood by the Parties hereto that no assignment of this Agreement or sublet of the Property shall be valid unless (i) it is accompanied by an approved assignment or sublet of the upland property in accordance with the terms of the Upland Lease and (ii) the assignment of this Agreement is approved by the City and any and all other approval authorities such as, but not necessarily limited to, the Commission.
15. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be filed in the Superior Court of Contra Costa County, California.

16. **Attorney's Fees.** If either Party commences an action against the other to enforce any obligation contained herein, or to interpret any provision hereof, the prevailing party shall be entitled to recover from the other Party reasonable counsel fees, costs and necessary disbursements, as determined by the court having jurisdiction over the action.
17. **Indemnity Includes Defense Costs.** In any case where either Party is obligated under an express provision of this Sublease, to indemnify and to save the other Party harmless from any damage or liability, the same shall be deemed to include defense of the indemnitee by the indemnitor, such defense to be through legal counsel reasonably acceptable to the indemnitee.
18. **Entire Agreement.** This Sublease, together with Exhibit A which by this reference is hereby incorporated herein, contains the entire agreement between the Parties relative to the transactions covered hereby. All previous correspondence, communications, discussions, agreements, understandings or proposals and acceptances thereof between the Parties or their representatives, whether oral or written, are deemed to have been integrated into and superseded by this Sublease and are of no further force and effect except as expressly provided in this Sublease.
19. **Waiver; Modification.** No waiver of any breach of any covenant or provision of this Sublease shall be deemed a waiver of any subsequent breach of the same or any other covenant or provision hereof. No waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the waiving party. This Sublease may be amended or modified only by a written instrument executed by the Parties.
20. **Time is of the Essence.** Time is of the essence of this Sublease and of each provision hereof.
21. **Counterparts.** This Sublease may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have entered into this Sublease as of the Date first written above.

SUBLESSOR:

ISLE CAPITAL CORPORATION  
A California Corporation, Acting  
as Trustee, F.B.O. LA/VC Trust,  
d.b.a. Pittsburg Marine Terminal

SUBLESSEE:

KOCH CARBON, LLC  
A Delaware Limited Liability Company

By: \_\_\_\_\_  
John Bass, Vice President

By: \_\_\_\_\_  
Joe Hand, President