

AMENDMENT TO LEASE

THIS AMENDMENT TO LEASE (this "Amendment") is made as of December 1, 2017, by and between CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City") and BGCA MANAGEMENT, LLC, a Delaware limited liability company ("Tenant").

RECITALS

THIS AMENDMENT is made with reference to the following facts and circumstances:

A. City and Tenant entered a lease agreement, dated as of March 10, 2010 (the "Lease"), for the lease of the building known as the Bill Graham Civic Auditorium (the "Premises"), owned by City and located at 99 Grove Street, San Francisco, California. Tenant's obligations under the Lease, up to a Five Million Dollar (\$5,000,000) cap, are guaranteed by Another Planet Entertainment, LLC, a Delaware limited liability company ("Guarantor"), pursuant to the terms of Guaranty Agreement, dated on or about the date of the Lease.

B. Tenant uses the Premises for the purpose of presenting music concerts, theatrical events, cultural and entertainment performances, consumer events, trade shows, spectator sports, corporate meetings, social functions and special events, as more particularly described in the Lease.

C. The Lease requires Tenant to perform certain interior renovations and improvements to the Premises, at a minimum cost of Ten Million Dollars (\$10,000,000), during a three-phase construction period described in the Lease. City has granted several extensions for the performance of the required improvements, and, as of the date hereof, Tenant has performed \$564,475 of the agreed upon required improvements, together with other repairs and upgrades.

D. After several years of experience hosting concerts and other events in the Premises, Tenant has proposed converting that portion of the building presently known as Polk Hall into an approximately 1,500 seat club/small concert hall. The new club would be a separate venue from and operate concurrently with the existing larger main auditorium/arena in the Premises. The room referred to in the Lease as "Room 202", which is reserved for City's use in the Lease, would be incorporated into the new club and would no longer be available for City use as provided in the Lease. Tenant and City believe that the proposed new club would make the Premises an even more vibrant and active venue for concerts and special events, and would optimize the public use and enjoyment of the building.

E. In addition to and in coordination with the Polk Hall improvements, Tenant proposes to make improvements to the electrical system in the Premises and certain other improvements to the main auditorium, at a total cost of not less than Three Million Five Hundred Thousand Dollars (\$3,500,000), to upgrade the freight elevators in the Premises at a minimum cost of Three Hundred Seventy Five Thousand Dollars (\$375,000) per freight elevator, to replace the three (3) passengers elevators on the Polk Street side of the building at a total cost of not less than One Million Dollars, and to replace the three remaining elevators pursuant to a 10-year plan at a total cost of not less than One Million Dollars (\$1,000,000).

F. City, as Landlord, is willing to allow Tenant to construct the proposed nightclub in the Premises, to credit the cost of the Polk Hall conversion, up to a Four Million Dollar (\$4,000,000) cap, toward the cost of the improvements required by the Lease, and to substitute the Polk Hall improvements and other improvements and replacements proposed by Tenant for the balance of the Initial Improvements originally required by the Lease and not yet performed by Tenant, on the terms and conditions set forth in this Amendment.

G. The parties now desire to amend the Lease to (i) modify the definition of the Initial Improvements to include the improvements required for the Polk Hall conversion and certain other improvements to the Premises, (ii) revise the schedule for the performance of the Initial Improvements, (iii) modify the Base Rent and Participation Rent payable under the Lease, (iv) eliminate the rent credit for utility costs above the Utility Threshold set forth in the Lease, (v) reduce the number of days on which City shall have the right to use the Premises for civic events and other City purposes from fifty (50) days to twenty-five (25) days, and (vi) modify the Lease in certain other respects, all on the terms and conditions set forth herein.

ACCORDINGLY, in consideration of the matters described in the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the City and Tenant agree as follows:

1. **Defined Terms.** Unless otherwise specified, each capitalized term contained herein shall have the same meaning as set forth in the Lease.

2. **Effective Date of Amendment.** This Amendment shall be effective on the date (the "Amendment Effective Date") upon which (i) the Board of Supervisors passes a resolution approving this Amendment, and the Mayor signs such resolution, and (ii) the parties hereto have duly executed and delivered this Amendment.

3. **Confirmation of Effective Date of Lease and Commencement Date of Lease.** City and Tenant confirm that the Effective Date of the Lease, as defined in Section 34 of the Lease, was August 1, 2010, and the Commencement Date of the Lease, as defined in the Basic Lease Information section of the Lease was August 1, 2010.

4. **Reduction in City Days.** Effective as of the Amendment Effective Date, the number of "City Days," as set forth in Section 1.2(b)(i) of the Lease, shall be reduced from "up to fifty (50) days per Lease Year" to "up to twenty-five (25) days per Lease Year".

5. **Utilities.**

a. **Elimination of Rent Credit for Utility Costs in Excess of Utility Threshold.** Effective as of the Amendment Effective Date, Tenant shall be responsible for payment of its utility costs in accordance with the terms of the Lease, including Section 12, "*Utility and Other Services*," as amended herein. References to the City being liable for payment of any utility costs in the Lease, excluding its pro rata share for "City Days," are null and void. Accordingly, (i) Section 12.1(b) of the Lease shall be deleted in its entirety, (ii) the phrase "With potential credits against Base Rent for utilities as set forth in Section 12.1" shall be deleted from the Base Rent section of the Basic Lease Information table of the Lease, (iii) the reference to potential credits against Participation Rent for utilities shall be deleted from the Participation Rent section of the Basic Lease Information table of the Lease, and (iv) the fourth (4th) sentence of Section 1.3(d) of the Lease, which provides that utility cost sharing shall be taken into account in determining fair market value for the Extended Term, shall be deleted.

b. **Request Change of Meter Rate and Utility Rates.** The San Francisco Public Utility Commission ("SFPUC") is the provider of electric services to City property, and the SFPUC's Interconnection Services Department coordinates with Pacific Gas and Electric Company and others to implement such service. In addition to Tenant's entry rights under Section 29 of the Lease, Tenant shall permit City and the utility service provider to have reasonable access to the Premises and the utility equipment serving the Premises, including lines, feeders, risers, wiring, pipes, and meters. City has requested or will request that the electrical service provider for the Premises change the RG478 electrical meter serving the Premises to A10S-TOU at City's expense. Such meter change shall occur during regular business hours.

Further, if City is able to obtain the electrical rates, fees and other charges applicable to municipal departments and public agencies for a private, for profit, business operating in the Premises, City will endeavor to provide electricity to Tenant at such municipal rate, and the municipal rate for fees and charges.

c. **New Steam Meter.** The City anticipates that it will be converting its current steam system to individual City building meters and will be providing a new meter for the Bill Graham Civic Auditorium. City shall pay for the cost of the new meter. Tenant shall be responsible for payment of any steam use upon installation of the new meter.

6. Base Rent and Participation Rent.

a. **Base Rent.** Effective as of the Amendment Effective Date, Annual Base Rent shall be increased to \$300,000, payable in monthly installments of \$25,000 per month and subject to increases as provided in Section 2.2(b) of the Lease commencing at the first anniversary of the Amendment Effective Date, the Base Rent section of the Basic Lease Information section of the Lease shall be amended accordingly, and Section 2.2(a) of the Lease shall be amended as provided in Section 6.c., below. Base Rent payable for the Lease Year in which the Base Rent increases to \$300,000 (i.e. the Lease Year of the Amendment Effective Date) shall be prorated between the Base Rent rate payable prior to such increase and the new \$300,000 annual Base Rent rate.

b. **Participation Rent.** Effective as of the Amendment Effective Date, the provisions of Section 2.3 of the Lease shall be deleted and the following provision shall be substituted therefor:

“2.3 Participation Rent.

Tenant agrees to pay to City, as Participation Rent: (i) fifty percent (50%) of the Net Naming Rights Revenue in excess of Five Hundred Thousand Dollars (\$500,000) per Lease Year (subject to a CPI adjustment on each Adjustment Date); and (ii) \$3,500 for each corporate event and other non-ticketed/non-cover charge event for which Tenant receives revenue (each such corporate or other non-ticketed/non-cover charge event, excluding “City Days” events, a “Non-Ticketed Event”) held on or in the main auditorium of the Premises with or without the remainder of the Premises and \$2,500 for each Non-Ticketed Event held solely on or in one or more of the halls of the Premises (i.e., the Polk Room (or new Polk Hall) or Larkin Room) for which Tenant receives revenue, provided that on each Adjustment Date such sums shall be increased in accordance with CPI. The City's Director of Property and Tenant shall meet and confer in good faith following the end of the tenth Lease Year in order determine the appropriate amount of Participation Rent for Non-Ticketed Events starting in the eleventh Lease Year and for the remainder of the Initial Term, taking into account the average revenue generated and average expenses incurred in connection with Non-Ticketed Events and the desire to encourage the profitable continuation of Non-Ticketed Events. Any agreement between Tenant and City's Director of Property to adjust the Participation Rent for Nonpaid Entry Events shall be memorialized in writing, which shall be incorporated into this Lease and shall not be deemed a Lease amendment. If they do not agree, either party shall have the right to commence the appraisal process described in Section 1.3(d) above for the determination of the amount of Participation Rent for Non-Ticketed Events, with such Participation Rent to be set at a dollar amount designed to grant to City ten percent (10%) of Tenant's profit generated from such Non-Ticketed Events, but in no event less than \$3,500. Upon the completion of such process, the amount of Participation Rent for Non-Ticketed Events shall be as determined by the appraisal process.

Within ninety (90) days following the end of each Lease Year, Tenant shall deliver to City a statement, certified as true, correct and complete to the knowledge of the senior officer, member or partner of Tenant who is in the best position to know and has performed reasonable inquiry and diligence into such matters ("Tenant's Certification"), setting forth Tenant's calculation of Participation Rent for the preceding Lease Year (the "Participation Rent Statement"), together with appropriate backup documentation, as well as the actual payment of Participation Rent as set forth in the Participation Rent Statement. In the event this Lease terminates for any reason during a Lease Year, Tenant shall calculate Participation Rent for the portion of the Lease Year that occurred prior to such termination within sixty (60) days following the termination."

c. **New Definitions of Qualified Event and Qualified Ticket.** The definitions of "Qualified Event" and "Qualified Ticket" set forth in Section 34 of the Lease shall be deleted and the following definitions shall be substituted therefor:

"**Qualified Event** means an event during the current Lease Year: (a) Where the actual attendance at the event is greater than two thousand (2,000) persons for a publicly ticketed event in the main auditorium (the "Main Arena") on the Premises, or (b) where the actual attendance at the event is greater than five hundred (500) persons for a Non-Ticketed Event at the Premises. Further, where the actual attendance at the event is greater than one thousand (1,000) persons for a publicly ticketed event in one of the halls on the Premises such event shall equal one-half (1/2) of a Qualified Event.

Qualified Ticket means a ticket sold for a publicly-ticketed event at the Premises where the actual turnstile attendance at the event is: (a) greater than two thousand (2,000) persons for a publicly ticketed event in the Main Arena on the Premises, or (b) greater than one thousand (1,000) persons for a publicly ticketed event in one of the halls on the Premises."

d. **Elimination of Rent Abatement Period.** Section 2.2(a) of the Lease provides for a Base Rent abatement period of up to twelve (12) months during Tenant's performance of the Initial Improvements. Effective as of the Amendment Effective Date such rent abatement provisions shall be deleted from the Lease. Accordingly, effective as of the Amendment Effective Date (i) the reference to the Rent Abatement Period shall be deleted from the Rent Commencement Date summary in the Term section of the Basic Lease Information table of the Lease, (ii) the phrase "subject to rent abatement during the Rent Abatement Period as set forth in Section 2.2" shall be deleted from Section 1.3(a) of the Lease, (iii) the definition for Rent Abatement Period shall be deleted from Section 34 of the Lease, and (iv) Section 2.2(a) of the Lease shall be deleted and the following provision shall be substituted therefor:

"(a) **Base Rent.** Tenant shall pay to City, as Base Rent, the annual sum of Three Hundred Thousand Dollars (\$300,000), subject to adjustment in accordance with Section 2.2(b) [Adjustment to Base Rent During the Initial Term] below. Tenant shall pay City Base Rent in advance, in equal monthly installments, on or before the first day of each and every calendar month during the Term (each, a "Rent Payment Date"). If the Lease ends on a day other than the last day of a calendar month, then Base Rent for such fractional month shall be computed by dividing the annual Base Rent by 365 (or 366, if the year in question is a leap year), and multiplying the per-diem rental rate so computed by the number of days in such fractional month."

e. **Reconciliation.** The parties agree an accounting and reconciliation of the Base Rent, Participation Rent, Utilities and Services, and all other revenue and charges paid and due between the parties under the Lease is being conducted and, will be concluded thirty (30) days after the approval of this Amendment by the Board of Supervisors, which may result in a

“Reconciliation Adjustment”. The Reconciliation Adjustment, if due to the City, will be paid by Tenant at the time of, and in addition to, the payment of Base Rent due the month following the approval of this Amendment by the Board of Supervisors; if due to Tenant, it will be deducted from Base Rent due to City starting the month following approval of this Amendment by the Board of Supervisors.

7. Polk Hall and Building Improvements.

a. Polk Hall Conversion and Other Building Improvements. Effective as of the Amendment Effective Date, (i) Exhibit B to the Lease shall be deleted, (ii) the definition of Initial Improvements in the Initial Improvement section of the Basic Lease Information table and in Section 34 of the Lease shall be deleted and the following shall be substituted therefor: “Building Improvements has the meaning set forth in Section 9.1”, and (ii) Section 9 of the Lease shall be deleted in its entirety and the following provision shall be substituted therefor:

“SECTION 9 BUILDING IMPROVEMENTS INCLUDING POLK HALL CONVERSION

9.1 Tenant’s Obligation to Construct the Building Improvements.

(a) Building Improvements. Tenant, at its sole cost and expense, and through one or more general contractors approved by City (collectively the “Contractor”), shall design, furnish and install within the Premises the following improvements (the “Building Improvements”) in accordance with the process described in this Section 9.

(i) Polk Hall Conversion and Improvements. Tenant shall perform a minimum of \$4,000,000 of improvements to convert that portion of the Premises presently known as Polk Hall into an approximately 1,500 seat club/small concert hall (for the purposes of this Section (the “Polk Hall Club” and the “Polk Hall Club Improvements”) and to renovate and upgrade the space, incorporating that portion of the building presently known as Room 202 into the Polk Hall Club, within three (3) years to five (5) years. The parties anticipate that when complete the Polk Hall Club will include a stage, multiple bar areas and a balcony, and that ingress and egress will be through a door on Grove Street. Among other matters, the required Polk Hall Club Improvements will include lighting improvements and HVAC separation from the balance of the Premises.

(ii) Electrical and Main Arena Improvements. Tenant shall perform a minimum of \$3,500,000 of improvements to the building’s electrical system and to the main auditorium (the “Main Arena Improvements”), which minimum cost shall include only hard costs of construction (materials and labor), and shall not include the cost of labor and material for repairs and maintenance.

(iii) Elevator Improvements and Replacements. Tenant shall perform the following work on the building’s elevators (collectively, the “Elevator Upgrades and Replacement”):

(1) A minimum of \$375,000 in improvements, modernization, and/or replacement for each of the two (2) freight elevators on both the Polk Street and Larkin Street sides of the Building (the “Freight Elevator Work”);

(2) A minimum of \$1,000,000 to remove and replace the three (3) passenger elevators on the Polk Street side of the Building (the “Polk Street Passenger Elevator Replacement”); and

(3) A minimum of \$1,000,000 to remove and replace the three (3) remaining passenger elevators in the building (the "Final Elevator Replacement Work").

(iv) Minimum Building Improvement Cost. As used herein, the term "Minimum Building Improvement Cost" shall mean the following costs for each of the following categories (each, a "Category") of the Building Improvements:

\$4,000,000 for the Polk Hall Club Improvements;

\$3,500,000 for the Main Arena Improvements;

\$750,000 for the Freight Elevator Work;

\$1,000,000 for the Polk Street Passenger Elevator Replacement; and

\$1,000,000 for the Final Elevator Replacement Work.

The cost of Personal Property (as defined in Section 34 of this Lease) shall not be credited against any category of Minimum Building Improvement Cost, provided that the cost of elevator equipment shall be credited against the Minimum Initial Improvement Cost attributable to the Elevator Upgrades and Replacement.

(b) Timing of Building Improvements. Prior to the date that is one year after the Amendment Effective Date Tenant shall submit to the Director of Property a 10-year plan for the Final Elevator Replacement Work for City's approval, which shall not be unreasonably withheld, and Tenant shall complete the Final Elevator Replacement Work by the date(s) specified in such approved 10-year plan. The balance of the Elevator Upgrades and Replacement and the Main Arena Improvements shall be completed not later than the date the Polk Hall Club Improvements are completed, or within five (5) years from the Amendment Effective Date, whichever occurs first. If Tenant wishes to change the date(s) for the Final Elevator Replacement Work specified in the approved 10-year plan or the deadline specified in this Section 9.1(b) for completion of the balance of the Elevator Upgrades and Replacement and the Main Arena Improvements, such changes shall be effective only upon the written agreement of the parties.

(c) Design Documents. Prior to obtaining all necessary reviews, permits, and approvals from City in its regulatory capacity, Tenant shall submit to the Director of Property schematic design plans for the Polk Hall Club Improvements and Main Arena Improvements. The plans shall be subject to the approval of the Director of Property (the "Design Documents") which approval shall not be unreasonably withheld or delayed.

(d) Budget. To avoid future disputes about which costs can be credited against Tenant's minimum spending obligations for the various Categories of the Building Improvements, Tenant shall submit to the Director of Property a proposed budget at the time Tenant submits Design Documents and Construction Documents to the Director of Property. Prior to commencing construction of any Category of the Building Improvements Tenant shall provide City with a proposed budget for the relevant work, and shall obtain written confirmation from the Director of Property that (a) the work shown in the budget would qualify as work for which Tenant would be entitled credit against the Minimum Building Improvement Cost for the applicable Category of work, and (b) City approves the budget for the proposed work, including the amounts in each budget category (as approved, the "Budget").

(e) Construction Documents. Based on the approved Design Documents and any further adjustments approved by City, Tenant shall cause its architect or engineer approved by the Director of Property (the "Architect" or "Engineer", as applicable), which approval shall not be unreasonably withheld or

delayed, to prepare and submit to the Director of Property for City's approval, plans and specifications sufficient for the processing of an application for a building permit for each component of the Building Improvements in accordance with applicable laws (the "Construction Documents"). Such Construction Documents shall be subject to approval by City as set forth below.

(i) City's Approval of Plans. The Construction Documents (and any Change Orders thereto) shall be subject to approval by the Director of Property, which approval shall not be unreasonably withheld or delayed, in accordance with the following procedure. After submission of the Construction Documents or proposed Change Order, the Director of Property shall promptly either approve or disapprove the submission; provided, if the Director of Property disapproves the submission, the reason for the disapproval and of the revisions that City reasonably requires in order to obtain approval consistent with the terms of this Lease shall be served upon Tenant in writing. As soon as reasonably possible thereafter Tenant shall submit to City documents incorporating the required revisions. Such revisions shall be subject to approval by the Director of Property under the same process outlined above; provided, the Director of Property shall not withhold approval of Construction Documents based on a matter that was previously approved by the Director as part of the approved Design Documents. Without limiting the generality of the foregoing, City agrees to approve or disapprove change order requests within five (5) business days after receipt from Tenant, and if not approved or disapproved within said period, Tenant may send a second notice to City which notice must state prominently "THIS IS A SECOND REQUEST. FAILURE TO RESPOND WITHIN FIVE (5) BUSINESS DAYS WILL BE DEEMED TO CONSTITUTE AN APPROVAL." If City still fails to respond in writing within five (5) business days after receipt of the second notice, such change order shall be deemed approved by City acting in its proprietary capacity under this Lease.

(ii) Payment for Plans. Tenant shall pay for all costs of preparing and completing the Design Documents and the Construction Documents.

(iii) Change Orders. If, following City's approval of the Construction Documents, Tenant requests or is required to make any Change Order, Tenant shall provide the Director of Property with proposed plans and specifications with respect to such change, addition or alteration, together with notice of any delay in the anticipated date of Substantial Completion that would result from such Change Order. Any such Change Order shall be subject to the Director of Property's prior written approval, in accordance with subparagraph (i) above. No approval by City of any such Change Order shall relieve or modify Tenant's obligations hereunder to complete the construction of the Building Improvements, nor shall any such approval limit any of City's rights or remedies hereunder or under the Lease. Tenant shall be solely responsible for the cost of the Change Order, including, without limitation, the costs of preparing the plans and specifications relating thereto.

9.2 Permits. Tenant shall have the responsibility for obtaining all governmental permits and approvals required to commence and complete the Building Improvements, and upon request shall deliver copies of all of such permits and approvals to City. Tenant shall have the responsibility of calling for all inspections required by City's Bureau of Building Inspection and any other applicable inspections by other City departments or governmental agencies. Upon reasonable request by Tenant, City's Real Estate Division staff, acting in City's proprietary capacity but not in any regulatory capacity, will offer support, in accordance with industry custom for landlords, for approval of Tenant's permit applications.

9.3 Construction of Initial Improvements. Following City's approval of the Construction Documents, including obtaining all necessary permits and approvals, Tenant shall cause the Building Improvements to be constructed and installed in a good

and professional manner in accordance with sound building practice and in material conformity with the Construction Documents, as revised by any Change Orders, and the terms of this Lease. Other than as set forth herein, City shall not have any obligation with respect to any such work.

9.4 Construction.

(a) Diligent Prosecution. Prior to commencement of construction of any Category of the Building Improvements Tenant shall have obtained all required permits for construction of such Category in accordance with the approved Construction Documents. Tenant shall keep City apprised of the status of permit approval and the progress of construction. Upon commencement of construction of the Building Improvements, Tenant shall diligently pursue the Building Improvements to completion. Upon City's request, Tenant or its Contractor shall furnish the Director of Property with periodic reports on the construction. At all times during the construction of the Building Improvements, the Director of Property and City's Real Estate Division staff, shall have the right to enter the Premises to inspect the Premises, during regular business hours, provided such inspections do not unreasonably interfere with the construction and provided that City coordinates such access with Tenant at twenty-four (24) hours in advance of such access. Such access shall be subject to Tenant's reasonable security and safety measures.

(b) Inspection Notice. Tenant shall notify City when each Category of the Building Improvements is Substantially Completed, and City and Tenant shall schedule an inspection of the Premises in order for City to confirm Substantial Completion.

(c) Substantial Completion. A representative of City and a representative of Tenant shall walk through the Premises within thirty (30) days following the date a Category of the Initial Improvements is Substantially Completed to identify items which have not yet been completed. Within fifteen (15) business days following such walk through, City shall have the right to present to Tenant a written "punchlist" consisting of any items that have not been finished in accordance with the Construction Documents. Tenant shall promptly complete all defective or incomplete items identified in such punchlist within sixty (60) days after the delivery of such list, or such longer period as may be reasonably necessary to complete the same. City's failure to include any item on such list shall not alter Tenant's responsibility hereunder to complete all Initial Improvements in accordance with the Construction Documents and the provisions hereof, nor constitute a waiver of any latent defects.

(d) Force Majeure. In the event of any Force Majeure, Tenant shall give prompt written notice to City of the occurrence of such event and the projected delay in performance, and thereafter shall keep City regularly informed of the status of such Force Majeure.

(e) Time of the Essence. Time is of the essence with respect to all provisions of this Section 9 [Building Improvements].

9.5 Minimum Building Improvements Cost and Potential Additional Improvements. Tenant shall pay for the cost of designing the Building Improvements, and shall pay the cost of constructing and installing the Building Improvements. In no event shall Tenant pay less than the Minimum Building Improvement Cost listed in Section 9.1(a)(iv) above for constructing and installing each Category of Building Improvements. Tenant shall have the right to alter line items in a Budget (not including Tenant's construction management costs) by spending more or less within each line item up to twenty percent (20%) without City's prior consent; provided, any alteration of a line item by twenty percent (20%) or more shall be subject to the prior review and approval of the City's Director of Property, which approval shall not be unreasonably

withheld. Within ninety (90) days following the completion of any Category of the Building Improvements, Tenant shall prepare a detailed accounting of all third party costs incurred by Tenant in completing such Category of the Building Improvements and Tenant's actual construction management costs, together with appropriate backup documentation as set forth below (the "Cost Statement"), and shall deliver the Cost Statement to City. Tenant's construction management costs shall not exceed reasonable and customary amounts in total and on an hourly basis. In the event that Tenant incurred third party and construction management costs to complete any Category of Building Improvements that are less than the Minimum Building Improvement Cost for such Category, Tenant shall suggest additional improvements to the Premises to make up the difference. The proposed additional improvements shall be subject to City Administrator's prior written approval, which approval shall not be unreasonably withheld or delayed. Upon agreement of the additional improvements (as approved, the "Additional Improvements"), Tenant shall promptly complete such Additional Improvements and upon completion, provide an updated Cost Statement to demonstrate that Tenant has spent the Minimum Building Improvement Cost for each Category and for the Additional Improvements. Tenant understands and agrees that Tenant's agreement to spend the Minimum Building Improvement Cost for each Category of work on the Premises is a material part of the consideration to City for this Lease, and City would not be willing to enter this Lease without such agreement. Tenant's failure to spend the Minimal Building Improvement Cost for any Category of Building Improvements as set forth herein (except as allowed with respect to approved Additional Improvements), or Tenant's submission of false statements regarding the Building Improvement cost, shall be a material default under this Lease.

9.6 Required Documentation of Costs. Tenant shall keep accurate books and records of all costs incurred in connection with the Building Improvements in accordance with accounting principles generally accepted in the construction industry. Tenant shall provide the Director of Property with copies of supporting data substantiating the Tenant's payment of costs for the Building Improvements. At City's request, Tenant shall also provide (i) all invoices received by Tenant from the Contractor or other third parties in connection with the construction of the Initial Improvements, (ii) satisfactory evidence of payment of such invoices, including unconditional lien waivers, or if such invoices have not been paid, conditional lien waivers, all such lien waivers being in the form prescribed by California Civil Code Section 3262 and executed by each subcontractor and material supplier, and (iii) such additional documentation as City may reasonably request. City shall have the right on written notice to Tenant to audit during regular business hours Tenant's books and records with respect to the Building Improvements.

9.7 Ownership of Building Improvements. Notwithstanding the provisions of Section 26.1 in the Lease, all affixed improvements and alterations that are part of the Building Improvements, including temporary and permanent fixtures, furniture and equipment, regardless of whether such item is considered a trade fixture, shall become the property of City upon the expiration or termination of this Lease, and shall be surrendered to City."

b. Corresponding Changes to Definitions Section. To reflect the foregoing changes to Section 9 of the Lease, effective as of the Amendment Effective Date, the definitions of the following terms shall be deleted from Section 34 of the Lease: Construction Interval, Construction Period, Phase, Phase 1, Phase 2, Phase 3, Phase 1 Improvements, Phase 2 Improvements, Phase 3 Improvements, Phase 1 Construction Period, Phase 2 Construction Period, and Phase 3 Construction Period.

8. Marquee. If Tenant elects to replace the existing marquee on the building with a new marquee, the City, acting in its proprietary capacity through the City Administrator or City's Director of Property, shall not unreasonably withhold consent to the installation of such new marquee. Any such new marquee shall be subject to review by and approval of the San Francisco Planning Department and any other regulatory department or agency having jurisdiction, and must comply with all applicable laws, rules and regulations, including without limitation those of the San Francisco's Civic Center Historic District, and with this Section 8. The provisions of Section 10 of the Lease regarding Subsequent Construction and the provisions of Section 11 of the Lease shall apply to the installation of the new marquee, and the provisions of Section 3.2 of the Lease shall apply to the use of the new marquee. Tenant agrees that if any approved marquee at any time allows advertising or naming rights other than the City, Tenant, and event information, for which Tenant or its affiliates and Agents from a third party in connection with the advertising or naming rights receives revenue, income, or consideration, in cash or in the reasonable cash value to Tenant of any non-cash consideration ("Marquee Revenue"), then Tenant shall pay City fifty percent (50%) of the amount of the net Marquee Revenue, which for the purposes hereof shall mean the Marquee Revenue less commissions incurred by Tenant in the sale of such advertising or naming rights consistent with industry standards, provided such commission costs shall in no event exceed fifteen percent (15%). Such revenue sharing shall commence after Tenant recoups its planning, permitting, and construction costs for the marquee. Tenant shall keep accurate books and records of all such costs and at City's request shall provide the Director of Property with copies of invoices or other documentation of such costs.

9. Repair and Maintenance. Effective as of the Amendment Effective Date, Section 8.1 of the Lease [City's Duty to Maintain] shall be amended by adding the following to the first sentence following the phrase "and (ii)":

"in the event of any maintenance or repair costing less than Three Million Dollars (\$3,000,000) (subject to a CPI adjustment on the date of such repair is required) that is not subject to Section 13 [Damage or Destruction], City may request Tenant, and Tenant shall have the right but not the obligation to, make the repair for rent credit, the amount of which shall not exceed Tenant's actual third party out-of-pocket maintenance or repair cost (as substantiated by Tenant upon completion by satisfactory evidence), and shall be applied only against future Rent under this Lease, and in either case such work shall be considered to be Subsequent Construction for the purposes of Section 10 (subject however to City's obligation hereunder to provide rent credit or reimbursement), or, City may elect, at its sole discretion, to reimburse Tenant for some or all of the actual third party out-of-pocket maintenance or repair (as substantiated by Tenant upon completion by satisfactory evidence) in lieu of such Rent credit, and (iii)"

10. Update of City Provisions.

a. Prevailing Wages and Local Hire for Certain Construction Work. Effective as of the Amendment Effective Date Section 11.4 of Lease shall be deleted and the following provision shall be substituted therefor:

"11.4 Prevailing Wages and Working Conditions: Local Hire.

(a) Prevailing Wages and Working Conditions. Any undefined, initially-capitalized term used in this subsection shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Tenant shall require its Contractors and Subcontractors performing (i) labor in connection with a "public work" as defined under California Labor Code Section 1720 et seq. (which includes certain construction,

alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction, at the Premises to (1) pay workers performing such work not less than the Prevailing Rate of Wages, (2) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (3) employ Apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, "Prevailing Wage Requirements"). Tenant agrees to cooperate with the City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements.

Tenant shall include, and shall require its subtenants, and Contractors and Subcontractors (regardless of tier) to include, the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with San Francisco Administrative Code Section 23.61. Tenant's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A Contractor's or Subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party. For the current Prevailing Rate of Wages, see www.sfgov.org/olse/prevailingwages or call the City's Office of Labor Standard Enforcement at 415-554-6235.

(b) Local Hiring Requirements for Improvements and Alterations. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.62 (the "Local Hiring Requirements"). Improvements and Alterations are subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than \$750,000 per building permit or (ii) meets any of the other exemptions in the Local Hiring Requirements. Tenant agrees that it shall comply with the Local Hiring Requirements to the extent applicable. Before starting any Tenant Improvement Work or any Alteration, Tenant shall contact City's Office of Economic Workforce and Development ("OEWD") to verify if the Local Hiring Requirements apply to the work (i.e., whether the work is a "Covered Project").

Tenant shall include, and shall require its subtenants to include, a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project with specific reference to San Francisco Administrative Code Section 23.62. Each such contract shall name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Tenant shall cooperate, and require its subtenants to cooperate, with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Tenant's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party."

b. Prevailing Wages for Theatrical Workers, and Trade Shows and Broadcast Services. To reflect changes in the numbering and content of the San Francisco Administrative Code provisions regarding the payment of prevailing wages for certain theatrical and trade show

workers, effective as of the Amendment Effective Date Section 30.3 of the Lease shall be deleted and the following provisions shall be substituted therefor:

“30.3 Wages and Working Conditions for Theatrical Workers, Special Events and Broadcast Services

Tenant shall pay, and shall require its subtenants, and contractors and subcontractors (regardless of tier) to pay, prevailing wages, including fringe benefits or the matching equivalents thereof, to persons performing services for the following activity on the Premises to the extent required by San Francisco Administrative Code Chapter 21C: a Show (as defined in Section 21C.4), a Special Event (as defined in Section 21C.8), and Broadcast Services (as defined in Section 21C.9).

If Tenant, or its subtenants, contractors, and subcontractors fail to comply with the applicable obligations in San Francisco Administrative Code Chapter 21C, City shall have all available remedies set forth in Chapter 21C and the remedies set forth in this Lease. City may inspect and/or audit any workplace, job site, books and records pertaining to the applicable services and may interview any individual who provides, or has provided, such services. Tenant shall provide to City (and to require any subtenant, contractor or subcontractor who maintains such records to provide to City) immediate access to all workers’ time sheets, payroll records, and paychecks for inspection on request to the extent they relate to such services.

- The types of covered services related to a Show includes individuals engaged in theatrical or technical services, including rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services.
- The types of covered services related to a Special Event includes individuals engaged in on-site installation, set-up, assembly, and dismantling of temporary exhibits, displays, booths, modular systems, signage, drapery, specialty furniture, floor coverings, and decorative materials in connection with trade shows, conventions, expositions, and other special events on City property.
- The types of covered services related to Broadcast Services includes individuals engaged in the electronic capture and/or live transmission of on-site video, digital, and/or video content for commercial purposes through the use of a remote production or satellite trust on-site, including any technical director, video controller, assistant director, and stage manager, and individuals engaged in audio, camera, capture and playback, graphics and utility functions.”

c. Restrictions on the Use of Pesticides. To reflect the revision and reorganization of San Francisco ordinances regulating the use of pesticides on City property, effective as of the Amendment Effective Date (i) the reference to “Chapter 39 of the San Francisco Administrative Code” in the definition of Hazardous Material Laws in Section 34 of the Lease shall be changed to “Chapter 3 of the San Francisco Environment Code” and (ii) the provisions of Section 20.2(c)(i) of the Lease shall be deleted and the following provisions shall be added to the Lease as Section 32.11:

“32.11 Restriction on the Use of Pesticides.

Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or “IPM Ordinance”) describes an integrated pest management (“IPM”) policy to be implemented by all City departments. Tenant shall not use or

apply or allow the use or application of any pesticides on the Premises or contract with any party to provide pest abatement or control services to the Premises without first receiving City's written approval of an IPM plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the term of this Lease, (ii) describes the steps Tenant will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. Tenant shall comply, and shall require all of Tenant's contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Tenant were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (d) require Tenant to keep certain records and to report to City all pesticide use at the Premises by Tenant's staff or contractors.

If Tenant or Tenant's contractor will apply pesticides to outdoor areas at the Premises, Tenant must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation ("CDPR") and any such pesticide application shall be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>."

d. Criminal History in Hiring and Employment Decisions. To reflect changes in the San Francisco Administrative Code requiring the inclusion of the provisions of Administrative Code Chapter 12T in any Property Contracts (other than Excluded Contracts) (as such terms are defined in such Chapter 12T) that are executed or amended on after the effective date of such ordinance, effective as of the Amendment Effective Date the following provisions shall be added to the Lease as Section 30.5:

"30.5 Criminal History in Hiring and Employment Decisions

(a) Unless exempt, Tenant agrees to comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; "Chapter 12 T"), which are hereby incorporated as may be amended from time to time, with respect to applicants and employees of Tenant who would be or are performing work at the Premises.

(b) Tenant shall incorporate by reference the provisions of Chapter 12T in all subleases of some or all of the Premises, and shall require all subtenants to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) Tenant and subtenants shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other

adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) Tenant and subtenants shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. Tenant and subtenants shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Tenant and subtenants shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Tenant or subtenant at the Premises, that the Tenant or subtenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Tenant and subtenants shall post the notice prepared by the Office of Labor Standards Enforcement ("OLSE"), available on OLSE's website, in a conspicuous place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

(g) Tenant and subtenants understand and agree that upon any failure to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T or this Lease, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Lease.

(h) If Tenant has any questions about the applicability of Chapter 12T, it may contact the City's Real Estate Division for additional information. City's Real Estate Division may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8."

e. Vending Machines: Nutritional Standards and Calorie Labeling Requirements.
To reflect changes in the San Francisco Administrative Code, effective as of the Amendment Effective Date the following provision shall be added to the Lease as Section 32.11:

"32.11 Vending Machines: Nutritional Standards and Calorie Labeling Requirements.

Tenant shall not install or permit any vending machine on the Premises without the prior written consent of the Director of Property. Any permitted vending machine must comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code Section 4.9-1(c), as may be amended from time to time (the "Nutritional Standards and Calorie Labeling Requirements"). Tenant agrees to incorporate the Nutritional Standards and Calorie Labeling Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards and Calorie Labeling Requirements or to otherwise comply with this Section 32.11 shall be deemed a material breach of this Lease. Without limiting Landlord's other rights and remedies under this Lease, Landlord shall have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards

Requirements. In addition, any restaurant located on the Premises is encouraged to ensure that at least 25% of Meals offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code Section 4.9-1(e), as may be amended.”

f. **All-gender Toilet Facilities.** To reflect changes in the San Francisco Administrative Code, effective as of the Amendment Effective Date the following provision shall be added to the Lease as Section 32.12:

“32.12 **All-Gender Toilet Facilities.** If applicable, Tenant shall comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of any building on City-owned land, including the Premises, where extensive renovations are made. An “all-gender toilet facility” means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures, and “extensive renovations” means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by this section. If Tenant has any question about applicability or compliance, Tenant should contact the Director of Property for guidance.”

11. **Consent of Guarantor.** Concurrently with Tenant’s execution of this Amendment, Guarantor shall execute and deliver to the City an acknowledgment of and consent to this Amendment, confirming that the Guaranty Agreement shall apply to Tenant's obligations under this Lease as amended by this Amendment.

12. **No Joint Venture.** This Amendment or any activity by the City hereunder does not create a partnership or joint venture between the City and Tenant relating to the Lease or otherwise. This Amendment does not constitute authorization or approval by the City of any activity conducted by Tenant, and the City shall in no way be responsible for the acts or omissions of Tenant on the Premises or otherwise.

13. **Attorneys Fees.** In the event a dispute arises concerning this Amendment, the party not prevailing in such dispute shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Amendment, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

14. **References.** No reference to this Amendment is necessary in any instrument or document at any time referring to the Lease. Any future reference to the Lease shall be deemed a reference to such document as amended hereby.

15. **Applicable Law.** This Amendment shall be governed by, construed and enforced in accordance with the laws of the State of California.

16. **Further Instruments.** The parties hereto agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Amendment.

17. **Miscellaneous.** Except as expressly modified herein, the terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect. The Lease as amended by this Amendment constitutes the entire agreement of the parties concerning the subject matter hereof, and supersedes and cancels any and all previous negotiations, agreements, or understandings, if any, regarding the matters contained herein. The execution of this

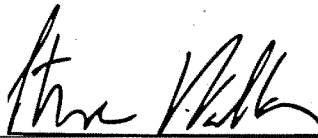
Amendment shall not constitute a waiver of relinquishment of any rights that City may have relating to the Lease. Tenant and City hereby ratify and confirm all of the provisions of the Lease as amended by this Amendment.

In witness whereof, the parties hereto have executed this Amendment as of the date written above.

TENANT: BGCA MANAGEMENT, LLC,
a Delaware limited liability company

By: Another Planet Entertainment, LLC,
a Delaware limited liability company

Its:

By: 
AUTHORIZED SIGNATURE

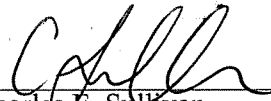
Name: Steve Welkom
Title: COO

LANDLORD: CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
JOHN UPDIKE
Director of Property

APPROVED AS TO FORM FOR CITY:

DENNIS J. HERRERA, City Attorney

By: 
Charles E. Sullivan
Deputy City Attorney