

AMENDED AND RESTATED LEASE

between

CITY AND COUNTY OF SAN FRANCISCO, Landlord

and

PROXYDEVELOPMENT, LLC, Tenant

**For the lease of Parcel K
(near the SE Corner of Hayes and Octavia)
San Francisco, California**

June 1, 2013

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AMENDED AND RESTATED LEASE

THIS AMENDED AND RESTATED LEASE (this "Lease") dated for reference purposes only as of June ____, 2013, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Landlord"), and PROXY DEVELOPMENT, LLC ("Tenant").

RECITALS

A. City and Tenant are parties to a Lease dated as of July 14, 2010, as amended by a First Amendment to Lease dated as of September 28, 2011 (as amended, the "Sublease"), with respect to the sublease of certain premises located near the southeast corner of Hayes and Octavia Streets, San Francisco, as further depicted on the attached Exhibit A ("Premises").

B. At the time that the City and Tenant entered into the Sublease, the Premises were owned by the Redevelopment Agency of the City and County of San Francisco ("Agency"), and leased by City pursuant to a Ground Lease dated as of January 30, 2004, as amended (the "Master Lease"), and the Sublease was subject to the terms and conditions of the Master Lease.

C. Under California State Assembly Bill No. 1X26 (Chapter 5, Statutes of 2011-12, first Extraordinary Session), as amended by California State Assembly Bill No. 1484 (as amended, the "Dissolution Bills"), the Agency dissolved as a matter of law on February 1, 2012, and pursuant to the Dissolution Bills, Ordinance No. 11-12, adopted by the City's Board of Supervisors and Mayor on January 26, 2012, Ordinance No. 215-12, adopted by the City's Board of Supervisors and Mayor on October 12, 2012, and the approved housing asset list submitted by City's Mayor's Office of Housing to, and approved by, the State of California Department of Finance pursuant to AB 1484 (Cal. Health & Safety Code Section 34176(a)(2)), the City's Mayor's Office of Housing ("MOH") is successor in interest to and Agency's fee ownership of the Premises, subject to Tenant's rights under the Sublease.

D. The Master Lease automatically terminated by operation of law when MOH acquired Agency's fee ownership of the Premises, and MOH has subsequently entered into a Memorandum of Understanding with City's Mayor's Office of Economic Workforce Development and City's Office of the City Administrator, dated as of May 13, 2013, regarding the continued lease of the Premises until MOH commences the development of affordable housing at the Premises.

E. City and Tenant wish to amend and restate the Sublease in its entirety to memorialize the termination of the Master Lease, extend the term and revise the base rent payments for Tenant's lease of the Premises, and terminate Tenant's obligation to make payments of Bonus Rent (as defined in the Sublease), all on the terms and conditions set forth in this Lease.

AGREEMENT

City and Tenant hereby agree as follows:

1. BASIC LEASE INFORMATION

The following is a summary of basic lease information (the "Basic Lease Information"). Each item below shall be deemed to incorporate all of the terms set forth in this Lease pertaining to such item. In the event of any conflict between the information in this Article and any more

specific provision of this Lease, the more specific provision shall control.

Lease Reference Date:	June 1, 2013
Landlord:	CITY AND COUNTY OF SAN FRANCISCO
Tenant:	PROXYdevelopment, LLC
Premises (Section 3.1):	A portion of Assessor's Parcel Block 0817, Lot 30, located near the SE corner of Hayes and Octavia Streets, San Francisco, CA, which contains approximately 11,430 sq. ft. and is depicted on the attached Exhibit A
Term (Section 4):	Commencing on the Commencement Date (defined in Section 4.2) and terminating on January 31, 2021
Initial Base Rent (Section 5.1):	Commencing on the Commencement Date, \$5,314.80 per month, which amount shall be adjusted on the first anniversary of the Commencement Date pursuant to Section 5.1 Commencing on the second anniversary of the Commencement Date, \$7,200 per month, which amount shall be adjusted on each following anniversary of the Commencement Date pursuant to Section 5.1
Use (Section 7.1):	Retail activities (including the sale of foods and beverages), the operation of restaurants on the Premises, food trucks, food carts, art installations, events, outdoor fitness classes, and the operation of a membership-based car sharing business on the Premises (e.g., City Car Share or Zipcar), provided that no more than 50% of the Premises may be used to operate any such car sharing business and Tenant shall obtain approval of the San Francisco Art Commission prior to placing any art installation at the Premises.
Security Deposit (Section 23):	\$5,000
Utilities and Services (Section 9):	Tenant to pay for all utilities and services provided to the Premises
Notice Address of City (Section 24.1):	Office of Economic and Workforce Development City Hall, Room 448 1 Dr. Carlton B. Goodlett Place San Francisco, California 94117 Real Estate Division

Attn: 25 Van Ness Avenue, Suite 400
San Francisco, California 94102
Director of Property
Re: Parcel K
Fax No.: (415) 552-9216

with a copy to: Office of the City Attorney
City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Special Projects Team

Key Contact for City: Tamsen Drew, OEWD

Contact Email Address: tamsen.drew@sfgov.org

Notice Address of Tenant
Section 24.1): PROXYdevelopment, LLC
2212 6th Street
Berkeley, CA 94710

Key Contact for Tenant: Douglas Burnham

Tenant Email Address: douglas@envelopead.com

2. DEFINITIONS

For purposes of this Lease, initially capitalized terms shall have the meanings ascribed to them in this Section:

"Additional Charges" means any and all real and personal property taxes, possessory interest taxes, insurance premiums and any and all other costs, impositions, expenses, charges and other amounts required to be paid by Tenant under this Lease.

"Adjustment Date" means each anniversary of the Commencement Date.

"Affiliate of Tenant" means any person or entity that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under the common control with, Tenant. As used above, the words "control," "controlled" and "controls" mean the right and power, directly or indirectly through one or more intermediaries, to direct or cause the direction of substantially all of the management and policies of a person or entity through ownership of voting securities or by contract, including, but not limited to, the right to fifty percent (50%) or more of the capital or earnings of a partnership or, alternatively, ownership of fifty percent (50%) or more of the voting stock of a corporation.

"Agents" means, when used with reference to either Party to this Lease, the officers, directors, employees, agents, contractors, and representatives of such Party, and their respective heirs, legal representatives, successors and assigns.

"Assignment" has the meaning given in **Section 15.1** hereof.

"Award" means all compensation, sums or value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.

"Basic Lease Information" means the information with respect to this Lease

summarized in **Article 1** hereof.

"**Base Rent**" means the annual Base Rent specified in the Basic Lease Information and described in **Section 5.1** hereof.

"**City**" means the City and County of San Francisco, a municipal corporation.

"**City Fence**" means the fence located on the Premises as of the Lease Reference Date, which shall remain City's property at all times.

"**Commencement Date**" has the meaning given in **Section 4.2** hereof.

"**Date of Taking**" means the earlier of (i) the date upon which title to the portion of the Premises taken passes to and vests in the condemnor or (ii) the date on which Tenant is dispossessed.

"**Encumber**" means create any Encumbrance; "**Encumbrance**" means any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance.

"**Encumbrancer**" means a mortgagee, beneficiary of a deed of trust or other holder of an Encumbrance.

"**Environmental Laws**" means any present or future federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises (including any permitted Improvements) and any other property, including, without limitation, soil, air and groundwater conditions.

"**Event of Default**" means any one of the events of default described in **Section 16.1** hereof.

"**Expiration Date**" has the meaning given in **Section 4.2** hereof.

"**Hazardous Material**" means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 *et seq.*) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Premises, any Improvements to be constructed on the Premises by or on behalf of Tenant, or are naturally occurring substances on, in or about the Premises; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids.

"**Hazardous Material Claims**" means any and all enforcement, Investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws, together with any and all Losses made or threatened by any third party against City, City's Agents, or the Premises (or any portion thereof), relating to damage, contribution, cost recovery compensation, loss or injury resulting

from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Materials Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises, the loss or restriction of the use or any amenity of the Premises, and attorneys' fees and consultants' fees and experts' fees and costs.

"Improvements" means any and all buildings, structures, fixtures and other improvements constructed, installed or placed on the Premises by or on behalf of Tenant pursuant to the Sublease or this Lease, including, without limitation, any trailers, mobile homes, permanent tent facilities, signs, billboards or other advertising materials, roads, trails, driveways, parking areas, curbs, walks, fences, walls, stairs, poles, plantings and landscaping, and including any alterations, installations or additions to any Improvements made by or for Tenant.

"Indemnify" means indemnify, protect, defend and hold harmless forever.

"Indemnified Parties" means City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, the City's Office of Economic and Workforce Development and the City's Real Estate Division, and all of its and their respective Agents, and their respective heirs, legal representatives, successors and assigns, and each of them.

"Investigation" when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion thereof or which have been, are being, or threaten to be Released into the environment. Investigation shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.

"Invitees" when used with respect to Tenant means the clients, customers, invitees, guests, members, licensees, assignees and sublessees of Tenant.

"Landlord" means the City and County of San Francisco.

"Law" means any law, statute, ordinance, resolution, regulation, proclamation, order or decree of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, including City, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties.

"Lease" means this Lease as it may be amended in accordance with its terms.

"Losses" means any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs.

"Official Records" means the official records of the county(ies) in which the Premises are located.

"Party" means City or Tenant; **"Parties"** means both City and Tenant.

"Premises" shall mean the property described in **Section 3.1**, together with the City Fence.

"Release" when used with respect to Hazardous Material means any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping,

leaching, dumping, or disposing into or inside any existing improvements or any Improvements constructed hereunder by or on behalf of Tenant, or in, on, under or about the Premises or any portion thereof.

"Remediation" when used with reference to Hazardous Material means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material located in, on, under or about the Premises or which have been, are being, or threaten to be Released into the environment. Remediate includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323.

"Rent" means the Base Rent, as may be adjusted pursuant to the provisions of **Section 5.1**, together with any and all Additional Charges and all rent payments to be made by Tenant to City pursuant to that certain letter from City to Tenant regarding the 2011-2013 annual CPI adjustments for the Premises dated as of April 17, 2013, and countersigned by Tenant on April 21, 2013, whether or not any such amounts are specifically characterized as rent.

"Sublease" has the meaning given in **Section 15.1** hereof.

"Taking" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under Law. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

"Tenant" means the Party identified as Tenant in the Basic Lease Information and at the beginning of this Lease. Except when immediately followed by the word "itself," the term Tenant shall also refer to the successors and assigns of Tenant's interests under this Lease, provided that the rights and obligations of Tenant's successors and assigns shall be limited to only those rights and obligations that this Lease permits to be transferred and that have been transferred in accordance with this Lease.

"Tenant's Personal Property" means the personal property of Tenant described in **Section 8.3** hereof.

"Term" means the term of this Lease as determined under **Section 4.1** hereof.

"Transfer" means any Assignment or Sublease.

"Transferee" means any recognized assignee of any part of Tenant's leasehold interest hereunder or any recognized sublessee of any portion of the Premises, pursuant to a Transfer that complies with **Article 15** hereof.

"Unmatured Event of Default" means any default by Tenant under this Lease that, with the giving of notice or the passage of time, or both, would constitute an Event of Default hereunder.

3. PREMISES

3.1 Leased Premises. Subject to the terms, covenants and conditions of this Lease, City leases to Tenant and Tenant leases from City, the Premises (as defined in **Section 1**); excluding and reserving during the Term unto City, its successors and assigns, during the Term the rights described in **Section 3.2** below.

3.2 Rights Reserved to City. Notwithstanding anything to the contrary in this Lease, City reserves and retains all of the following rights relating to the Premises at all times:

(a) Any and all water and water rights, including, but not limited to (i) any and all surface water and surface water rights, including, without limitation, riparian rights and appropriative water rights to surface streams and the underflow of streams, and (ii) any and all groundwater and subterranean water rights, including, without limitation, the right to export percolating groundwater for use by City or its water customers;

(b) Any and all timber and timber rights, including, without limitation, all standing trees and downed timber;

(c) Any and all minerals and mineral rights of every kind and character now known to exist or hereafter discovered in the Premises, including, but not limited to, oil and gas and rights thereto, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to City or its successors and assigns, but without entering upon or using the surface of the lands of the Premises and in such manner as not to damage the surface of the Premises or to interfere with the permitted use thereof by Tenant, without Tenant's prior written consent;

(d) The right to grant future easements and rights of way over, across, under, in and upon the Premises as City shall determine to be in the public interest, provided that any such easement or right-of-way shall be conditioned upon the grantee's assumption of liability to Tenant for damage to its property that Tenant may sustain hereunder as a result of the grantee's use of such easement or right of way; and

(e) Without limiting the generality of **Section 3.2(e)** above, the right to grant future easements, rights of way, permits and/or licenses over, across, under, in and upon the Premises for the installation, operation, maintenance, repair and removal of (i) equipment for furnishing cellular telephone, radio or other telecommunications services, including, without limitation, antennas, radio, devices, cables and other equipment associated with a telecommunications cell site, and (ii) commercial billboards, signs and/or advertising kiosks, provided that any such easement or right-of-way shall not materially interfere with Tenant's use of the Premises hereunder, and provided further that the grant of any such easement or right-of-way shall be conditioned upon the grantee's assumption of liability to Tenant for damage to its property that Tenant may sustain hereunder as a result of the grantee's use of such easement or right of way; and

(f) All rights of access provided for in **Article 19** below.

3.3 As Is Condition of Premises.

(a) **Inspection of Premises.** Tenant represents and warrants that Tenant has conducted a thorough and diligent inspection and investigation, either independently or through Agents of Tenant's own choosing, of the Premises and the suitability of the Premises for Tenant's intended use, and that Tenant has continuously leased and occupied the Premises pursuant to the Sublease since September 1, 2010. TENANT HAS DETERMINED, BASED SOLELY ON ITS OWN INVESTIGATION AND KNOWLEDGE OF THE PREMISES, THAT THE PREMISES ARE SUITABLE FOR TENANT'S BUSINESS AND INTENDED USE.

(b) **As Is; Disclaimer of Representations.** Tenant acknowledges and agrees that the Premises are being leased and accepted in their "**AS IS, WITH ALL FAULTS**" condition, without representation or warranty of any kind, and subject to all applicable Laws governing the use, occupancy, management, operation and possession of the Premises. Without

limiting the foregoing, this Lease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Tenant acknowledges and agrees that neither City, nor any of its Agents have made, and City hereby disclaims, any representations or warranties, express or implied, concerning: (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the present or future suitability of the Premises for Tenant's business and intended uses, (v) the feasibility, cost or legality of constructing any Improvements on the Premises if required for Tenant's use and permitted under this Lease, or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

(c) **Utilities.** City has no responsibility or liability of any kind with respect to any utilities that may be on, in or under the Premises. Tenant has the sole responsibility to locate any utilities and protect them from damage.

3.4 Termination of Sublease. The Sublease shall automatically terminate as of the Commencement Date.

4. TERM

4.1 Term of Lease. The Premises are leased for a term (the "Term") commencing on the Commencement Date and ending on the Expiration Date, unless sooner terminated pursuant to the provisions of this Lease.

4.2 Commencement Date and Expiration Date. The "Commencement Date" shall be the date upon which each of the following matters is satisfied: (i) City's Board of Supervisors and the Mayor, in their sole and absolute discretion, adopt a resolution or enact an ordinance approving this Lease in accordance with all applicable laws, (ii) this Lease is duly executed and delivered by the Parties hereto, and (iii) Tenant has delivered the certificates described in **Section 18.3** hereof to City. The "Expiration Date" shall be January 31, 2021. Promptly following the Commencement Date, City shall deliver to Lessee a notice confirming the actual Commencement Date, but City's failure to do so shall not affect the commencement of the Term.

5. RENT

5.1 Rent.

(a) **Base Rent.** Commencing on the Commencement Date and continuing throughout the remainder of the Term, Tenant shall pay to City the monthly Base Rent specified in the Basic Lease Information, provided that such sum shall be subject to escalation pursuant to subsection(b) below. The Base Rent shall be paid to City in advance, without prior demand and without any deduction, setoff or counterclaim whatsoever, on or before the Commencement Date and first day of each month thereafter. All sums payable by Tenant to City hereunder shall be paid in cash or by good (cashier's or certified) check to the City and County of San Francisco in care of the Director of Property at 25 Van Ness Avenue, San Francisco, California 94102, or such other place as City may designate in writing. If Tenant pays by check and such check is not honored, then City may require Tenant to make all future payments in cash or by cashier's check. If the Commencement Date is on a day other than the first day of a calendar month, the Base Rent for such fractional month shall be prorated on a thirty (30) day month.

(b) **Base Rent Adjustments.** On each anniversary of the Commencement Date (each, an "Adjustment Date") other than the second anniversary of the Commencement Date, the Base Rent payable by Tenant shall be increased by two percent (2%) of the Base Rent

for the lease year immediately preceding such Adjustment Date.

(c) **Additional Charges.** Tenant shall pay to City any and all Additional Charges, which shall be payable to City at the same place and the same manner as the Base Rent is payable. City shall have the same remedies for a default in the payment of any Additional Charges as for a default in the payment of Base Rent.

5.2 Late Charge. If Tenant fails to pay any Rent by the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to 5% of the amount due, in each instance. The late payment charge has been agreed upon by City and Tenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that City will incur as a result of any such failure by Tenant, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate City for its damages resulting from such failure to pay and Tenant shall promptly pay such charge to City together with such unpaid amount.

5.3 Default Interest. If any Rent is not paid on the due date, such unpaid amount shall bear interest from the due date until paid at the rate of ten percent (10%) per year or, if a higher rate is legally permissible, at the highest rate an individual is permitted to charge under Law. However, interest shall not be payable on late charges incurred by Tenant nor on any amounts on which late charges are paid by Tenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Tenant.

5.4 Net Lease. This Lease is a "net lease." Accordingly, Tenant shall pay to City all Rent and any other payments hereunder free of any charges, assessments or deductions of any kind, without prior demand and without abatement, counterclaim or setoff. Under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties, shall City be expected or required to make any payment of any kind whatsoever with respect to Tenant's use or occupancy of the Premises and any permitted Improvements or this Lease, except as may otherwise be expressly set forth herein. Without limiting the foregoing, Tenant shall be solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which City would otherwise be or become liable by reason of its estate or interests in the Premises, any rights or interests of City in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, renovation, use or occupancy of the Premises, any permitted Improvements, or any portion thereof. Except as may be specifically and expressly provided otherwise in this Lease, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or shall otherwise relieve Tenant from any of its obligations under this Lease, or shall give Tenant any right to terminate this Lease in whole or in part. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation.

6. TAXES, ASSESSMENTS AND OTHER EXPENSES

6.1 Taxes and Assessments, Licenses, Permit Fees and Liens.

(a) **Payment Responsibility.** Tenant shall pay any and all real and personal property taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any Improvements, Tenant's Personal Property, the leasehold estate or any subleasehold estate, or Tenant's use of the Premises or any Improvements. Tenant shall make all such payments directly

to the charging authority when due and payable and at least ten (10) days prior to delinquency, subject to Tenant's right to contest the validity of such charge pursuant to **Section 6.1(c)**. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which City receives the tax bill directly from the taxing authority, Tenant shall reimburse City for payment of such sums immediately upon demand.

(b) Taxability of Possessory Interest. Without limiting the foregoing, Tenant recognizes and agrees that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest.

(c) Reporting Requirement. Tenant agrees to provide such information as City may request to enable City to comply with any tax reporting requirements applicable to this Lease.

6.2 Other Expenses. Tenant shall be responsible for any and all other charges, costs and expenses related to its use, occupancy, operation or enjoyment of the Premises or any Improvements permitted thereon, including, without limitation, the cost of any utilities or services necessary for Tenant's use.

6.3 Evidence of Payment. Tenant shall, upon City's request, furnish to City within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to City, evidencing payment thereof.

7. USE; COVENANTS TO PROTECT PREMISES

7.1 Tenant's Permitted Use. Tenant may use the Premises and the permitted Improvements only for retail activities (including the sale of foods and beverages), the operation of restaurants on the Premises, food trucks, food carts, art installations, events, outdoor fitness classes, membership-based car sharing business on the Premises (e.g., City Car Share or Zipcar), provided that no more than 50% of the Premises may be used to operate any such car sharing business and Tenant shall obtain approval of the San Francisco Art Commission prior to placing any art installation at the Premises in compliance with Section 5.103 of the San Francisco Charter and Section 2A.150 of the San Francisco Administrative Code. Tenant shall not use the Premises for any other purpose other than those expressly permitted in this Lease.

7.2 Days and Hours of Operation. Tenant shall perform all activities on the Premises during the hours that are permitted for such activities under all Laws.

7.3 Covenants Regarding Use. As a material inducement to City to enter into this Lease, Tenant covenants with City as follows:

(a) No Unlawful Uses or Nuisances. Tenant shall not use or occupy any of the Premises or any permitted Improvements, or permit the use or occupancy thereof, in any unlawful manner or for any illegal purpose, or permit to be carried on any offensive, immoral, noisy or hazardous use or any use in violation of the conditions of any certificate of occupancy. Tenant shall take all precautions to eliminate immediately any nuisances or hazards relating to its activities on or about the Premises or any Improvements permitted hereunder. All of Tenant's activities on the Premises shall comply with all applicable Laws.

(b) Covenant Against Waste. Tenant shall not cause or permit any waste, damage or injury to the Premises.

(c) Covenant to Protect Premises. At all times during the Term of this

Lease, Tenant shall protect the Premises from any damage, injury or disturbance. If Tenant or any of its Agents or Invitees damages, injures or disturbs any of the Premises, or any portion thereof, Tenant shall immediately notify City of that occurrence. Without limiting any of its other rights hereunder, City may immediately take all actions it deems proper to repair the Premises at Tenant's sole expense and, following notice and a reasonable opportunity to cure (except in the event of an emergency in which case no notice or cure period is required), City may take all actions it deems proper to repair the Premises at Tenant's sole expense. Tenant shall promptly, upon City's request, remove or alter to City's satisfaction and at Tenant's sole cost, any Improvements or Tenant's Personal Property placed on the Premises by or on behalf of Tenant as necessary to avoid interference with City's use of the Premises for municipal purposes; provided, such removal shall be at Landlord's sole cost if the applicable Improvements were approved by Landlord in writing pursuant to the terms of this Lease. City may adopt from time to time such rules and regulations with regard to Tenant's facilities and operations hereunder as City may determine are necessary or appropriate to safeguard the City's interests in the Premises. Tenant shall comply with all such rules and regulations upon receipt of a copy thereof.

(d) Covenant Against Dumping; Waste Disposal. Tenant shall not cause or permit the dumping or other disposal on, under or about the Premises of landfill, refuse, Hazardous Material or other materials that are unsightly or could pose a hazard to the human health or safety, native vegetation or wildlife, or the environment. Organic wastes from the Premises shall be composted on-site to the extent reasonably possible. Tenant shall use its best efforts to reduce the amount of trash and waste generated from the Premises, to acquire products for use on the Premises which reuse or recycle packaging, and to recycle all materials used on the Premises to the extent reasonably possible.

(e) Pesticide Prohibition. Tenant shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Tenant to submit to City's Real Estate Division an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the terms of this Lease, (b) describes the steps Tenant will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance and (c) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. In addition, Tenant shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

(f) Sewerage System. Tenant shall maintain and its sole cost and expense, and in accordance with the direction and to the satisfaction of the City, the sewerage system at the Premises and shall not permit any sewage or fouled waste water to be disposed of on the Premises.

(g) Food Service Waste Reduction Ordinance. Tenant agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. Any initially-capitalized undefined term used in this subsection shall have the meaning given to such term in the Food Service Waste Reduction Ordinance. The provisions of San Francisco Environment Code Chapter 16 are incorporated herein by reference and made a part of this Lease as though fully set forth. This subsection is a material term of this Lease. By entering into this Lease, Tenant agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Tenant agrees that the sum of \$100 liquidated damages for the first breach, \$200 liquidated damages for the second breach in the same year, and \$500 liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will

incur based on the violation, established in light of the circumstances existing at the time this Lease was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's failure to comply with this provision. Tenant agrees that it shall not use, nor shall allow any of its Agents to use, Disposable Food Service Ware that contains Polystyrene Foam while performing any activities on the Premises, and shall instead use suitable Biodegradable/Compostable or Recyclable Disposable Food Service Ware unless such party receives a waiver from such requirements from the City Administrator in accordance with San Francisco Environment 1604(a).

(h) Trash Control. Tenant shall provide, or ensure the provision of, adequate trash receptacles at the Premises, timely maintenance of such trash receptacles, and otherwise provide for adequate control of any garbage at the Premises generated by the use of the Premises by Tenant and any of its Agents, subtenants, and licensees.

(i) Signage Related to Future Use of Premises. On or before the sixtieth (60th) day immediately following the Commencement Date, Tenant shall install signage regarding the future use of the Premises, which is visible from the portion of Hayes Street that abuts the Premises, is no less than three feet by three feet, and indicates the Premises are intended to be developed into affordable housing and that any other activities or uses allowed by Tenant are temporary in nature, as further depicted in the attached **Exhibit B** (the "Future Use Sign"). Tenant, at its sole cost, shall maintain the Future Use Sign in good condition.

(j) Outreach to Vendors. Tenant shall take good faith efforts that are satisfactory to Landlord to outreach to vendors who currently do business in Redevelopment Project Areas established by Agency under Division 24, Part 1 of the California Health and Safety Code and in the former Western Addition A-2 Redevelopment Project Area established by Agency under Division 24, Part 1 of the California Health and Safety Code, and who may wish to provide services on the Premises. Such efforts may consist of Tenant developing a list of such vendors and notifying such vendors of its permitted uses of the Premises, or other actions that are reasonably requested by Landlord. All outreach efforts must be documented by Tenant and available for review on request by Landlord.

8. IMPROVEMENTS; ALTERATIONS

8.1 Initial Improvements. Pursuant to the Sublease, Tenant installed the initial improvements at the Premises (collectively, the "Initial Improvements") depicted in the draft plans and specifications prepared by Tenant and submitted to City's Department of Building Inspection on July 21, 2010 (the "Plans"). Tenant represents and warrants that the Initial Improvements were installed in accordance with the Plans and the standards contained in Section 8.3 of the Sublease.

8.2 No Additional Improvements or Alterations. Tenant shall not construct, install, make or permit any improvements in, to or about the Premises, nor materially alter any of the Initial Improvements or the Future Use Sign, without the prior written consent of City in each instance, which City may give or withhold in its sole and absolute discretion; provided, however, that Tenant shall have the right to remove the portions of the City Fence reasonably necessary to accommodate Tenant's use of the Premises. Tenant shall provide no less than three (3) business days' prior written notice of Tenant's intent to remove any portion of the City Fence pursuant to the foregoing sentence. For the purposes of this Lease, the term "improvements" shall include any prefabricated improvements. If City consents to any such proposed improvements or alterations (each, an "Approved Improvement"), Tenant shall be responsible, at no cost to the City, for constructing and installing such Approved Improvement in accordance with the approved plans and specification for such Approved Improvement (each, the "Additional Plans") and the standards contained in **Section 8.3** below.

8.3 Construction of Improvements.

(a) Tenant shall obtain, at no cost to the City, all permits and licenses required in connection with any Approved Improvements. Tenant shall not make any material change to the approved Plans or Additional Plans or consent to any change order thereto during the course of construction without first obtaining City's written approval. Upon completion of any Approved Improvements, Tenant shall furnish City and the Agency with a copy of the final as-built plans and specifications for such Approved Improvement. No approval by City or any of its Agents of any Additional Plans or any changes thereto, or to the Future Use Sign, any of the Initial Improvements, or any Approved Improvements for purposes of this Lease shall be deemed to constitute approval of any federal, state or local regulatory authority with jurisdiction over the Premises or Tenant's use hereunder, and nothing herein shall limit Tenant's obligation to obtain all such regulatory approvals at no cost to the City. All Approved Improvements shall be done at Tenant's sole expense (i) in strict accordance with the Additional Plans, (ii) by duly licensed and bonded contractors or mechanics approved by the City, (iii) in a good and professional manner, (iv) in strict compliance with all Laws, including any regulatory permits or approvals required for the construction or installation of such Improvement, and (v) subject to all other conditions that City may reasonably impose, including, without limitation, provision of such completion security as is acceptable to City.

(b) At Landlord's request, Tenant shall promptly upon receipt deliver copies of all required regulatory permits and approvals issued for the construction, installation or operation of any Improvement. No material change from any Additional Plans may be made without the prior written consent of Landlord. Landlord and its Agents shall have the right to inspect the course of construction or installation for any Improvement at all times. Tenant shall require from each contractor and subcontractor performing any work on or about the Premises a policy of general public liability insurance, with such limits as may reasonably be required by City from time to time, but in any event not less than One Million Dollars (\$1,000,000) combined single limit. Such insurance shall also be in compliance with the requirements set forth in **Section 18.2(c)**.

8.4 Ownership of Improvements. The Initial Improvements and any Approved Improvements constructed on or affixed to the Premises shall be and remain Tenant's property during the Term. Except for the decomposed granite and asphalt pervious surface described as part of the Initial Improvements, upon the Expiration Date or any earlier termination hereof, Tenant shall, upon Landlord's request, remove all Improvements from the Premises in accordance with the provisions of **Section 21.1** hereof, unless Landlord, at its sole option and without limiting any of the provisions of **Section 8.1** above, specifies in writing at the time of Landlord's approval of any such Improvements that such Improvements may remain on the Premises following the expiration or termination of this Lease.

8.5 Tenant's Personal Property. All furniture, furnishings and articles of movable personal property and equipment installed in the Premises by or for the account of Tenant that can be removed without structural or other material damage to the Premises (all of which are herein called "Tenant's Personal Property") shall be and remain the property of Tenant and may be removed by it subject to the provisions of **Section 21.1** hereof. At least ten (10) days prior to delinquency, Tenant shall pay all taxes levied or assessed upon Tenant's Personal Property and shall deliver satisfactory evidence of such payment to City.

9. REPAIRS AND MAINTENANCE

9.1 Tenant Responsible for Maintenance. Tenant assumes, at its sole cost, full and sole responsibility for the operation, maintenance and management of the Premises and any

permitted Improvements from and after the Commencement Date. Tenant shall maintain, at its sole cost, the Premises and any existing and permitted Improvements at all times in clean, safe, attractive and sanitary condition and in good order and repair, to City's reasonable satisfaction. Tenant shall not remove any portion of the City Fence without first obtaining the prior written consent of City to such removal. If any portion of the Premises or any of City's property located on or about the Premises is damaged by any of the activities conducted by Tenant or its Agents or Invitees hereunder, Tenant shall immediately, at its sole cost, repair any and all such damage and restore the Premises or City's property to its previous condition. Tenant shall be responsible for removing all waste, trash, rubbish, papers, cartons and refuse from the Premises, picking up trash and debris in the immediate vicinity of the Premises and disposing of such trash and debris in compliance with all Laws.

9.2 No City Maintenance, Repair or Replacement Obligations. City shall have no obligations to maintain, repair or replace the Premises or any portion thereof.

9.3 Utilities and Services. Tenant shall be solely responsible for arranging and paying directly for any utilities or services necessary for its activities hereunder and shall pay for all utilities and services it uses at the Premises, including, but not limited to, water, gas and electricity, sewage services, telephone services, garbage and recycling disposal, telephone, fax and internet connection charges, including the cost of bringing any such utilities or services to locations in the Premises. No antennae or telecommunication dish may be installed on the Premises without the advance written approval of Landlord. No such antennae or telecommunications dishes shall interfere with City's emergency and non-emergency communications facilities or the transmission facilities of Landlord.

10. LIENS

Tenant shall keep the Premises and all of City's property free from any liens arising out of any work performed, material furnished or obligations incurred by or for Tenant. In the event Tenant does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, City shall have in addition to all other remedies provided herein and by Law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by City and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to City by Tenant upon demand. City shall have the right at all times to post and keep posted on the Premises any notices permitted or required by Law or that City deems proper for its protection and protection of the Premises and City's property, from mechanics' and materialmen's liens. Tenant shall give City at least fifteen (15) days' prior written notice of the commencement of any repair or construction on any of the Premises. Notwithstanding the foregoing, Tenant shall have the right, upon posting of an adequate bond or other security acceptable to City, to contest any such lien, and in such case City shall not seek to satisfy or discharge such lien unless Tenant has failed to do so within ten (10) days after final determination of the validity thereof. Tenant shall Indemnify City, the other Indemnified Parties and the Premises against any and all Losses arising out of any such contest.

11. COMPLIANCE WITH LAWS

11.1 Compliance with Laws. Tenant shall promptly, at its sole expense, maintain the Premises, any Improvements permitted hereunder and Tenant's use and operations thereon in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary. Such Laws shall include, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.* and Title 24 of the California Code of Regulations,

all present and future Environmental Laws (as defined in this Lease below), and all present and future life safety, fire sprinkler, seismic retrofit and other building code requirements. The Parties acknowledge and agree that Tenant's obligation to comply with all laws as provided herein is a material part of the bargained-for consideration under this Lease. Tenant's obligation under this Section shall include, without limitation, the responsibility of Tenant to make substantial or structural repairs and alterations to the Premises (including any Improvements), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or City, the degree to which the curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Law involved, and whether the Law involved is related to Tenant's particular use of the Premises. Without limiting **Section 5.5** hereof, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its obligations hereunder, or shall give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against City. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel City to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

11.2 Regulatory Approvals

(a) Responsible Party. Tenant understands and agrees that Tenant's use of the Premises may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Tenant shall be solely responsible for obtaining any and all such regulatory approvals. Tenant shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Tenant, and City shall have no liability, monetary or otherwise, for any such fines or penalties. Tenant shall Indemnify City and the other Indemnified Parties against all Losses arising in connection with Tenant's failure to obtain or comply with the terms and conditions of any regulatory approval.

(b) City Acting as Owner of Real Property. Tenant further understands and agrees that City is entering into this Lease in its capacity as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Nothing in this Lease shall limit in any way Tenant's obligation to obtain any required approvals from City departments, boards or commissions having jurisdiction over the Premises. By entering into this Lease, City is in no way modifying or limiting Tenant's obligation to cause the Premises or any permitted Improvements to be used and occupied in accordance with all applicable Laws, as provided further above.

11.3 Compliance with City's Risk Management Requirements. Tenant shall not do anything, or permit anything to be done, in or about the Premises or any Improvements permitted hereunder that would create any unusual fire risk, and shall take commercially reasonable steps to protect City from any potential premises liability. Tenant shall faithfully observe, at its expense, any and all reasonable requirements of City's Risk Manager with respect thereto and with the requirements of any policies of public liability, fire or other policies of insurance at any time in force with respect to the Premises and any Improvements as required hereunder.

12. FINANCING; ENCUMBRANCES; SUBORDINATION

12.1 Encumbrance of Landlord's Fee Interest. The following provisions shall apply notwithstanding anything to the contrary contained in this Lease.

(a) **Encumbrance by City.** To the extent permitted by applicable Law, City may at any time sell or otherwise transfer or encumber its fee estate in any portion of the Premises provided that (i) any such sale or Encumbrance shall be subject and subordinate to all of the terms of this Lease and the leasehold estate created hereby, (ii) the right of possession of Tenant to the Premises shall not be affected or disturbed by any such sale or Encumbrance, or by the exercise of any rights or remedies by any purchaser or Encumbrancer arising out of any instrument reflecting such sale or Encumbrance so long as no Event of Default or Unmatured Event of Default is outstanding hereunder.

(b) **Encumbrance By Tenant.** Tenant shall not under any circumstances whatsoever Encumber in any manner City's estate in the Premises or any adjoining property, or City's interest under this Lease, or any portion thereof.

12.2 Leasehold Encumbrances. Without limiting **Article 15** hereof, Tenant shall not Encumber this Lease or Tenant's interest in this Lease, or assign or pledge assignment of the same as security for any debt, without first obtaining the written consent of City, which City may give or withhold in its sole discretion.

13. DAMAGE OR DESTRUCTION

13.1 Damage or Destruction. In the case of damage to or destruction to the Improvements by fire or any other casualty, whether insured or uninsured, Tenant may, at its option and at its sole cost, restore, repair, replace or rebuild such damaged Improvements to the condition they were in prior to such damage or destruction, subject to any changes made in strict accordance with the requirements of **Section 8.1** above. However, if Tenant does not notify City in writing within thirty (30) days after the date of such damage or destruction of Tenant's election to restore, repair, replace or rebuild any such damaged or destroyed Improvements as provided above, Tenant shall, at its sole cost, demolish such Improvements and remove them (including all debris) from the Premises in compliance with the provisions of **Section 21.1** below within sixty (60) days after the date of such damage or destruction, and this Lease shall automatically terminate at the end of such sixty (60) day demolition and removal period.

13.2 Abatement in Rent. In the event of any damage or destruction to the Premises or any permitted Improvements that prevents Tenant from using, and Tenant does not use, the Premises or any portion thereof, for thirty (30) consecutive days (the "Eligibility Period"), Rent and Additional Charges payable hereunder shall be abated or reduced, after expiration of the Eligibility Period, for such time that Tenant continues to be so prevented from using, and does not use, the Premises or a portion thereof, in the proportion that the rentable area of the portion of the Premises that Tenant is prevented from using bears to the total rentable area of the Premises during the restoration (except to the extent that the damage or destruction was caused by the negligence or intentional misconduct of Tenant, its Agents or Invitees).

13.3 Waiver. The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or Improvements, and City and Tenant each hereby waives and releases any right to terminate this Lease in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

14. EMINENT DOMAIN

14.1 General. If during the Term or during the period between the execution of this Lease and the Commencement Date, any Taking of all or any part of the Premises or any interest in this Lease occurs, the rights and obligations of the Parties hereunder shall be determined pursuant to this Section. City and Tenant intend that the provisions hereof govern fully in the event of a Taking and accordingly, the Parties each hereby waives any right to terminate this Lease in whole or in part under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure or under any similar Law now or hereafter in effect.

14.2 Total Taking; Automatic Termination. If a total Taking of the Premises occurs, then this Lease shall terminate as of the Date of Taking.

14.3 Partial Taking; Election to Terminate.

(a) If a Taking of any portion (but less than all) of the Premises occurs, then this Lease shall terminate in its entirety under either of the following circumstances: (i) if all of the following exist: (A) the partial Taking renders the remaining portion of the Premises untenable or unsuitable for continued use by Tenant, (B) the condition rendering the Premises untenable or unsuitable either is not curable or is curable but City is unwilling or unable to cure such condition, and (C) Tenant elects to terminate; or (ii) if City elects to terminate, except that this Lease shall not terminate if Tenant agrees to, and does, pay full Rent and Additional Charges, without abatement, and otherwise agrees to, and does, fully perform all of its obligations hereunder.

(b) City shall have the right to terminate this Lease in the event of a partial Taking of a substantial portion of any of City's adjoining real property, even if the Taking does not directly affect the Premises.

(c) Either Party electing to terminate under the provisions of this **Article 14** shall do so by giving written notice to the other Party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth day after such written notice is given or the Date of Taking.

14.4 Rent; Award. Upon termination of this Lease pursuant to an election under **Section 14.3** above, then: (i) Tenant's obligation to pay Rent shall continue up until the date of termination, and thereafter shall cease, except that Rent shall be reduced as provided in **Section 14.5** below for any period during which this Lease continues in effect after the Date of Taking, and (ii) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease), and Tenant shall have no claim against City for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property.

14.5 Partial Taking; Continuation of Lease. If a partial Taking of the Premises occurs and this Lease is not terminated in its entirety under **Section 14.3** above, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the Parties shall be as follows: (i) Base Rent shall be reduced by an amount that is in the same ratio to the Base Rent as the area of the Premises taken bears to the area of the Premises prior to the Date of Taking, and (ii) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease). Tenant shall have no claim against City for the value of any unexpired Term of this Lease, provided that Tenant may make a separate claim for compensation. Tenant shall retain any Award made specifically to Tenant for Tenant's relocation expenses or the interruption of or damage to

Tenant's business or damage to Tenant's Personal Property.

14.6 Temporary Takings. Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to all or any part of the Premises for a limited period of time not in excess of sixty (60) consecutive days, this Lease shall remain unaffected thereby, and Tenant shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, Tenant shall be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by Tenant for the period of the Taking, and City shall be entitled to receive the balance of any Award.

15. ASSIGNMENT AND SUBLETTING

15.1 Restriction on Assignment and Subletting. Tenant shall not directly or indirectly (including, without limitation, by merger, acquisition, sale or other transfer of any controlling interest in Tenant), voluntarily or by operation of Law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises, any Improvements or its leasehold estate hereunder (collectively, "Assignment"), nor shall Tenant sublet any portion of the Premises or any permitted Improvements thereon (collectively, "Sublease") without City's prior written consent to each such Sublease. Any Assignment or unapproved Sublease shall be voidable at the option of the City in its sole and absolute discretion; and the City shall have the right to terminate immediately this Lease by sending written notice to Tenant.

15.2 Notice of Proposed Sublease. If Tenant desires to enter into an Assignment or a Sublease, it shall give written notice (a "Notice of Proposed Transfer") to City of its intention to do so, together with a copy of the proposed document(s) to effect the proposed Assignment or Sublease (either, a "Transfer Agreement"). The Notice of Proposed Transfer shall identify the proposed assignee or subtenant (either, a "Transferee") and state the terms and conditions of the proposed Assignment or Sublease. Promptly upon City's request for same, Tenant shall deliver any additional documents or information reasonably related to the proposed transaction or Transferee. City agrees that it will not unreasonably withhold its approval of any proposed Transferee or proposed Transfer Agreement. Notwithstanding the foregoing, if any event of default by Tenant is outstanding hereunder at the time of Tenant delivers a Notice of Proposed Transfer (or if any event shall have occurred which with the giving of notice or the passage of time or both would constitute such a default), then City may elect by notice to Tenant to refuse to consent to Tenant's proposed Assignment or Sublease and pursue any of its right or remedies hereunder or at law or in equity.

15.3 City's Response. City shall deliver written notice of its approval or disapproval of a proposed Transferee or a proposed Transfer Agreement to Tenant within ten (10) business days after City's receipt of the Notice of Proposed Transfer, the proposed Transfer Agreement, and all additional documents or information reasonably requested by City. If City approves of a proposed Transferee and proposed Transfer Agreement, Tenant shall have ninety (90) days following the receipt of City's approval notice to enter into such Assignment or Sublease with the approved Transferee on the terms and conditions of the proposed Sublease or Assignment and pursuant to the approved Transfer Agreement. Tenant shall deliver a fully executed copy of the Transfer Agreement for such transaction to City within two (2) business days that it is fully executed.

15.4 Effect of Sublease or Assignment. No Sublease or Assignment by Tenant nor any consent by City thereto shall relieve Tenant, or any guarantor, of any obligation to be performed by Tenant under this Lease. Any Sublease or Assignment not in compliance with this Section shall be void and, at City's option, shall constitute a material default by Tenant under

this Lease. The acceptance of any Base Rent or other payments by City from a proposed Transferee shall not constitute consent to such Sublease or Assignment by City or a recognition of any Transferee, or a waiver by City of any failure of Tenant or other transferor to comply with this Section. If there is an Assignment or Sublease, whether in violation of or in compliance with this Section, in the event of default by any Transferee, or any successor of Tenant, in the performance or observance of any of the terms of this Lease or any Sublease or Assignment agreement, City may proceed directly against Tenant without the necessity of exhausting remedies against such Transferee or successor.

15.5 Assumption by Transferee. Each Transferee shall expressly assume all obligations of Tenant under this Lease, including, but not limited to, the requirements set forth in **Section 24.21** and **Section 24.29**, and shall be liable jointly and severally with Tenant for the payment of the Base Rent and Additional Charges and for the performance of all the terms, covenants and conditions to be performed on Tenant's part hereunder. No Assignment shall be binding on City unless Tenant or Transferee has delivered to City a counterpart of the Assignment and an instrument in recordable form that contains a covenant of assumption by such Transferee satisfactory in form and substance to City. However, the failure or refusal of such Transferee to execute such instrument of assumption shall not release such Transferee from its liability as set forth above.

15.6 Indemnity for Relocation Benefits. Without limiting **Section 15.4**, Tenant shall cause any Transferee to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease. Tenant shall Indemnify City for any and all Losses arising out of any relocation assistance or benefits payable to any Transferee.

15.7 Existing Licensees. City previously approved Tenant's issuance of licenses to the parties listed on the attached **Exhibit C** (collectively, the "Existing Licensees"). Tenant represents and warrants that no party other than the Existing Licensees are operating at the Premises or otherwise authorized by Tenant to use or occupy the Premises.

16. DEFAULT; REMEDIES

16.1 Events of Default. Any of the following shall constitute an event of default ("Event of Default") by Tenant hereunder:

(a) **Rent.** Any failure to pay any Rent or other sums as and when due, provided Tenant shall have a period of three (3) days from the date of written notice of such failure from City within which to cure any default in the payment of Rent or other sums; provided, however, that City shall not be required to provide such notice regarding Tenant's failure to make such payments when due more than twice during any calendar year, and any such failure by Tenant after Tenant has received two such notices in any calendar year from City shall constitute a default by Tenant hereunder without any requirement on the part of City to give Tenant notice of such failure or an opportunity to cure except as may be required by Section 1161 of the California Code of Civil Procedure;

(b) **Covenants, Conditions and Representations.** Any failure to perform or comply with any other covenant, condition or representation made under this Lease, provided Tenant shall have a period of fifteen (15) days from the date of written notice from City of such failure within which to cure such default under this Lease, or, if such default is not capable of cure within such 15-day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such 15-day period and thereafter diligently prosecutes the same to completion and Tenant uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from City; provided, however, that upon the occurrence during the Term of two (2) defaults of the same obligation City shall

not be required to provide any notice regarding Tenant's failure to perform such obligation, and any subsequent failure by Tenant after Tenant has received two such notices shall constitute a default by Tenant hereunder without any requirement on the part of City to give Tenant notice of such failure or an opportunity to cure;

(c) **Vacation or Abandonment.** Any vacation or abandonment of the Premises for more than fourteen (14) consecutive days; and

(d) **Bankruptcy.** The appointment of a receiver to take possession of all or substantially all of the assets of Tenant, or an assignment by Tenant for the benefit of creditors, or any action taken or suffered by Tenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted, if any such receiver, assignment or action is not released, discharged, dismissed or vacated within sixty (60) days.

16.2 Remedies. Upon the occurrence of an Event of Default by Tenant, City shall have the following rights and remedies in addition to all other rights and remedies available to City at Law or in equity:

(a) **Terminate Lease and Recover Damages.** The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Tenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Base Rent and Additional Charges for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Tenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. City's efforts to mitigate the damages caused by Tenant's breach of this Lease shall not waive City's rights to recover damages upon termination.

(b) **Continue Lease and Enforce Rights.** The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows City to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as City does not terminate Tenant's right to possession, if Tenant has the right to sublet or assign, subject only to reasonable limitations. For purposes hereof, none of the following shall constitute a termination of Tenant's right of possession: acts of maintenance or preservation; efforts to relet the Premises or the appointment of a receiver upon City's initiative to protect its interest under this Lease; or withholding consent to an Assignment or Sublease, or terminating an Assignment or Sublease, if the withholding or termination does not violate the rights of Tenant specified in subdivision (b) of California Civil Code Section 1951.4. If City exercises its remedy under California Civil Code Section 1951.4, City may from time to time sublet the Premises or any part thereof for such term or terms (which may extend beyond the Term) and at such rent and upon such other terms as City in its sole discretion may deem advisable, with the right to make alterations and repairs to the Premises. Upon each such subletting, Tenant shall be immediately liable for payment to City of, in addition to Base Rent and Additional Charges due hereunder, the cost of such subletting and such alterations and repairs incurred by City and the amount, if any, by which the Base Rent and Additional Charges owing hereunder for the period of such subletting (to the extent such period does not exceed the Term) exceeds the amount to be paid as Base Rent and Additional Charges for the Premises for such period pursuant to such subletting. No action taken by City pursuant to this **Section 16.2(b)** shall be deemed a waiver of any default by Tenant and, notwithstanding any such subletting without termination, City may at any time thereafter elect to terminate this Lease for such previous default.

(c) **Appointment of Receiver.** The right to have a receiver appointed for

Tenant upon application by City to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to City pursuant to this Lease.

16.3 City's Right to Cure Tenant's Defaults. If Tenant defaults in the performance of any of its obligations under this Lease, then City may at any time thereafter with three (3) days prior oral or written notice (except in the event of an emergency as determined by City), remedy such Event of Default for Tenant's account and at Tenant's expense. Tenant shall pay to City, as an Additional Charge, promptly upon demand, all sums expended by City, or other costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. Tenant's obligations under this Section shall survive the termination of this Lease. Nothing herein shall imply any duty of City to do any act that Tenant is obligated to perform under any provision of this Lease, and City's cure or attempted cure of Tenant's Event of Default shall not constitute a waiver of Tenant's Event of Default or any rights or remedies of City on account of such Event of Default.

17. WAIVER OF CLAIMS; INDEMNIFICATION

17.1 Waiver of Claims. Tenant covenants and agrees that City shall not be responsible for or liable to Tenant for, and, to the fullest extent allowed by Law, Tenant hereby waives all rights against City and its Agents and releases City and its Agents from, any and all Losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises or any other City property, from any cause whatsoever. Nothing herein shall relieve City from liability caused solely and directly by the gross negligence or willful misconduct of City or its Agents, but City shall not be liable under any circumstances for any consequential, incidental or punitive damages. Without limiting the foregoing:

(a) Tenant expressly acknowledges and agrees that the Rent payable hereunder does not take into account any potential liability of City for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to the Premises, any Improvements or Tenant's uses hereunder. City would not be willing to enter into this Lease in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of City or its Agents, and Tenant expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Tenant or other waivers contained in this Lease and as a material part of the consideration for this Lease, Tenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against City for consequential and incidental damages (including without limitation, lost profits), and covenants not to sue for such damages, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, arising out of this Lease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Tenant pursuant to this Lease regardless of the cause, and whether or not due to the negligence or gross negligence of City or its Agents.

(b) In connection with the foregoing releases, Tenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

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

Tenant acknowledges that the releases contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Tenant realizes and acknowledges that it has agreed upon this Lease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Lease.

17.2 Tenant's Indemnity. Tenant, on behalf of itself and its successors and assigns, shall Indemnify City and the other Indemnified Parties from and against any and all Losses incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any accident, injury to or death of a person, including, without limitation, Agents and Invitees of Tenant, or loss of or damage to property howsoever or by whomsoever caused, occurring in, on or about the Premises or any other City property; (b) any default by Tenant in the observation or performance of any of the terms, covenants or conditions of this Lease to be observed or performed on Tenant's part; (c) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Tenant, its Agents or Invitees or any person or entity claiming through or under any of them, of the Premises or any Improvements; (d) the condition of the Premises or any Improvements constructed by or on behalf of Tenant, or Tenant's failure to properly repair or maintain any Improvements on the Premises; (e) any construction or other work undertaken by Tenant on or about the Premises or any Improvements whether before or during the Term of this Lease; or (f) any acts, omissions or negligence of Tenant, its Agents or Invitees, or of any trespassers, in, on or about the Premises or any Improvements; all regardless of the active or passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that such Indemnity is void or otherwise unenforceable under applicable Law in effect on or validly retroactive to the date of this Lease and further except only such Losses as are caused exclusively by the gross negligence and intentional wrongful acts and omissions of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any Loss. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend City and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Tenant by City and continues at all times thereafter. Tenant's obligations under this Section shall survive the expiration or sooner termination of the Lease.

18. INSURANCE

18.1 Tenant's Insurance. Tenant shall procure and maintain throughout the Term of this Lease and pay the cost thereof the following insurance:

(a) Property Insurance. At all times Tenant shall, at its sole cost, keep the Premises and all Improvements thereon insured for the mutual benefit of City and Tenant against:

Loss or damage by such perils as are included in the standard "All Risks Form" of property damage insurance, in amounts sufficient to prevent City or Tenant from becoming a co-insurer within the terms of the applicable policies, and, in any event, in an amount equal to 100% of the Full Insurable Value of the Improvements which are included in the Premises;

Loss or damage by explosion, rupture or bursting of high pressure steam boilers, steam pipes, steam turbines, steam engines or flywheels, air conditioning

equipment, pressure vessels, motors or similar apparatus, now or hereafter installed in the Improvements in such limits with respect to any one accident as may be reasonably required by City from time to time but not less than One Million Dollars (\$1,000,000); and

Such other risks in such amounts as City's Risk Manager may reasonably require.

"Full insurable value" shall mean the actual replacement cost of the Improvements which are included in the Premises (excluding foundation and excavation costs but without deduction for physical depreciation). It shall be determined at such time as City's Risk Manager may request by an appraiser or appraisal company selected and paid by Tenant and reasonably acceptable to City; provided, however, that City's Risk Manager shall have the right, at any time, to ascertain the full insurable value at its own expense, except that in the event such full insurable value as determined by City shall exceed by at least ten percent (10%) of the then existing amount of insurance coverage procured by Tenant, Tenant shall pay the expense of determining the full insurable value.

(b) Comprehensive Insurance. Comprehensive or commercial general liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, fire damage legal liability (of not less than Two Hundred Fifty Thousand Dollars (\$250,000)), personal injury, products and completed operations.

(c) Public Liability and Other Insurance. Tenant shall at all times, at its cost, also maintain insurance for the mutual benefit of City and Tenant against:

Claims for personal injury, including, without limitation, bodily injury or property damage, occurring in or upon the Premises or the property adjoining the Premises, under a policy of general public liability insurance, with such limits as may reasonably be required by City from time to time, but in any event not less than One Million Dollars (\$1,000,000) combined single limit.

Worker's compensation insurance with employer's liability insurance covering all persons employed and with respect to whom death or bodily injury claims could be asserted against City, Tenant, the Premises or any other City property, not less than \$1,000,000 each accident.

Comprehensive automobile liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, if Tenant uses automobiles in connection with its use of the Premises.

Business interruption insurance insuring that the Base Rent shall be paid for a period of up to one year if Tenant is unable to operate its business at the Premises, on an all risk form excluding earthquake and flood but including business interruptions caused by riots and civil commotion.

(d) Limited Waivers.

(i) Notwithstanding anything to the contrary in **Section 18(c)**, Tenant shall not be required to carry worker's compensation insurance at any time that the following conditions are both satisfied: (1) Tenant has no employees and will only have Tenant members and Tenant contractors who are individuals or sole proprietorships (each, an

"Individual Person") performing any activities for or on behalf of Tenant at the Premises, and (2) all Tenant's subtenants or licensees carry the worker's compensation insurance described in **Section 18(c)**, name City as an additional insured on such policies, waive any right of recovery against the City for the matters described in **Section 18.9** below, and provides the indemnities and waivers in favor of City and described in **Article 17** above.

(ii) Notwithstanding anything to the contrary in **Section 18(c)**, Tenant shall not be required to carry automobile liability insurance at any time that the following conditions are both satisfied: (1) Tenant operates and maintains no automobiles on the Premises at any time, and (2) all Tenant's subtenants or licensees carry the automobile liability insurance described in **Section 18(c)**, name City as an additional insured on such policies, waive any right of recovery against the City for the matters described in **Section 18.9** below, and provides the indemnities and waivers in favor of City and described in **Article 17** above.

(iii) Notwithstanding anything to the contrary in **Section 18(a)**, Tenant shall not be required to carry property insurance against loss or damage by explosion, rupture or bursting of high pressure steam boilers, steam pipes, steam turbines, steam engines or flywheels, air conditioning equipment, pressure vessels, motors or similar apparatus (collectively, "Pressure Equipment") as long as Tenant does not, and does not allow any of its subtenants or licensees to, install, maintain or operate any Pressure Equipment on the Premises.

18.2 General Requirements. All insurance provided for under this Lease shall be effected under valid enforceable policies issued by insurers of recognized responsibility and reasonably approved by City.

(a) Should any of the required insurance be provided under a claims-made form, Tenant shall maintain such coverage continuously throughout the term hereof and, without lapse, for a period of three (3) years beyond the expiration or termination of this Lease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Lease, such claims shall be covered by such claims-made policies.

(b) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(c) All liability insurance policies shall be endorsed to provide the following:

Name Tenant as the insured and the City and County of San Francisco, its officers, agents and employees, as additional insureds, as their respective interests may appear hereunder.

That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Lease, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

All policies shall be endorsed to provide thirty (30) days' advance written notice to City of cancellation, non-renewal or reduction in coverage, mailed to the address(es) for City set forth in the Basic Lease Information.

18.3 Proof of Insurance. Tenant shall deliver to City certificates of insurance in form and with insurers satisfactory to City, evidencing the coverages required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon City's request, and Tenant shall provide City with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. In the event Tenant shall fail to procure such insurance, or to deliver such policies or certificates, City may, at its option, procure the same for the account of Tenant, and the cost thereof shall be paid to City within five (5) days after delivery to Tenant of bills therefor.

18.4 Review of Insurance Requirements. Tenant and City shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Tenant with respect to risks comparable to those associated with the Premises, then, at City's option, Tenant shall increase at its sole cost the amounts or coverages carried by Tenant to conform to such general commercial practice.

18.5 No Limitation on Indemnities. Tenant's compliance with the provisions of this Section shall in no way relieve or decrease Tenant's indemnification obligations under **Sections 17.2 and 22.3** above, or any of Tenant's other obligations or liabilities under this Lease.

18.6 Lapse of Insurance. Notwithstanding anything to the contrary in this Lease, City may elect, in City's sole and absolute discretion, to terminate this Lease upon the lapse of any required insurance coverage by written notice to Tenant.

18.7 Tenant's Personal Property. Tenant shall be responsible, at its expense, for separately insuring Tenant's Personal Property.

18.8 City's Self Insurance. Tenant acknowledges that City self-insures against casualty, property damage and public liability risks and agrees City shall not be required to carry any third party insurance with respect to the Premises or otherwise.

18.9 Waiver of Subrogation. Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance, City and Tenant each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance covering the Premises or other City property and their contents, or any portion thereof, for any loss or damage maintained by such other party with respect to the Premises, other City Property or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party. If any policy of insurance relating to the Premises or other City property carried by Tenant does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Tenant shall obtain, if possible, from the insurer under such policy a waiver of all rights of subrogation the insurer might have against City or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy.

19. ACCESS BY CITY

19.1 General Access. City reserves for itself and its designated Agents, the right to

enter the Premises and any portion thereof at all reasonable times upon not less than forty-eight (48) hours oral or written notice to Tenant (except in the event of an emergency) for any of the following purposes:

(a) To determine whether the Premises are in good condition and to inspect the Premises (including, without limitation, soil borings or other Hazardous Material Investigations);

(b) To determine whether Tenant is in compliance with its obligations hereunder and to cure or attempt to cure any such default in accordance with the provisions of **Section 16.3** hereof;

(c) To serve, post or keep posted any notices required or allowed under any of the provisions of this Lease;

(d) To do any maintenance or repairs to the Premises that City has the right or the obligation, if any, to perform hereunder; and

(e) To show it to any prospective purchasers, brokers, encumbrancers or public officials, or, during the last year of the Term of this Lease, exhibiting the Premises to prospective tenants or other occupants, and to post any "for sale" or "for lease" signs in connection therewith.

19.2 Emergency Access. In the event of any emergency, as determined by City, City may, at its sole option and without notice, enter the Premises and alter or remove Tenant's Personal Property on or about the Premises. City shall have the right to use any and all means City considers appropriate to gain access to any portion of the Premises in an emergency. In such case, City shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof.

19.3 No Liability; No Abatement. City shall not be liable in any manner, and Tenant hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of City's entry onto the Premises pursuant to this Section, except damage resulting directly and exclusively from the gross negligence or willful misconduct of City or its Agents and not contributed to by the acts, omissions or negligence of Tenant, its Agents or Invitees. Tenant shall not be entitled to any abatement in Rent if City exercises any rights reserved in this Section.

19.4 Minimize Disruption. City shall use its reasonable good faith efforts to conduct any activities on the Premises allowed under this Section in a manner that, to the extent practicable, will minimize any disruption to Tenant's use hereunder.

20. ESTOPPEL CERTIFICATES

Either Party hereto shall, from time to time during the Term upon not less than twenty (20) days' prior written notice from the other Party, execute, acknowledge and deliver to the other Party, or such persons or entities designated by such other Party, a statement in writing certifying: (a) the Commencement Date and Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (c) that there are no defaults under this Lease (or if so, specifying the same), (d) the dates, if any, to which the Rent has been paid, and (e) any other information that may be reasonably required by any such persons or

entities. Any such certificate delivered pursuant to the provisions hereof may be relied upon by the other Party or any prospective purchaser or Encumbrancer of its estate. The General Manager shall be authorized to execute, acknowledge and deliver any such certificates of the City.

21. SURRENDER

21.1 Surrender of the Premises. Upon the Expiration Date or any earlier termination of this Lease pursuant hereto, Tenant shall surrender to City the Premises, in good condition, order and repair, free from debris and hazards, and free and clear of all liens, easements and other Encumbrances created or suffered by, through or under Tenant. On or before the Expiration Date or any earlier termination hereof, or later upon Landlord's request, Tenant shall, at its sole cost, remove any and all of Tenant's Personal Property from the Premises and demolish and remove any and all Improvements from the Premises requested by Landlord to be removed (except for any Improvements that City agreed would remain part of the Premises pursuant to the provisions of **Section 8.2** above and except for any Improvement installed or constructed at or below ground surface [including asphalt, decomposed granite, underground utilities, and landscaping] that was constructed or installed in compliance with **Article 8** above and maintained in compliance with **Section 9.1** above). Tenant shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any Improvements. In connection therewith, Tenant shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Tenant's obligations under this Section shall survive the Expiration Date or other termination of this Lease. Any items of Tenant's Personal Property remaining on or about the Premises after the Expiration Date of this Lease may, at City's option, be deemed abandoned and in such case City may dispose of such property in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by Law. If Tenant fails to surrender the Premises to City on the Expiration Date or earlier termination of the Term as required by this Section, Tenant shall Indemnify City against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding Tenant resulting from Tenant's failure to surrender the Premises.

21.2 Automatic Reversion. Upon the Expiration Date or earlier termination of this Lease, the Premises shall automatically, and without further act or conveyance on the part of Tenant or City, become the property of City, free and clear of all liens and Encumbrances and without payment therefor by City and shall be surrendered to City upon such date. Upon or at any time after the date of termination of this Lease, if requested by City, Tenant shall promptly deliver to City, without charge, a quitclaim deed to the Premises suitable for recordation and any other instrument reasonably requested by City to evidence or otherwise effect the termination of Tenant's leasehold estate hereunder and to effect such transfer or vesting of title to the Premises or any permitted Improvements that City agrees are to remain part of the Premises pursuant to the provisions of **Section 8.2** above.

22. HAZARDOUS MATERIALS

22.1 No Hazardous Materials. Tenant covenants and agrees that neither Tenant nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or any Improvements or transported to or from the Premises or any Improvements. Tenant shall immediately notify City if and when Tenant learns or has reason to believe there has been any Release of Hazardous Material in, on or about the Premises or any Improvements. City may from time to time request Tenant to provide adequate information for City to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable Environmental Laws, and

Tenant shall promptly provide all such information. Without limiting **Section 19** hereof, City and its Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Tenant (except in the event of an emergency).

22.2 Tenant's Environmental Indemnity. If Tenant breaches any of its obligations contained in **Section 22.1** above, or, if any act or omission or negligence of Tenant or any of its Agents or Invitees results in any Release of Hazardous Material in, on, under or about the Premises (including any Improvements thereon) or any other City property, without limiting Tenant's general Indemnity contained in **Section 17.2** above, Tenant, on behalf of itself and its successors and assigns, shall Indemnify City and the Indemnified Parties, and each of them, from and against all Hazardous Materials Claims arising during or after the Term of this Lease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the Investigation and Remediation of Hazardous Material and with the restoration of the Premises or any other City property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other City property. Without limiting the foregoing, if Tenant or any of Tenant's Agents or Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or any other City property, Tenant shall, immediately, at no expense to City, take any and all appropriate actions to return the Premises or other City property affected thereby to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Tenant shall provide City with written notice of and afford City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

22.3 Limited Waiver. Notwithstanding anything to the contrary in **Section 22.1** or **Section 22.2** above, Tenant may construct and operate a fixed propane gas tank (a "Tank") on the Premises to provide adequate heating for outdoor eating areas, which shall be deemed a part of the Initial Improvements. Each Tank, and the installation of that Tank, must meet all requirements and conditions for Initial Improvements. In addition to the propane gas stored within a Tank, Tenant may keep containers of propane gas on the Premises for the purpose of refueling the Tanks, provided such containers are properly sealed, stored in compliance with all applicable laws (including all Environmental Laws) and industry standards, and in amounts reasonably and customarily used for such purpose.

23. SECURITY DEPOSIT

Tenant shall pay to City upon execution of this Lease the sum specified for the security deposit in the Basic Lease Information as security for the faithful performance of all terms, covenants and conditions of this Lease. Tenant agrees that City may (but shall not be required to) apply the security deposit in whole or in part to remedy any damage to the Premises or the Improvements (if any) caused by Tenant, its Agents or Invitees, or any failure of Tenant to perform any other terms, covenants or conditions contained in this Lease, without waiving any of City's other rights and remedies hereunder or at Law or in equity. Should City use any portion of the security deposit to cure any Event of Default by Tenant hereunder, Tenant shall immediately replenish the security deposit to the original amount, and Tenant's failure to do so within five (5) days of City's notice shall constitute a material Event of Default under this Lease. If the Base Rent is increased pursuant to any of the provisions of this Lease, Tenant shall increase the amount of the security deposit accordingly. City's obligations with respect to the security deposit are solely that of debtor and not trustee. City shall not be required to keep the security deposit separate from its general funds, and Tenant shall not be entitled to any interest on such deposit. The amount of the security deposit shall not be deemed to limit Tenant's liability for the

performance of any of its obligations under this Lease.

24. GENERAL PROVISIONS

24.1 Notices. Except as otherwise expressly provided in this Lease, any notice given hereunder shall be effective only if in writing and given by delivering the notice in person, or by sending it first-class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid, to: (a) Tenant (i) at Tenant's address set forth in the Basic Lease Information, if sent prior to Tenant's taking possession of the Premises, or (ii) at the Premises if sent on or subsequent to Tenant's taking possession of the Premises, or (iii) at any place where Tenant or any Agent of Tenant may be found if sent subsequent to Tenant's vacating, abandoning or surrendering the Premises; or (b) City at City's address set forth in the Basic Lease Information; or (c) to such other address as either City or Tenant may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first-class or certified mail, one day after the date it is made if sent by commercial overnight courier, or upon the date personal delivery is made, and any refusal by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this **Section 24.1** and applicable Laws, shall be deemed receipt of such notice. For convenience of the Parties, copies of notices may also be given by telefacsimile to the telefacsimile number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither party may give official or binding notice by telefacsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice.

24.2 No Implied Waiver. No failure by City to insist upon the strict performance of any obligation of Tenant under this Lease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial Base Rent or Additional Charges during the continuance of any such breach, or possession of the Premises prior to the expiration of the Term by any Agent of City, shall constitute a waiver of such breach or of City's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Lease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of City given in any instance under the terms of this Lease shall not relieve Tenant of any obligation to secure the consent of City in any other or future instance under the terms of this Lease.

24.3 City Consent or Approval; Amendments. Whenever this Lease requires or permits the giving by City of its consent or approval, the City's Director of Property, or his or her designee shall be authorized to provide such approval, except as otherwise provided by applicable law, including the Charter. Any amendments or modifications to this Lease, including, without limitation, amendments to or modifications to the exhibits to this Lease, shall be subject to the mutual written agreement of City and Tenant, and City's agreement may be made upon the approval of the Director of Property, or his or her designee; provided, however, that any material amendments or modifications to this Lease (i) changing the legal description of the Premises, (ii) increasing the Term, (iii) increasing the Rent, (iv) changing the general use of the Premises from the use authorized under **Section 7.1**, and (v) any other amendment or modification that materially increases the City's liabilities or financial obligations under this Lease shall additionally require the approval of the City's Board of Supervisors.

24.4 Authority. If Tenant signs as a corporation, a partnership or a limited liability company, each of the persons executing this Lease on behalf of Tenant does hereby covenant and warrant that Tenant is a duly authorized and existing entity, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Tenant are authorized to do so. Upon City's request, Tenant shall provide City with evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

24.5 Joint and Several Obligations. The word "Tenant" as used herein shall include the plural as well as the singular. If there is more than one Tenant, the obligations and liabilities under this Lease imposed on Tenant shall be joint and several.

24.6 Interpretation of Lease. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the party responsible for drafting any part of this Lease. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Lease, whether or not language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of City is required to be obtained by Tenant hereunder, City may give or withhold such consent in its sole and absolute discretion. All such consents may be made by the General Manager acting alone, unless stated to the contrary herein.

24.7 Successors and Assigns. Subject to the provisions of **Section 15** hereof relating to Assignment and Subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of City and Tenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any sale, assignment or transfer by City named herein (or by any subsequent landlord) of its interest in the Premises as owner or lessee, including any transfer by operation of Law, City (or any subsequent landlord) shall be relieved from all subsequent obligations and liabilities arising under this Lease subsequent to such sale, assignment or transfer.

24.8 Brokers. Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated herein except as identified in the Basic Lease Information, whose commission, if any is due, shall be paid pursuant to a separate written agreement between such broker and the party through which such broker contracted. In the event that any other broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall indemnify the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

24.9 Severability. If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other

provision of this Lease shall be valid and be enforceable to the fullest extent permitted by Law.

24.10 Governing Law. This Lease shall be subject to, and construed and enforced in accordance with, the Laws of the State of California and the City's Charter and Administrative Code.

24.11 Entire Agreement. This instrument (including the exhibits hereto, which are made a part of this Lease) contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understandings and agreements. The Parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Lease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease. Tenant hereby acknowledges that neither City nor City's Agents have made any representations or warranties with respect to the Premises or this Lease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Tenant by implication or otherwise unless expressly set forth herein.

24.12 Attorneys' Fees. In the event that either City or Tenant fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Lease, 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.

24.13 Holding Over. Any holding over after the expiration of the Term with the express consent of City shall be construed to automatically extend the Term of this Lease on a month-to-month basis at a Monthly Base Rent equal to one hundred ten percent (110%) of the amount set forth in **Section 5.1**, and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term). Any holding over without City's consent shall constitute a default by Tenant and entitle City to exercise any or all of its remedies as provided herein, notwithstanding that City may elect to accept one or more payments of Rent, and whether or not such amounts are at the holdover rate specified above or the rate in effect at the end of the Term of this Lease. Any holding over after the expiration of the Term without the City's consent shall be at a monthly rental rate equal to one hundred fifty percent (150%) of the rate in effect at the end of the Term of this Lease.

24.14 Time of Essence. Time is of the essence with respect to all provisions of this Lease in which a definite time for performance is specified.

24.15 Cumulative Remedies. All rights and remedies of either party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

24.16 Survival of Indemnities. Termination of this Lease shall not affect the right of either party to enforce any and all indemnities, waivers and representations and warranties given or made to the other party under this Lease, nor shall it affect any provision of this Lease that expressly states it shall survive termination hereof. Tenant specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Lease, Tenant has an immediate and independent obligation to defend City and the other Indemnified Parties from any claim which actually or potentially falls within the indemnity provision even if such allegation is or

may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Tenant by City and continues at all times thereafter.

24.17 Relationship of Parties. City is not, and none of the provisions in this Lease shall be deemed to render City, a partner in Tenant's business, or joint venturer or member in any joint enterprise with Tenant. Neither party shall act as the agent of the other party in any respect hereunder, and neither party shall have any authority to commit or bind the other party without such party's consent as provided herein. This Lease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Lease by City does not constitute authorization or approval by City of any activity conducted by Tenant on, in or relating to the Premises.

24.18 Transfer by City. If City sells or otherwise transfers the Premises, City shall be released from its obligations hereunder arising on or after the date of such sale or transfer and Tenant shall look solely to the successor-in-interest to City. Upon a sale of the Premises by City, Tenant shall attorn to the purchaser or transferee, such attornment to be effective and self-operative without the execution of any further instruments on the part of the parties to this Lease. This Lease shall not be deemed to constitute any commitment by City, or create any priority or right in favor of Tenant, with regard to any future sale or other disposition of the Premises, or any portion thereof.

24.19 Recording. Tenant agrees that it shall not record this Lease in the Official Records. Upon request by Tenant, Landlord shall prepare for recordation a memorandum of this Lease which Tenant may record at its own cost.

24.20 Non-Liability of City Officials, Employees and Agents. No elective or appointive board, commission, member, officer, employee or other Agent of City shall be personally liable to Tenant, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Tenant, its successors and assigns, or for any obligation of City under this Lease or otherwise.

24.21 Wages and Working Conditions. With respect to the construction of any Improvements, any employee performing services for Tenant shall be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the San Francisco Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in the City and County of San Francisco. Tenant shall require any contractor to provide, and shall deliver to City every calendar month during any construction period, certified payroll reports with respect to all persons performing labor in the construction of any Improvements on the Premises.

24.22 Non-Discrimination in City Contracts and Benefits Ordinance.

(a) **Covenant Not to Discriminate.** In the performance of this Lease, Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, height, weight, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Tenant, in any of Tenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant.

(b) **Subleases and Other Subcontracts.** Tenant shall include in all subleases and other subcontracts relating to the Premises a non-discrimination clause applicable

to such sublessee or other subcontractor in substantially the form of subsection (a) above. In addition, Tenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all sublessees and other subcontractors 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) **Non-Discrimination in Benefits.** Tenant does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) **Condition to Lease.** As a condition to this Lease, Tenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(e) **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Lease as though fully set forth herein. Tenant shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Tenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

24.23 No Relocation Assistance; Waiver of Claims. Tenant acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and Tenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action (including, without limitation, consequential and incidental damages) against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any Laws, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 *et seq.*), except as otherwise specifically provided in this Lease with respect to a Taking.

24.24 MacBride Principles - Northern Ireland. The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, **et seq.** The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Tenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

24.25 Conflicts of Interest. Tenant states that it is familiar with the provisions of

Sections 15.103 and C8.105 of the San Francisco Charter and certifies that it knows of no facts which would constitute a violation of such provisions. Tenant further certifies that it has made a complete disclosure to the City of all facts bearing upon any possible interest, direct or indirect, which Tenant believes any other officer or employee of the City and County of San Francisco, presently has or will have in this Lease or in the performance thereof. Willful failure to make such disclosure, if any, shall constitute a material default hereunder.

24.26 Charter Provisions. This Lease is governed by and subject to the provisions of the City's Charter and Administrative Code.

24.27 Tropical Hardwood and Virgin Redwood Ban. Tenant shall not permit the use of any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product in or on the Premises or otherwise in the performance of this Lease. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Tenant shall not provide any items to the construction of Improvements or otherwise in the performance of this Lease which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Tenant fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Tenant shall be liable for liquidated damages for each violation in any amount equal to Tenant's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

24.28 Tobacco Product Advertising Prohibition. Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City, including the property which is the subject of this Lease. This prohibition includes the placement of the name of a company producing, selling, or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

24.29 First Source Hiring Ordinance. The City has adopted a First Source Hiring Ordinance (Board of Supervisors Ordinance No. 264-98) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry level positions. Tenant shall enter into a first source hiring agreement (as defined in Section 83.4(f) of the San Francisco Administrative Code) with the Landlord unless Tenant is exempted from the First Source Hiring Program set forth in Chapter 83 of the San Francisco Administrative Code

24.30 Sunshine Ordinance. In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

24.31 Counterparts. This Lease may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

24.32 No Light, Air or View Rights. Any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Premises shall in no way affect this Lease or impose any liability on Landlord.

24.33 City's Inability to Perform. If City is unable to perform or is delayed in performing any of City's obligations under this Lease, by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, protests, riots, demonstrations, inability to obtain utilities or materials or by any other reason beyond City's reasonable control, no such inability or delay shall constitute an eviction under this Lease, or impose any liability upon City or its Agents by reason of inconvenience, annoyance, interruption, injury or loss to or interference with Tenant's business or use and occupancy or quiet enjoyment of the Premises or any loss or damage occasioned thereby.

24.34 Notification of Limitations on Contributions. Through its execution of this Lease, Tenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Tenant further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Tenant's board of directors, chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Tenant; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that Tenant must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Tenant further agrees to provide to City the name of the each person, entity or committee described above.

24.35 Public Transit Information. Tenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Tenant employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Premises and encouraging use of such facilities, all at Tenant's sole expense.

24.36 Drug-Free Workplace. Tenant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City premises. Tenant agrees that any violation of this prohibition by Tenant, its Agents or assigns shall be deemed a material breach of this Lease.

24.37 Preservative-Treated Wood Containing Arsenic. Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the City's Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited

to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Tenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the City's Department of Environment. This provision does not preclude Tenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

24.38 Resource Efficiency. Tenant acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 707 relating to resource-efficient buildings and resource-efficient pilot projects. Tenant hereby agrees that it shall comply with all applicable provisions of such code sections.

24.39 Requiring Health Benefits for Covered Employees. Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance ("HCAO"), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Lease as though fully set forth. The text of the HCAO is available on the web at <http://www.sfgov.org/olse/hcao>. Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee, Tenant shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Tenant chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if the Tenant is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with subsection (a) above.

(c) Tenant's failure to comply with the HCAO shall constitute a material breach of this Lease. City shall notify Tenant if such a breach has occurred. If, within thirty (30) days after receiving City's written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Tenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

(d) Any Subcontract entered into by Tenant shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Tenant shall notify City's Purchasing Department when it enters into such a Subcontract and shall certify to the Purchasing Department that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Tenant shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Tenant based on the Subcontractor's failure to comply, provided that City has first provided Tenant with notice and an opportunity to obtain a cure of the violation.

(e) Tenant shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Tenant's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed

by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(g) Tenant shall keep itself informed of the current requirements of the HCAO.

(h) Tenant shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(i) Tenant shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least five (5) business days to respond.

(j) City may conduct random audits of Tenant to ascertain its compliance with HCAO. Tenant agrees to cooperate with City when it conducts such audits.

(k) If Tenant is exempt from the HCAO when this Lease is executed because its amount is less than Twenty-Five Thousand Dollars (\$25,000) [Fifty Thousand Dollars (\$50,000) for nonprofits], but Tenant later enters into an agreement or agreements that cause Tenant's aggregate amount of all agreements with City to reach Seventy-Five Thousand Dollars (\$75,000), all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Tenant and the Contracting Department to be equal to or greater than Seventy-Five Thousand Dollars (\$75,000) in the fiscal year.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LESSEE ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY HERETO UNLESS AND UNTIL A RESOLUTION OF THE COMMISSION SHALL HAVE BEEN DULY PASSED APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON PASSAGE OF SUCH A RESOLUTION, AND THIS LEASE SHALL NOT BE EFFECTIVE UNLESS AND UNTIL THE COMMISSION APPROVES THIS LEASE, IN ITS SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS.

City and Tenant have executed this Lease as of the date first written above.

LESSEE:

PROXYdevelopment, LLC,
a California limited liability company

By: _____
Its: _____
Date: _____

By: _____
Its: _____

Date: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
John Updike, Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Carol Wong, Deputy City Attorney

Exhibit A

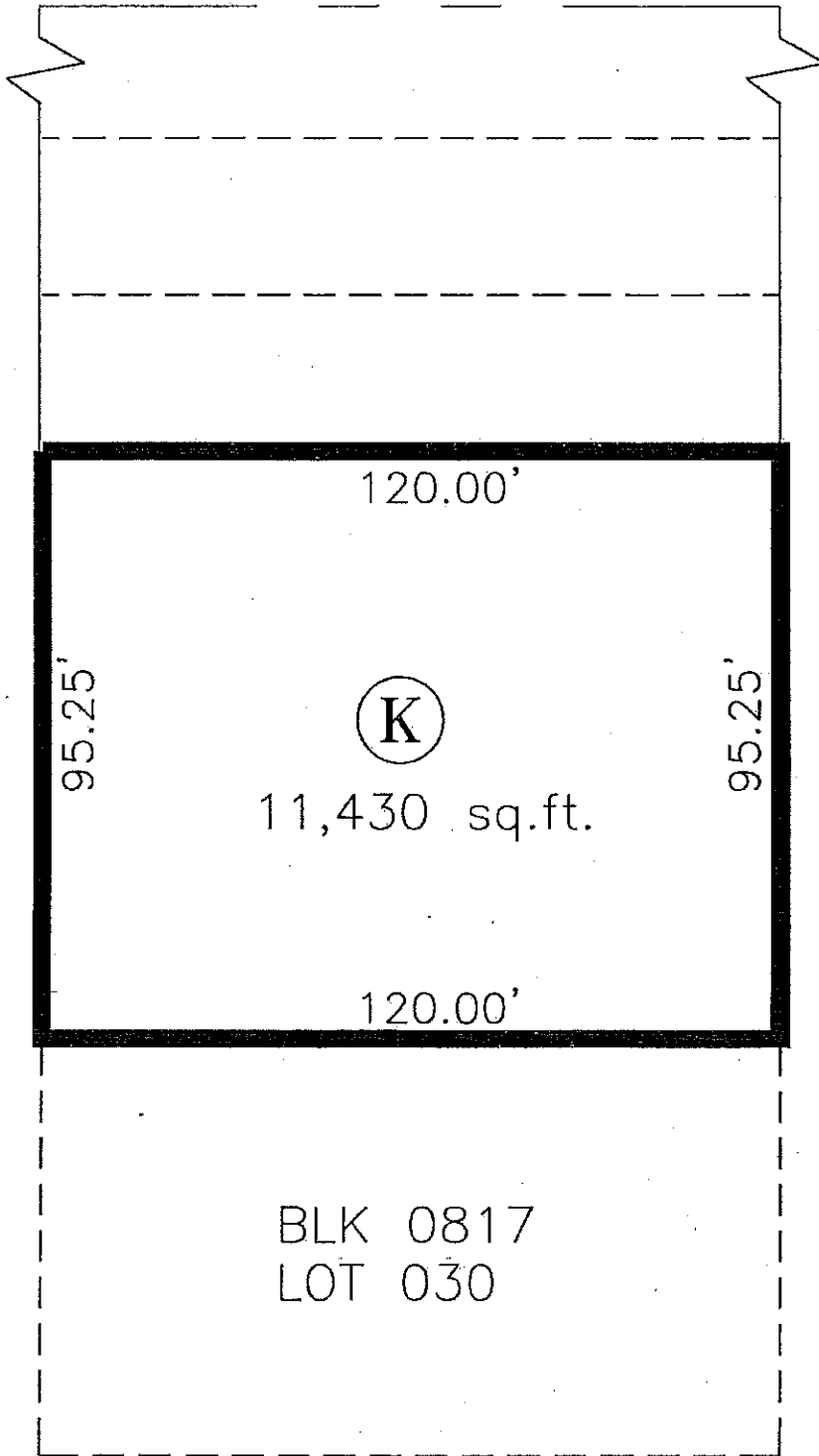
Depiction of Premises



GOUGH ST.

HAYES ST.

LINDEN ST.



BLK 0817
LOT 030

OCTAVIA ST.

C:\EDRIVE\ROMANI\OCTAVIA\ORIGINALDRAWINGS\PARCELK.DWG

EXHIBIT A

Exhibit B

Depiction of Future Use Sign

**EVENTUALLY THIS PARCEL
WILL BE DEVELOPED INTO
AFFORDABLE HOUSING.*
FOR NOW, IT'S**

~~P~~~~R~~~~O~~~~X~~~~X~~

**A PLACEHOLDER FOR A MORE PERMANENT DEVELOPMENT,
“proxy” IS DESIGNED TO CREATE A PROGRESSION OF FOOD,
ART, RETAIL + CULTURAL EXPERIENCES OVER ITS SHORT LIFE-
SPAN. LEARN MORE ABOUT HOW WE GOT HERE @ proxySF.net**

***FOR MORE INFORMATION ABOUT AFFORDABLE HOUSING ON THESE PREMESIS,
CONTACT THE SAN FRANCISCO MAYOR’S OFFICE OF HOUSING @ 415.701.5500**

Exhibit C

Approved Licensees

1. Smitten Ice Cream, LLC
2. Ritual Coffee Roasters, LLC
3. Streets of San Francisco Bike Tours
4. Aether Apparel
5. Basic Training
6. Juice Shop
7. City CarShare
8. Good Eggs
9. Casey's Pizza
10. Del Popolo Pizza
11. DodoCase
12. Minnie Bell's Soul Movement (Fernay McPherson)
13. Alicia's Tamales
14. Jarred SF
15. Aedan Foods (Miso)
16. MH Bread + Butter