

File No. 251052

Committee Item No. 5
Board Item No. 31

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date November 5, 2025
Board of Supervisors Meeting Date November 18, 2025

Cmte Board

<input type="checkbox"/>	<input type="checkbox"/>	Motion
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Resolution
<input type="checkbox"/>	<input type="checkbox"/>	Ordinance
<input type="checkbox"/>	<input type="checkbox"/>	Legislative Digest
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Budget and Legislative Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Youth Commission Report
<input type="checkbox"/>	<input type="checkbox"/>	Introduction Form
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Department/Agency Cover Letter and/or Report
<ul style="list-style-type: none">• MTA Briefing Letter 10/27/2025• MYR Memo 10/21/2025		
<input type="checkbox"/>	<input type="checkbox"/>	MOU
<input type="checkbox"/>	<input type="checkbox"/>	Grant Information Form
<input type="checkbox"/>	<input type="checkbox"/>	Grant Budget
<input type="checkbox"/>	<input type="checkbox"/>	Subcontract Budget
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Contract/Agreement
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Form 126 – Ethics Commission
<input type="checkbox"/>	<input type="checkbox"/>	Award Letter
<input type="checkbox"/>	<input type="checkbox"/>	Application
<input type="checkbox"/>	<input type="checkbox"/>	Public Correspondence

OTHER (Use back side if additional space is needed)

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>MTA CEQA Determination 9/15/2025</u>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>MTAB Resolution No. 251007-092 10/7/2025</u>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>MTA Presentation 11/5/2025</u>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<u>PAM Temporary Membership 11/3/2025</u>
<input type="checkbox"/>	<input type="checkbox"/>	

Completed by: Brent Jalipa

Date October 30, 2025

Completed by: Brent Jalipa

Date November 6, 2025

1 [Commercial Lease Agreement - Mel's Drive-In - 801 Mission Street - Estimated Revenue
2 \$1,908,684]

3 **Resolution approving a Commercial Lease Agreement between the City and County of
4 San Francisco and San Francisco C&C, doing business as Mel's Drive-In, for the retail
5 space located at 801 Mission Street in the Fifth and Mission Garage, for an initial five-
6 year term that will result in an estimated \$1,908,684 in revenue, and one five-year
7 option to extend the lease, effective upon approval of this Resolution.**

8
9 WHEREAS, The Fifth and Mission Garage, located at 833 Mission Street, is owned by
10 the City and County of San Francisco and is under the jurisdiction of the San Francisco
11 Municipal Transportation Agency (SFMTA); and

12 WHEREAS, The Fifth and Mission Garage provides approximately 2,585 parking
13 spaces and includes 19 commercial retail spaces totaling 26,829 square feet; and

14 WHEREAS, San Francisco C&C, doing business as Mel's Drive-In (Mel's) has been a
15 longtime tenant in the commercial retail space located at 801 Mission Street, and their existing
16 lease expired on August 31, 2025; and

17 WHEREAS, The SFMTA and Mel's desire to enter into a new lease agreement; and

18 WHEREAS, The proposed new lease agreement is for an initial five-year term that will
19 result in an estimated \$1,908,684 in revenue and includes one five-year option to extend the
20 lease; and

21 WHEREAS, On September 15, 2025, the SFMTA, under authority delegated by the
22 Planning Department, determined that the Commercial Lease Agreement with Mel's is not
23 defined as a "project" under the California Environmental Quality Act (CEQA) pursuant
24 Title 14 of the California Code of Regulations, Sections 15060(c) and 15378(b); and

1 WHEREAS, A copy of the CEQA determination is on file with the Secretary to the
2 SFMTA Board of Directors, and is incorporated herein by reference; and

3 WHEREAS, On October 7, 2025, the SFMTA Board of Directors approved Resolution
4 No. 251007-092 authorizing the Director of Transportation to execute the Commercial Lease
5 Agreement with San Francisco C&C, doing business as Mel's Drive-In (Commercial Lease
6 Agreement), and to forward to the Board of Supervisors for final approval; and

7 WHEREAS, Consistent with Section 9.118 of the San Francisco Charter, the
8 Commercial Lease Agreement requires Board of Supervisors approval because the term of
9 the Commercial Lease Agreement exceeds 10 years and the anticipated revenue for the initial
10 five-year term exceeds one million dollars; and

11 WHEREAS, A copy of the Commercial Lease Agreement between the City and County
12 of San Francisco and Mel's is on file with the Clerk of the Board of Supervisors in File
13 No. 251052, which is hereby declared to be part of this motion as if set forth fully herein; now,
14 therefore, be it

15 RESOLVED, That the Board of Supervisors approves the lease between the City and
16 County of San Francisco and San Francisco C&C, doing business as Mel's Drive-In; and, be it

17 FURTHER RESOLVED, That within 30 days of the document being fully executed by
18 all parties, the final document shall be provided to the Clerk of the Board for inclusion in the
19 official file.

20

21

22

23

24

25

Item 5 File 25-1052	Department: Municipal Transportation Agency
EXECUTIVE SUMMARY	
<p>Legislative Objectives</p> <ul style="list-style-type: none"> The proposed resolution would retroactively approve a commercial lease agreement between the San Francisco Municipal Transportation Agency (MTA), as landlord, and San Francisco C&C, doing business as Mel's Drive-In (Mel's), as tenant, for 5,720 square feet of retail space within Fifth and Mission Garage for an initial five-year term commencing on September 1, 2025, and expiring on August 31, 2030, with one five-year option to extend the term. 	
<p>Key Points</p> <ul style="list-style-type: none"> MTA advertised the space for lease to the public on its website from October 2024 to July 2025, and Mel's was the only respondent. MTA did not issue a request for proposals or work with a broker to find potential tenants. The prior lease set a fixed base rent with yearly adjustments. However, due to COVID-19, MTA reports it verbally amended all retail leases from fixed rent to rent based on eight percent of gross sales. The amendments were never documented. The proposed new lease maintains the eight percent rent on gross sales. The lack of a fixed rent component of this lease is unusual for MTA and as compared to Airport and Port restaurant leases, however the proposed eight percent rent appears reasonable. 	
<p>Fiscal Impact</p> <ul style="list-style-type: none"> The proposed commercial lease agreement is for an initial five-year term, resulting in an estimated \$1,908,684 in revenue to MTA. This revenue would be used to fund transportation operations. 	
<p>Policy Consideration</p> <ul style="list-style-type: none"> Our review of this lease identified internal control weaknesses in MTA's lease management practices, specifically concerning lease documentation, solicitation processes, and the lack of written policies. MTA should (1) Develop and implement written policies and procedures governing lease and other real estate transactions, modeled on best practices from departments such as the Port of San Francisco. These policies must include clear guidelines for the solicitation/RFP process, standardized lease terms, and requirements for documenting all property transaction documents in writing and (2) Review all leases modified informally during the pandemic to determine whether any other lease amendments were executed that lack formal documentation or that required the Board of Supervisors' approval. In the future, MTA should document all contracts and contract amendments in writing and obtain approval from the appropriate government entities. The manager of MTA's Real Estate Division was hired in the Summer of 2025, which provides an opportunity to modernize the division's policies, procedures, and practices. 	
<p>Recommendation</p> <ul style="list-style-type: none"> Approval of the proposed lease is a policy matter for the Board of Supervisors. 	

MANDATE STATEMENT

City Charter Section 9.118(c) states that any lease, modification, amendment, or termination of a lease that had an initial term of ten years or more, including options to extend, or that had anticipated revenues of \$1 million or more is subject to Board of Supervisors approval.

BACKGROUND

The Fifth and Mission Garage is owned by the City and is under the jurisdiction of the San Francisco Municipal Transportation Agency (MTA). The facility provides approximately 2,585 parking spaces and includes 19 commercial retail spaces totaling 26,829 square feet. In Fiscal Year 2024-25, the retail tenants in the garage generated over \$1.2 million in revenue for MTA.

San Francisco C&C, a California general partnership doing business as Mel's Drive-In (Mel's), has been a tenant of Suites N and O within the commercial retail space within the Fifth and Mission Garage since 2000. The previous lease began in September 2000 with an initial term of 124 months and three 5-year options to extend, for a total term of 25 years and three months. The existing lease expired on August 31, 2025.

The garage at Fifth and Mission Streets has 19 commercial suites, of which 15 are occupied.

Tenant Selection

MTA advertised the space for lease to the public on its website and outside the restaurant premises from October 2024 to July 2025, and Mel's was the only respondent. According to MTA staff, this is MTA's typical approach to soliciting new tenants, though the Agency may also issue requests for proposals for spaces that it believes are highly marketable due to location and minimal need for tenant improvements. MTA did not work with a broker to identify potential tenants because MTA's Real Estate Division staff have broker licenses and the department can save money on commission costs. MTA determined that retaining the existing tenant was advantageous due to their positive performance under the prior lease, including timely rent payments and premises maintenance.

On October 7, 2025, the MTA Board of Directors approved and authorized the Director of Transportation to execute the proposed commercial lease agreement.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would retroactively approve a commercial lease agreement between the San Francisco Municipal Transportation Agency (MTA), as landlord, and San Francisco C&C, doing business as Mel's Drive-In (Mel's), as tenant, for 5,720 square feet of retail space within Fifth and Mission Garage for an initial five-year term commencing on September 1, 2025, and expiring on August 31, 2030, with one five-year option to extend the term. The resolution should be amended to state that the Board of Supervisors' approval is retroactive.

Exhibit 1 summarizes the key terms of the proposed lease agreement

Exhibit 1: Summary of Proposed Lease Provisions

Provision	Prior Lease	Proposed Lease Terms
Premises	801 Mission Street (Suites N & O), approx. 5,720 sq. ft.	801 Mission Street (Suites N & O), approx. 5,720 sq. ft.
Lease Term	Ten years (July 1, 2020 – August 31, 2010), with three five-year options to extend through August 31, 2025	Five years (September 1, 2025 – August 31, 2030)
Options to Extend	None; Amend No. 4 exercised the final option to extend	One five-year option to extend
Permitted Use	Commercial space serving traditional "American Food" cuisine	Commercial space serving traditional "American Food" cuisine between 7am and 11pm on Sunday to Thursday and between 7am and 3am on Friday and Saturday
Base Rent (Initial Term)	Year 1: \$48 per square foot, plus 3% annual escalation	Percentage rent equal to 8% of monthly gross revenues
Base Rent (Extension Term)	Year 20: \$422,092.80 annually (\$73.79 per square foot), with 3% annual increase	8% of gross revenues, but if assigned/sublet prior to extension: \$20,020.00/month base rent (adjusted annually by 4%) plus 4% of monthly Gross Revenues
Security Deposit	\$22,880.00	\$22,880.00
Utilities	Tenant's responsibility	No change
Janitorial Services	Tenant's responsibility	No change
Maintenance and Repairs	Tenant's responsibility except for foundations, common utility lines/sprinkler mains, and structural portions of the Center	Tenant's responsibility
Proportionate Common Area Costs	Tenant to pay MTA proportionate share of common area costs	Tenant to pay MTA proportionate share of common area costs, estimated at approximately \$10,000 based on prior year
Tenant Improvements	Tenant accepts the premises "as-is"	Tenant accepts the premises "as-is" and agrees to evaluate the entrance and comply with the SF Accessible Business Entrance Program (estimated at \$10,000)
Real Estate Taxes and Fees	Tenant's responsibility	No change

Source: MTA

Rent Structure and Comparison to Prior Lease

The previous agreement (2000-2025), including all four amendments, established a fixed base rent structure with yearly adjustments, but no portion of the rent was based on a percentage of gross sales. The initial rent in April 2000 was \$48 per square foot, which was increased to \$73.79 per square foot in August 2020, with three percent annual escalations.

However, according to MTA, fixed rent was only paid until December 2020. Due to the COVID-19 pandemic, MTA reports that all of MTA's retail lease agreements either shifted to a percentage of gross sales and/or were provided rent forgiveness. The previous lease agreement was never formally amended to reflect this change and neither were MTA's other leases. MTA staff state that due to the state of emergency and capacity constraints (both internal and Citywide) during the pandemic, they were unable to formally document these changes across their portfolio at the time, intending instead to formalize the rent structures as leases came up for renewal.

MTA has been collecting rent as eight percent of gross sales since February 2021. According to MTA, the eight percent of gross sales rent structure was based on a survey of other restaurant leases, however staff were unable to locate the survey. The proposed agreement formalizes the eight percent rent structure. There is no minimum monthly rent in the initial term or extension term. However, if the lease is assigned or sublet prior to extension, the base rent is \$20,020.00/month (adjusted annually by four percent) plus four percent of monthly gross revenues.

MTA states that the tenant was not willing to pay a fixed base rent due to current market conditions including a 35 percent office vacancy rate in Q1 2025 and a decline in foot traffic and business activity in the neighborhood. At the same time, MTA staff noted that, while this lease is proposed as a percentage-only lease, they believe most of their other leases maintain a fixed rent structure. We requested a list of all MTA commercial leases to understand their rent structure however staff were unable to provide that information.

Fair-Market Comparison

MTA provided an analysis using Costar data from May 2025 to demonstrate that the current fair-market rate is \$30.44 per square foot per year, based on two transactions in Daly City. Our review of publicly available asking rents for restaurant space in San Francisco similarly found that landlords were asking for \$30 per square foot. The eight percent rent applied to current gross sales would result in an effective rent of approximately \$66.73 per square foot per year, if the tenant maintains its current level of revenues, which is twice the current fair-market rent.

Comparison to Other City Leases with Restaurants

The Airport reported to our office in 2024 that the average percentage rent rate for food and beverage tenants was 13 percent in CY 2023. All Airport leases have a minimum annual guaranteed rent and percentage rent structure. The Port reported to us in October 2025 that the average percentage rent rate for restaurant tenants was eight percent. All Port leases have a minimum annual guaranteed rent and percentage rent structure. Port leases are more comparable to the proposed lease. This suggests the proposed eight percent rent is reasonable,

though the lack of a minimum guaranteed rent in the proposed lease is unusual. The proposed decrease to four percent rent if the lease is sublet or assigned appears low.

FISCAL IMPACT

The proposed commercial lease agreement is for an initial five-year term, resulting in an estimated \$1,908,684 in revenue to MTA. MTA projects \$381,737 in annual rent over the five-year term based on FY 2023-24 actual rent of \$387,824 under the previous lease.

Historical revenue and projected revenue for the initial five-year term are shown in Exhibit 2 below.

Exhibit 2: Historical 3-Year MTA Revenue and Projection for FY 2025-26 to FY 2029-30

Fiscal Year	Amount
FY 2022-23 (Actual)	392,279
FY 2023-24 (Actual)	387,825
FY 2024-25 (Actual)	396,872
3-Year Historical Average	\$392,325
FY 2025-26 (Projection)	\$381,737
FY 2026-27 (Projection)	\$381,737
FY 2027-28 (Projection)	\$381,737
FY 2028-29 (Projection)	\$381,737
FY 2029-30 (Projection)	\$381,737
Total Projected	\$1,908,685

Source: MTA

Use of Revenues

Revenues from this lease will be used to fund MTA's transit operations.

POLICY CONSIDERATION

Our review of this lease identified internal control weaknesses in MTA's lease management practices, specifically concerning lease documentation, solicitation processes, and the lack of written policies.

Lease Management Practices and Documentation

As noted above, in 2020, MTA verbally shifted this lease and approximately 50 others from fixed rent to percentage rent or provided rent forgiveness during the COVID-19 pandemic without executing written lease amendments.

MTA cites staff capacity constraints during the COVID-19 emergency as the reason for the lack of documentation; however, other City departments facing similar circumstances were able to document lease changes throughout the process, including the Port (File 20-1163), Airport (File

20-1278), and the City Administrator (File 21-0001). The manager of MTA's Real Estate Division was hired in the Summer of 2025, which provides an opportunity to modernize the division's policies, procedures, and practices.

Solicitation Process

MTA did not issue a formal RFP or work with a broker for this location before negotiating the new lease with the existing tenant. Staff also did not reach out to any industry associations or neighborhood groups regarding this lease. MTA staff explained that their typical approach includes posting on a solicitation for new leases on the SFMTA website, and/or installing signage, but they generally only conduct a formal RFP process when they anticipate multiple competitive responses. MTA staff stated they did not believe this site was competitive due to (1) location factors exacerbated by the COVID-19 emergency and declines in economic activity and in street conditions and (2) the extent of tenant improvements required by the tenant (which are often tenant responsibilities).

However, without policies governing when an RFP is required, it is difficult to determine if the City is receiving the best possible terms. Given that the location is reportedly the chain's top location in San Francisco, other operators might be interested if an RFP were issued or MTA more aggressively sought potential tenants.

Governance

Because the San Francisco Downtown Parking Corporation established the original lease before being assumed by the MTA in 2013, MTA believes that the 2021 lease amendment to modify the rental rate did not require Board of Supervisors approval under City Charter Section 9.118(c). We disagree with that interpretation and have requested the City Attorney's Office to clarify whether the Board of Supervisors should have approved the 2021 lease amendment. MTA reports that the 2021 lease amendment was approved by the MTA Director of Transportation but did not provide documentation of that approval.¹

In addition, MTA does not have any written policies and procedures to govern its real estate activities. As noted above, the proposed lease does not have a fixed rent component, which is unusual for City leases.

Recommendations

MTA should (1) Develop and implement written policies and procedures governing lease and other real estate transactions, modeled on best practices from departments such as the Port of San Francisco. These policies must include clear guidelines for the solicitation/RFP process, standard lease terms and conditions, and requirements for documenting all property transaction documents in writing and (2) Review all leases modified informally during the pandemic to determine whether any other lease amendments were executed that lack formal documentation

¹ MTA staff provided documentation of correspondence from May 2020 regarding an unspecified rent relief proposal for retail tenants that included the Director of Transportation.

or that required the Board of Supervisors' approval. In the future, MTA should document all contracts and contract amendments in writing, obtain approval for contracts from the appropriate government entities, and keep written records of such approvals.

RECOMMENDATION

Approval of the proposed resolution is a policy matter for the Board of Supervisors.



Daniel Lurie, Mayor

Janet Tarlov, Chair
Stephanie Cajina, Vice Chair
Mike Chen, Director
Alfonso Felder, Director

Steve Heminger, Director
Dominica Henderson, Director
Fiona Hinze, Director

Julie Kirschbaum, Director of Transportation

October 17, 2025

**The Honorable Members of the Board of Supervisors
City and County of San Francisco
1 Dr. Carlton Goodlett Place, Room 244
San Francisco, CA 94102**

Subject: Request to enter into a Lease Agreement with San Francisco C&C, doing business as Mel's Drive-In, for SFMTA retail space at 801 Mission Street, San Francisco

Honorable Members of the Board of Supervisors:

The San Francisco Municipal Transportation Agency (SFMTA) requests that the San Francisco Board of Supervisors authorize the Director of Transportation to execute a Commercial Lease Agreement (Lease) between San Francisco C&C, doing business as Mel's Drive-In (Mel's), as Tenant, and the San Francisco Municipal Transportation Agency (SFMTA), as Landlord, for the retail space located at 801 Mission Street in the Fifth and Mission Garage, for an initial five-year term that will result in an estimated \$1,908,684 in revenue, and one five-year option to extend the lease.

Background

The Fifth and Mission Garage (Garage), located at 833 Mission Street, is owned by the City and County of San Francisco (City) and is under the jurisdiction of the SFMTA. It provides about 2,585 parking spaces and includes 19 commercial retail spaces totaling 26,829 square feet. The retail space associated with the lease is a 5,720 square feet space, which Mel's is the current tenant, that operates as a restaurant at 801 Mission Street. In fiscal year 2024-2025, the retail tenants Fifth and Mission Garage generated over \$1.2 million in revenue for the SFMTA.

The tenant Mel's has occupied the existing space for decades. It is a well-known franchise with a rich history dating back to the first drive-in restaurant that opened in San Francisco in 1947. Its restaurants have been featured in movies such as American Graffiti (1973) and Guess Who's Coming to Dinner (1967). It is known for American fare, with burgers, fries, milkshakes, and late hours, and as a result, is a popular hangout spot for those who eat past midnight. Currently, there are nine restaurants under the Mel's banner, with four locations in San Francisco, four in the greater Los Angeles area, and one location in Nashville.

The last time Mel's signed a lease agreement for 801 Mission Street was in April 2000. That agreement was 124 months long and included three 5-year options to extend. Such agreement terminated on August 31, 2025.

Proposed Lease Agreement

This proposed lease agreement would secure Mel's as a tenant for the next five years, with a five-year option to extend (ten-year total occupancy, if option exercised). Hours of operation are 7:00 am to 11:00 pm on Sunday to Thursday, and 7:00 am to 3:00 am on Friday to Saturday. The rental rate for the initial term is \$0 base rent per month plus 8% of the gross revenues. If

Mel's exercises its option to extend the lease, the rent for the option period will consist of base rent in the amount of \$20,020 per month plus 4% of the gross revenues. The trade-offs of this approach are described below.

While a percentage rent is less certain than a fixed base rent, the economy is too unstable to secure tenants willing to pay a fixed base rent. Many office workers are still telecommuting, and many office employers have allowed their spaces to lapse—opting to relocate their business out of San Francisco or continue with a hybrid telecommuting business model. According to sf.gov/data, the first quarter of 2025 vacancy rate is 35% (see: <https://www.sf.gov/data-office-vacancy-rate>). The San Francisco Shopping Center has experienced an exodus of tenants, with the Westfield management company giving the keys to their lender. An entire floor has been shut down, and Bloomingdales and Nordstrom have vacated the shopping center.

That said, the percentage rent in the proposed lease has its benefit. It gives the SFMTA and Mel's a partnership-like common interest: continuity of a long-term tenant will help revitalize the area and higher rents if tenant has higher sales and more manageable rent when sales are lower. If restaurant revenues go back to 2019 levels, the actual rent the SFMTA receives will exceed any base rent it could otherwise negotiate for the space. Furthermore, 8% of the current gross sales is about \$31,811 per month or \$66.73 per square foot (psf) per year, which is above the current fair market rental value of \$30.44 psf per year, as Costar, a commercial real estate data platform, has captured from comparable rents in the neighborhood. The option period rent being \$20,020 per month plus 4% of gross revenue, gives the SFMTA more certainty of cash in hand to expect, while still having upside if Mel's does well.

Additionally, Mel's has performed well under the prior lease - paying rents on time, maintaining the leased premises, and having a general level of professionalism that has been positive for the agency. Mel's is the anchor tenant at the Fifth and Mission Garage, and as such, maintaining such

a tenant in this property could encourage business in other tenant spaces within Fifth and Mission Garage.

STAKEHOLDER ENGAGEMENT

The space was advertised for lease to the public on the SFMTA's webpage. Mel's was the only respondent.

ALTERNATIVES CONSIDERED

The SFMTA considered entering into an agreement with a similar 5-to-10-year term with a fixed base rent, but Mel's was not willing to lock into a fixed rent with the volatile downtown situation. The SFMTA wants to retain this local small business in the SOMA/Yerba Buena District for the long term. The alternative of a longer lease term was also considered but Mel's disfavored because of the volatile downtown situation. The other alternative of keeping the existing tenancy on a month-to-month agreement was also considered but both parties disfavored this, as it offers neither the SFMTA nor Mel's the certainty of even short-term stability, as either party could terminate with little notice.

FUNDING IMPACT

The current Lease and the initial term for the proposed lease agreement with Mel's have the same rent structure of 8% of gross revenues, or an estimated \$1,908,684 in revenue for a five-year term. If Mel's exercises its option to extend the lease, the rent for the option period will consist of base rent in the amount of \$20,020 per month plus 4% of the gross revenues. The option period gives the SFMTA more certainty of cash in hand to expect, while possible upside if Mel's revenue improves. Staff anticipate no difference in revenue to the SFMTA.

SFMTA BOARD ACTION

On October 7, 2025, the SFMTA Board of Directors approved Resolution 251007-092 which authorized the Director of Transportation the SFMTA to execute a Commercial Lease Agreement with San Francisco C&C, doing business as Mel's for the retail space located at 801 Mission Street in the Fifth and Mission Garage, for an initial five-year term that will result in an estimated \$1,908,684 in revenue, and one five-year option to extend the lease.

RECOMMENDATION

The SFMTA requests that the San Francisco Board of Supervisors authorize the Director of Transportation to execute a Commercial Lease Agreement between San Francisco C&C, doing business as Mel's Drive-In, as Tenant, and the SFMTA, as Landlord, for the retail space located at 801 Mission Street in the Fifth and Mission Garage, for an initial five-year term that will result in an estimated \$1,908,684 in revenue, and one five-year option to extend the lease.

Thank you for your time and consideration of this proposed Lease agreement. Should you have any questions or require more information, please do not hesitate to contact me at any time.

Sincerely,



Julie Kirschbaum
Director of Transportation

COMMERCIAL LEASE AGREEMENT

between

THE CITY AND COUNTY OF SAN
FRANCISCO,

ACTING BY AND THROUGH ITS MUNICIPAL TRANSPORTATION
AGENCY

and

San Francisco C&C, a California general partnership dba "Mel's Drive-In" as Tenant

For the lease of
Retail Space in the Fifth and Mission Garage
at 801 Mission Street
San Francisco, California

September 1, 2025

TABLE OF CONTENTS

	<u>Page</u>
1.DEMISE.....	1
2.DEFINITIONS.....	1
3.PREMISES; AS-IS CONDITION; COMMON AREAS	9
3.1.... Premises	9
3.2.... Accessibility Inspection Disclosure.....	10
3.3.... San Francisco Disability Access Disclosures	10
3.4.... No Right to Encroach.....	10
3.5.... Intentionally Left Blank.....	11
3.6.... As-Is Condition.....	11
3.7.... Release and Waiver.....	12
3.8.... SFMTA's Rights Regarding Premises.....	12
4.TERM OF LEASE; TERMINATION BY TENANT; EXTENSION OPTION	12
4.1.... Term.....	12
4.2.... Intentionally Left Blank.....	12
4.3.... Waiver of Relocation Benefits.....	13
4.4.... Extension Option	13
5.RENT	13
5.1.... Base Rent	13
5.2.... Default Interest.....	13
5.3.... Returned Checks	13
5.4.... Net Lease	14
5.5.... Additional Charges	14
5.6.... Adjustments in Base Rent.....	15
5.7.... Quarterly Reporting	16
5.8.... Intentionally deleted.....	Error! Bookmark not defined.
6.TAXES AND ASSESSMENTS	16
6.1.... Payment of Taxes.....	16
6.2.... Possessory Interest Tax.....	16
7.SECURITY DEPOSIT.....	16

8.	USE OF THE PREMISES	17
9.	COMPLIANCE WITH LAWS AND REGULATIONS	17
10.	SFMTA ACTING AS OWNER OF PROPERTY; REGULATORY APPROVALS; COMPLIANCE WITH CITY'S RISK MANAGER'S REQUIREMENTS	18
10.1.	SFMTA Acting as Owner of Property	18
10.2.	Regulatory Approvals	18
10.3.	Compliance with City's Risk Manager's Requirements.....	19
11.	MAINTENANCE AND REPAIRS	19
11.1.	Tenant Maintenance and Repair Obligations.....	19
11.2.	SFMTA's Right to Inspect.....	19
11.3.	SFMTA's Right to Repair.....	19
11.4.	Acts of Nature	20
12.	UTILITIES AND SERVICES	20
13.	IMPROVEMENTS AND ALTERATIONS	21
13.1.	SFMTA Consent Required	21
13.2.	Tenant's Obligation to Construct the Initial Tenant Improvements	21
13.3.	Construction Requirements.....	21
13.4.	Improvements Part of Realty	22
13.5.	All-Gender Toilet Facilities	22
13.6.	Removal of Improvements.....	23
13.7.	Removal of Non-Permitted Improvements	23
13.8.	Signs.....	23
13.9.	SFMTA's Alterations.....	23
14.	LIENS	24
15.	HAZARDOUS MATERIALS	24
15.1.	Requirements for Handling.....	24
15.2.	Tenant Responsibility	24
15.3.	Tenant's Environmental Condition Notification Requirements	24
15.4.	Requirement to Remediate.....	26
15.5.	SFMTA's Right to Audit	26
15.6.	Presence of Hazardous Materials.....	26
15.7.	Survival	27
16.	INSURANCE.....	27

17.....	DAMAGE AND DESTRUCTION.....	30
17.1 ..	Damage and Destruction.....	30
17.2 ..	Waiver.....	31
18.....	EMINENT DOMAIN	31
18.1 ..	General.....	31
18.2 ..	Partial Takings	31
18.3 ..	Taking of the Facility.....	31
18.4 ..	Temporary Takings.....	31
18.5 ..	Award; Waiver; Termination of Lease; Rent.....	31
19.....	INDEMNITY AND EXCULPATION	32
19.1 ..	General Indemnity	32
19.2 ..	Hazardous Material Indemnity	32
19.3 ..	Scope of Indemnities.....	32
19.4 ..	Exculpation and Waiver.....	33
19.5 ..	Survival.....	33
20.....	ASSIGNMENT AND SUBLetting	33
20.1 ..	Transfer to Affiliate	33
20.2 ..	Transfer to Non-Affiliate	34
20.3 ..	Sublease	35
20.4 ..	Notice to SFMTA	35
20.5 ..	Transfer Agreement Requirements	35
20.6 ..	Transfer Audit.....	36
20.7 ..	Acknowledgment	36
20.8 ..	Transfer Decisions	36
21.....	DEFAULT BY TENANT.....	36
22.....	SFMTA'S REMEDIES.....	38
22.1 ..	Tenant's Right to Possession Not Terminated.....	38
22.2 ..	Termination of Tenant's Right to Possession	39
22.3 ..	Appointment of Receiver.....	39
22.4 ..	SFMTA's Right to Cure Tenant's Default.....	39
22.5 ..	No Accord and Satisfaction	40
22.6 ..	Waiver of Redemption.....	40
22.7 ..	Habitual Late Payer.....	40

22.8. ... Remedies Not Exclusive	40
23.....LITIGATION EXPENSES; ATTORNEYS' FEES	40
23.1. ... Litigation Expenses.....	40
23.2. ... Appeals	40
23.3. ... City Attorney	40
24.....SFMTA'S ENTRY ON PREMISES	41
24.1. ... Entry for Inspection	41
24.2. ... General Entry	41
24.3. ... Emergency Entry	41
24.4. ... No Liability.....	41
24.5. ... Nondisturbance	41
25.....SURRENDER AND QUITCLAIM.....	42
25.1. ... Surrender.....	42
25.2. ... Quitclaim.....	42
25.3. ... Abandoned Property	42
25.4. ... Survival.....	43
26.....HOLDING OVER	43
26.1. ... Terms of Holdover Tenancy	43
26.2. ... With Consent	43
26.3. ... Without Consent	43
27.....MINERAL RESERVATION.....	43
28.....CITY AND SFMTA REQUIREMENTS	43
28.1. ... Nondiscrimination.....	44
28.2. ... Requiring Health Benefits for Covered Employees.....	44
28.3. ... First Source Hiring.....	45
28.4. ... Local Business Enterprises	46
28.5. ... Indoor Air Quality.....	46
28.6. ... Prohibition of Tobacco Sales and Advertising	46
28.7. ... Graffiti Removal	46
28.8. ... Restrictions on the Use of Pesticides	46
28.9. ... MacBride Principles Northern Ireland.....	47
28.10. Tropical Hardwood and Virgin Redwood Ban	47
28.11. Preservative-Treated Wood Containing Arsenic	47

28.12. Notification of Limitations on Contributions	47
28.13. Sunshine Ordinance	48
28.14. Conflicts of Interest.....	48
28.15. Drug-Free Workplace	48
28.16. Prevailing Wages and Working Conditions.....	48
28.17. Public Transit Information.....	49
28.18. Food Service and Packaging Waste Reduction Ordinance.....	49
28.19. Consideration of Criminal History in Hiring and Employment Decisions.....	49
28.20. Local Hire	50
28.21. San Francisco Bottled Water Ordinance.....	51
28.22. Vending Machines; Nutritional Standards and Calorie Labeling Requirements; Offerings	51
28.23. Employee Signature Authorization Ordinance	51
29.....NOTICES.....	51
30.....REPRESENTATIONS AND WARRANTIES OF TENANT	52
31.....TENANT'S MANAGEMENT COVENANTS.....	53
31.1. .. Covenants.....	53
31.2. .. Continuous Operations.....	53
32.....MISCELLANEOUS PROVISIONS.....	53
32.1. .. California Law	53
32.2. .. Entire Agreement	53
32.3. .. Amendments	53
32.4. .. Severability	53
32.5. .. Interpretation of Lease	54
32.6. .. Successors	54
32.7. .. Real Estate Broker's Fees	55
32.8. .. Counterparts.....	55
32.9. .. Authority	55
32.10. No Implied Waiver	55
32.11. Time is of Essence	55
32.12. Cumulative Remedies	55
32.13. Survival of Indemnities.....	55
32.14. Relationship of Parties	55

32.15. No Recording.....	56
32.16. Additional Written Agreement Required.....	56
33.....LIMITATION ON DAMAGES	56
33.1. .. No Recourse Beyond Value of Premises	56
33.2. .. Non-Liability of City Officials, Employees and Agents	56
33.3. .. Limitation on SFMTA's Liability Upon Transfer	56
34.....TENANT ESTOPPEL CERTIFICATES	56
35.....APPROVAL OF BOARD OF SUPERVISORS	Error! Bookmark not defined.

BASIC LEASE INFORMATION

<i>Lease Date:</i>	September 1, 2025
<i>Landlord or SFMTA:</i>	City and County of San Francisco , a municipal corporation, operating by and through its Municipal Transportation Agency
<i>Landlord's Address:</i>	San Francisco Municipal Transportation Agency 1 South Van Ness Avenue, Eighth Floor San Francisco, CA 94103
<i>Tenant:</i>	San Francisco C&C, a California general partnership, dba "Mel's Drive-In"
<i>Tenant's Main Contact Person and Mailing Address:</i>	Gabriel Mendez 3355 Geary Blvd San Francisco, CA 94118 Email: mgtconcepts@comcast.net
<i>Tenant's Billing Contact and Address:</i>	Terry Cypher P.O. BOX 82219 Las Vegas, NV 89180 Phone: (702) 249 5995 Email: tcypher@cox.net
<i>Tenant's Emergency Contact and Address:</i>	Tunga Ulambayar 801 Mission Street San Francisco, CA 94103 Phone: (510) 207 6758
<i>Tenant's Insurance Contact and Address (not broker):</i>	Zurich American Insurance Company 1299 Zurich Way Schaumburg, Illinois 60196-1056 Phone: 1-800 382 2150
<i>Contact Information for Tenant's Agent for Service of Process (including address):</i>	Matthew Wertheim, Esq. 1015 Irwin Street San Rafael, CA 94901
<i>Premises:</i>	All that certain retail area in the shops at Yerba Buena and commonly known and designated as Suites N & O, as further described in <u>Section 3.1</u> hereof and depicted in Exhibit A attached hereto.
<i>Facility:</i>	Fifth and Mission Garage located at 833 Mission Street, San Francisco, California
<i>Premises Rentable Square Footage:</i>	Approximately 5,720 square feet of retail space on the ground floor of the Facility
<i>Length of Term:</i>	The initial term of this Lease shall be five (5) years

<i>Commencement Date:</i>	September 1, 2025
<i>Rent Commencement Date:</i>	September 1, 2025
<i>Expiration Date:</i>	August 31, 2030
<i>Option to Extend:</i>	Tenant shall have one (1) five (5) year option to extend the term of the Lease in accordance with Section 4.4 hereof.
<i>Base Rent:</i>	Tenant shall pay Percentage Rent, which shall be calculated by multiplying the monthly Gross Revenues by eight percent (8%)
<i>Rent Adjustment Dates:</i>	None.
<i>Security Deposit:</i>	\$22,880.00
<i>Permitted Use:</i>	The Premises may only be used as a restaurant serving traditional “American Food” cuisine in accordance with Section 8 and Tenant may only do so between the hours of 7:00 am to 11 pm on Sunday to Thursday and 7:00 am to 3:00 am on Friday to Saturday.
<i>Tenant Improvements:</i>	Tenant agrees to evaluate entrance to Premises and comply with the San Francisco Accessible Business Entrance Program.
<i>Utilities:</i>	Tenant shall be responsible for all utilities and garbage service in accordance with Section 12.
<i>Rules & Regulations:</i>	See Exhibit D attached hereto.
<i>Other Noteworthy Provisions:</i>	Food business must maintain service agreements that the commercial kitchen and fire suppression equipment systems are routinely inspected and serviced by qualified professionals.

LEASE AGREEMENT

This Lease Agreement, dated for reference purposes only as of the Lease Date set forth in the Basic Lease Information, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), operating by and through its MUNICIPAL TRANSPORTATION AGENCY ("SFMTA"), as landlord, and SAN FRANCISCO C&C, a California general partnership, dba "Mel's Drive-In" ("Tenant"). The basic lease information (the "Basic Lease Information"), the exhibits and this Lease Agreement are and shall be construed as a single instrument and are referred to herein as this "Lease". In the event of any conflict or inconsistency between the Basic Lease Information and this Lease Agreement, the Basic Lease Information will control.

1. DEMISE

In consideration for the rents and all other charges and payments payable by Tenant, and for the agreements, terms and conditions to be performed by Tenant in this Lease, SFMTA does hereby lease to Tenant, and Tenant does hereby hire and take from SFMTA, the Premises upon the agreements, terms and conditions of this Lease for the Term hereinafter stated.

2. DEFINITIONS

Definitions used in this Lease are found in the specified locations in this Lease or are set forth below. Definitions that are not capitalized below are not capitalized when used in this Lease.

"ACMs" is defined in Section 13.3(e).

"ADA" means the Americans with Disabilities Act, a federal law codified at 42 U.S.C. §§ 12101 et seq., including, but not limited to, Title III thereof, and all regulations and guidelines related thereto, together with any and all laws, rules, regulations, ordinances, codes and statutes now or hereafter enacted by local or state agencies having jurisdiction thereof, including all requirements of Title 24 of the State of California, as the same may be in effect on the date of this Lease and may be hereafter modified, amended or supplemented.

"Additional Rent" means all taxes, assessments, insurance premiums, operating and maintenance charges, fees, costs, expenses, liabilities and obligations of every description which Tenant assumes or is obligated to pay or discharge pursuant to this Lease, together with every fine, penalty, interest or other charge which may be added for non-payment or late payment, whether payable to SFMTA or to other persons, parties or entities designated herein.

"Affiliate" means: (i) a Person that Controls or is Controlled by Tenant, or is Controlled by the same Person that Controls Tenant; or (ii) if Tenant is a natural Person, any designated successor by trust, will, or court order following Tenant's death or incapacity.

"Affiliate Transfer" means a Transfer from Tenant to an Affiliate meeting the requirements of Section 20.1.

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

"Alterations" means any alterations, installations, improvements, or additions to any Improvements or to the Premises.

"Anniversary Date" means the first and each subsequent anniversary of the Commencement Date; provided, however, that if the Commencement Date is not the first day of a month, then each Anniversary Date shall be calculated from the first day of the thirteenth (13th) month after the Commencement Date.

"Assignment" means a proposed or actual Transfer of Tenant's rights, title, and interest in all or any part of the Premises under a contractual assignment or an assignment by operation of Law.

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

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

"Books and Records" means all of Tenant's books, records, and accounting reports or statements relating to its business, this Lease, the Initial Tenant Improvements and the operation and maintenance of the Premises, including without limitation, cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the Premises and any other bookkeeping documents Tenant utilizes in its business operations for the Premises. Tenant shall maintain a separate set of accounts to allow a determination of Gross Revenue generated directly from the Premises and all exclusions therefrom.

"Business Day" means any week day during which businesses are generally open for business, excluding local, state, and federal holidays observed by SFMTA.

"Cal-OSHA" means the Division of Occupational Safety and Health of the California Department of Industrial Relations.

"Certificate of Completion" is the temporary or final certificate of occupancy issued by the San Francisco Department of Building Inspection allowing for commencement of the Permitted Use.

"Changes" is defined in Section 10.2.

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

"Claims" means all liabilities, injuries, losses, costs, claims, demands, rights, causes of action, judgments, settlements, damages, liens, fines, penalties and expenses, including without limitation, direct and vicarious liability of any kind for money damages, compensation, penalties, liens, fines, interest, attorneys' fees, costs, equitable relief, mandamus relief, specific performance, or any other relief.

"Commencement Date" means the date on which the Term commences as specified in the Basic Lease Information.

"Common Areas" means all areas outside of the Premises and within the boundaries of the Facility that are not now or hereafter exclusively leased or exclusively permitted to other ground floor tenants or permittees, and that are designated by SFMTA from time to time for the general common use or convenience of SFMTA, Tenant, or other tenants of SFMTA, and the respective authorized Agents and Invitees of the same. The Common Areas include, without limitation, sidewalks, canopies, washrooms, driveways, delivery areas, pedestrian walkways, utility rooms,

and other areas or improvements provided or designated by SFMTA for common use, including, without limitation, any trash enclosure area in the Facility designed by SFMTA for use in collecting, sorting, compacting and/or disposing of trash or recyclables generated by Facility tenants as they may from time to time exist and be available. Common Areas shall not include (i) any portion of the Facility used exclusively in connection with SFMTA's operation of transit including, without limitation, station entrances and exits, pay station lobbies, elevators, and related display cases, or (ii) any other portion of the Facility exclusive of the retail portion of the Facility ((i), and (iii) collectively, the "Excluded Areas").

"Concession" is defined in Section 32.16.

"Control" means a Person that: (a) owns or has the right to acquire fifty percent (50%) percent or more or twenty-five percent (25%) or more if traded on a nationally recognized security exchange of each class of equity interests in the second Person; or (b) owns fifty percent (50%) or more or twenty-five percent (25%) or more if traded on a nationally recognized security exchange of each class of interests that have the right to nominate, vote for, or otherwise select the members of the governing body that directs or causes the direction of substantially all of the management and policies of the second Person; or (c) otherwise has the right to direct or cause the direction of substantially all of the management and policies of the second Person.

"Core Benefits" is defined in Section 28.1.

"CMD" means the Contract Monitoring Division of the City's General Services Agency.

"CPA" means an independent certified public accounting firm acceptable to SFMTA in its reasonable discretion.

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

"Encroachment Area" is defined in Section 3.4.

"Encroachment Area Charge" is defined in Section 3.4.

"Environmental Laws" means any Laws relating to Hazardous Material (including its Handling, Release, or Remediation) or to human health and safety, industrial hygiene, or environmental conditions in the environment, including structures, soil, air, bay water, and groundwater, and any environmental mitigation measure adopted under Environmental Laws affecting any portion of the Facility.

"Environmental Regulatory Action" when used with respect to Hazardous Materials means any inquiry, Investigation, enforcement, Remediation, agreement, order, consent decree, compromise, or other action that is threatened, instituted, filed, or completed by an Environmental Regulatory Agency in relation to a Release of Hazardous Materials, including both administrative and judicial proceedings.

"Environmental Regulatory Agency" means the United States Environmental Protection Agency, OSHA, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the San Francisco Bay Regional Water Quality Control Board, Cal-OSHA, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, the San Francisco Public Utilities Commission, or any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

"Environmental Regulatory Approval" means any approval, license, registration, permit, or other authorization required or issued by any Environmental Regulatory Agency, including any hazardous waste generator identification numbers relating to operations on the Premises and any closure permit.

"Exacerbate" or "Exacerbating" when used with respect to Hazardous Materials means any act or omission that increases the quantity or concentration of Hazardous Materials in the affected area, causes the increased migration of a plume of Hazardous Materials in soil, groundwater, or bay water, causes a Release of Hazardous Materials that had been contained until the act or omission, or otherwise requires Investigation or Remediation that would not have been required but for the act or omission. Exacerbate also includes the disturbance, removal or generation of Hazardous Materials in the course of Tenant's operations, Investigations, maintenance, repair, Improvements and Alterations under this Lease. "Exacerbation" has a correlating meaning.

"Excess Rent" means Sublease rent and any other sums paid or payable to Tenant under a Sublease, excluding the value of goodwill, in excess of Tenant's concurrent Rent obligation for the Sublease premises.

"Expiration Date" means the date on which the Term expires as specified in the Basic Lease Information.

"Event of Default" is defined in Section 21.

"Facility" means the Fifth and Mission Parking Garage located at 833 Mission Street, San Francisco.

"Facility Systems" means the plumbing, electrical, fire protection, life safety, security and other mechanical, electrical, and communications systems of the Facility.

"Financial Statements" mean a current balance sheet and profit and loss statements that have been reviewed or examined by a CPA.

"Force Majeure" means events which result in delays of performance of a party's obligations hereunder due to causes beyond the party's control and not caused by the acts or omissions of such party, including acts of nature or of the public enemy, war, invasion, insurrection, riots, any general moratorium in the issuance of governmental or regulatory permits applicable to the Premises or the Improvements, acts of the government, fires, floods, earthquakes, tidal waves, epidemics, quarantine, restrictions, strikes, freight embargoes, unusually severe weather (but only if such unusually severe weather causes actual delays); delays of contractors or subcontractors due to any of the foregoing causes; strikes and substantial interruption of work because of labor disputes (excluding strikes and labor disputes directly related to any contracts between a party and its contractors or work performed on behalf of such party). Force Majeure does not include (1) failure to obtain financing or failure to have adequate funds, (2) sea level rise; and (3) any event that does not cause an actual delay.

"Goodwill" means the value assigned to Tenant's intangible business assets in connection with a Transfer, but only if the Transferee will continue to operate the same business that Tenant operated at the Premises and SFMTA reasonably agrees with the valuation.

"Gross Revenue" means, subject only to the exceptions stated below, , all sales, payments, revenues, income, fees, rentals, receipts, proceeds and amounts of any kind whatsoever, whether for cash, credit or barter, received or receivable by Tenant or any other party from any sublease, business, use or occupation, or any combination thereof, transacted, arranged or performed, in

whole or in part, on the Premises. Gross Revenue shall exclude sales taxes and discounts or credits issued to customers.

"Habitual Late Payer" means Tenant has received (a) at least two (2) notices of monetary default, or (b) at least three (3) notices of default within a twelve (12) month period.

"Handle" or **"Handling"** means to use, generate, process, manufacture, produce, package, treat, transport, store, emit, discharge, or dispose of a Hazardous Material.

"Hard Costs" is defined in Section 11.3.

"Hazardous Material" means any substance, waste, or material that is now or in the future designated by any Regulatory Agency to be capable of posing a present or potential risk of injury to human health or safety, the environment, or property. This definition includes anything designated or defined in any Environmental Law as hazardous, hazardous substance, hazardous waste, toxic, pollutant, or contaminant; any asbestos, and ACMs, whether or not 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 occurring in nature; and other naturally-occurring substances such as petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

"Hazardous Material Claim" means any Environmental Regulatory Action or any Claim made or threatened by any third party against the Indemnified Parties, or the Premises or the Facility, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence or Release of any Hazardous Materials, including, without limitation, losses based in common law. Hazardous Material Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises, any other part of the Facility, or other SFMTA property, the loss or restriction of the use or any amenity of the Premises, any other part of the Facility, or other SFMTA property, and attorneys' fees and consultants' fees and experts' fees and costs.

"Hazardous Material Condition" means the presence, Release, or threatened Release of Hazardous Materials in, on, or about the Premises, the Facility, other SFMTA property, or the environment, or from any vehicles or vessels Tenant, or its Agents and Invitees uses during Tenant's occupancy of the Premises.

"Improvements" means any and all buildings, structures, fixtures or other improvements constructed or installed on the Premises or any other part of the Facility, including those constructed by or on behalf of Tenant pursuant to this Lease (including, without limitation, any trailers, signs, roads, trails, driveways, parking areas, curbs, walks, fences, walls, stairs, poles, plantings and landscaping).

"Improvements Pertaining to the Realty" means machinery or equipment installed for use on the property that cannot be removed without a substantial economic loss or without substantial damage to the property on which it is installed, regardless of the method of installation. In determining whether particular property can be removed "without a substantial economic loss," the value of the machinery or equipment in place and considered as part of the realty should be compared with its value if it were removed and sold.

"Indemnified Parties" is defined in Section 19.1.

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

"Indemnification" and **"Indemnity"** have correlating meanings.

"Initial Tenant Improvements" means the tenant improvements to be constructed by Tenant, at its sole cost and expense, as further described in the Basic Lease Information and Section 13 below.

"Interest Rate" means ten percent (10%) per year or, if a higher rate is legally permissible, the highest rate an individual is permitted to charge under Law.

"Investigate" or **"Investigation"** when used with reference to Hazardous Materials means any activity undertaken to determine and characterize the nature and extent of Hazardous Materials that have been, are being, or are threatened to be Released in, on, under or about the Premises, any other part of the Facility, other SFMTA property, or the environment, and includes, without limitation, preparation and publication of site history, sampling, and monitoring reports, performing equipment and facility testing such as testing the integrity of secondary containment and above and underground tanks, and sampling and analysis of environmental conditions before, during, and after Remediation begins and continuing until the appropriate Environmental Regulatory Agency has issued a no further action letter, lifted a clean-up order, or taken similar action.

"Invitees" means Tenant's clients, customers, invitees, patrons, guests, members, licensees, permittees, concessionaires, assignees, subtenants, and any other person whose rights arise through them, except that for the purposes of Article 20 (Assignment and Subletting), "Invitees" excludes Tenant's licensees, assignees, subtenants, and any other person whose rights arise through them.

"Late Charge" means a fee equivalent to six percent (6%) of any unpaid amount.

"Law" means any present or future law, statute, ordinance, code, resolution, rule, regulation, judicial decision, requirement, proclamation, order, decree, policy (including the Waterfront Land Use Plan), and Regulatory Approval of any Regulatory Agency with jurisdiction over any portion of the Premises, including Regulatory Approvals issued to SFMTA which require Tenant's compliance, and any and all recorded and legally valid covenants, conditions, and restrictions affecting any portion of the Facility, whether in effect when this Lease is executed or at any later time and whether or not within the present contemplation of the parties, as amended from time to time.

"Lease" is defined in the preamble to this Lease.

"Non-Affiliate" means a Person that is not an Affiliate.

"Notice of Removal" is defined in Section 13.6. **"Notice to Vacate"** is defined in Section 3.4.

"Official Records" means the official records of the City and County of San Francisco.

"OSHA" means the United States Occupational Safety and Health Administration.

"Percentage Rent" means the Percentage Rent set forth in the Basic Lease Information and Section 5.6 below.

"Person" means any natural person, corporation, limited liability entity, partnership, joint venture, or governmental or other political subdivision or agency.

"Premises" means the real property described in Section 3.1 and depicted on Exhibit A.

"Preservative–treated Wood Containing Arsenic" is defined in Section 28.11.

"Prevailing Party" is defined in Section 23.1.

"Regulatory Agency" means the municipal, county, regional, state, or federal government and their bureaus, agencies, departments, divisions, courts, commissions, boards, officers, or other officials, any Environmental Regulatory Agency, SFMTA (in its regulatory capacity), other departments, offices, and commissions of the City and County of San Francisco (each in its regulatory capacity), the United States Department of Labor, the United States Department of Transportation, or any other governmental agency now or later having jurisdiction over SFMTA property.

"Regulatory Approval" means any authorization, approval, license, registration, or permit required or issued by any Regulatory Agency.

"Release" when used with respect to Hazardous Materials means any actual or imminent spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Premises, any other part of the Facility, other SFMTA property, or the environment.

"Remediate" or **"Remediation"** when used with respect to Hazardous Materials means to clean up, abate, contain, treat, stabilize, monitor, remediate, remedy, remove, or otherwise control Hazardous Materials, or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with applicable Environmental Laws and any additional SFMTA requirements. "Remediation" also includes the creation of a remedial work plan to be approved by the appropriate Environmental Regulatory Agency when required.

"Rent" means the Base Rent, Additional Rent and all other sums payable by Tenant to SFMTA hereunder, including, without limitation, any Late Charge and any interest assessed pursuant to Section 5.

"Rent Commencement Date" means the date on which the payment of Rent commences as specified in the Basic Lease Information.

"Repair Period" means two hundred ten (210) days after the date of damage to the Premises or the Facility by fire or other casualty.

"Rules and Regulations" means the Rules and Regulations, if any, applicable to the Facility, set forth in Exhibit D attached hereto, as may be amended from time to time.

"Sale" means: (a) Tenant's Transfer of its entire interest in this Lease or the entire leasehold estate, including the sale of Tenant's Property at the Premises and Tenant's goodwill to any other Person or entity; or (b) a Transfer affecting ownership of the beneficial interests in or business assets of Tenant.

"Sale Closing" means the date that any Sale closes.

"Security Deposit" means the amount specified in the Basic Lease Information and as further described in Section 7.

"SFMTA" means the San Francisco Municipal Transportation Agency.

"SFMTA Work" is defined in Section 13.9.

"Sublease" means the following events or proposed events: (a) a proposed or actual sublease or sub-license of all or any part of the Premises under a sublease, sub-sublease, license, sub-license or agreement of similar effect with a subtenant, vendor, concessionaire, food truck or food cart operator; (b) any Person other than Tenant occupies or claims a right of possession to any part of the Premises; or (c) any Subtenant or sub-licensee of Tenant sub-subleases or sub- sub-licenses any of its interest in its sublease or premises.

"Subletting Expenses" means verifiable and reasonable brokerage commissions incurred in connection with a Sublease and the costs of any new tenant improvements for which Tenant is responsible under the Sublease.

"Subsequent Alteration" means all alterations, installations, Improvements, repairs to and reconstruction, replacement, addition, expansion, restoration, alteration or modification of any Improvements, or any construction of additional Improvements, following completion of the Initial Tenant Improvements.

"Subtenant" means the Person with whom Tenant enters into a Sublease.

"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. "Tenant's Property" means all furniture, trade fixtures, office equipment, and articles of movable personal property installed in the Premises by or for the account of Tenant, and any Improvements or Alterations constructed on or affixed to the Premises if designated under this Lease as Tenant's Property, in either case without cost to SFMTA.

"Term" is defined in Section 4.1.

"Trade Fixtures" means those items of personality, furniture, equipment, machinery used in trade by Tenant which are customarily removed without damage to the Premises at the end of a lease term in the ordinary course of businesses of the type operated by Tenant at the Premises.

"Transfer" means any of the following events or proposed events, whether voluntary, involuntary, or by operation of Law: (a) any sale, assignment, encumbrance, sublease, or other transfer of any of Tenant's interest in this Lease or in the Premises; (b) any Person other than Tenant occupies or claims a right of possession to any part of the Premises; (c) except for an Affiliate Transfer, the entity which owns or Controls Tenant's equity interests or business assets (such as goodwill, inventory, and profits) changes (including without limitation a dissolution, merger, consolidation, transfer or sale); or (d) any interest of any subtenant, assignee, or other Transferee of Tenant's interest in its Sublease or premises is sold, assigned, encumbered, or otherwise Transferred. So long as Tenant is an entity whose outstanding stock is listed on a nationally recognized security exchange or if at least eighty percent (80%) of Tenant's voting stock is owned by another entity, the voting stock of which is so listed. transfer of such stock does not constitute a Transfer or an Affiliate Transfer under this Lease.

"Transfer Agreement" means all document(s) effecting or evidencing Tenant's proposed sale, assignment, encumbrance, sublease, or other Transfer.

"Transfer Date" means the effective date of a Transfer.

"Transfer Notice" means Tenant's prior written notice to SFMTA of an intent to Transfer to a Non-Affiliate, specifying: (a) the Transferee's name, address, other contact information, and, if the Transferee is not a natural Person, its form of organization and the identity of each Person with Control of the Transferee; (b) the proposed Transfer Date and a full description of the Transfer Terms; (c) a description of the Transferee's proposed use of the Premises, including any required or desired Alterations or Improvements to the Premises that the Transferee may undertake in order to facilitate its proposed use; and (d) a list of the Transferee's personal, business, and credit references.

"Transfer Terms" means the terms and conditions in the proposed or final Transfer Agreement, as appropriate in context.

"Transferee" means the Person to which Tenant makes or proposes to make a Transfer.

"Utilities" means electricity, water, gas, heat, sewers, telecommunication services and all other Utilities.

"Waiving Party" is defined in Section 16.5.

"Work" when used in reference to construction is defined in Section 13.3.

"Worth at the Time of Award" is defined in Section 22.2.

3. PREMISES; AS-IS CONDITION; COMMON AREAS

3.1. Premises.

(a) Subject to the provisions of this Lease, SFMTA hereby leases to Tenant, and Tenant hereby leases from SFMTA, the Premises in the Facility identified in the Basic Lease Information. The Premises has the address and contains the square footage specified in the Basic Lease Information. The location and dimensions of the Premises are depicted on Exhibit A attached hereto and incorporated herein by reference. SFMTA and Tenant agree and acknowledge that any statement of rentable or usable (if applicable) square footage set forth in this Lease is an approximation which SFMTA and Tenant agree is reasonable and that the usable square footage of the Premises may be less than the rentable square footage of the Premises. SFMTA and Tenant further agree and acknowledge that the rentable square footage of the Premises shall be used at all times to calculate the Base Rent due and payable by Tenant under this Lease and neither the Base Rent nor any other economic term based on rentable square footage shall be subject to revision whether or not the actual rentable or usable square footage is more or less.

(b) Common Areas

(i) Tenant shall have the non-exclusive right to use, together with other tenants, the Common Areas. All of the Common Areas shall at all times be subject to the exclusive control, regulation, and management of SFMTA. SFMTA shall have the right to construct, maintain, and operate lighting facilities on all Common Areas; to patrol all Common Areas; to temporarily close any Common Areas for maintenance, repairs or alterations; from time to time to change the area, level, location and arrangement of Common Area facilities; to use the Common Areas and restrict access and use of the same during the maintenance, repair, construction or reconstruction of buildings, additions or improvements; and to erect buildings, additions and improvements on the Common Areas from time to time. SFMTA may operate and maintain the Common Areas and perform such other acts and make such other changes at any time and from time to time in the size, shape, location, number and extent of the Common Areas

or any of them as SFMTA in its sole discretion shall determine; provided, however, that no exercise by SFMTA of its rights hereunder shall unreasonably restrict access to the Premises.

(ii) Subject to the provisions of this Section 3.1, SFMTA grants to Tenant, its subtenants, licensees, concessionaires, suppliers, business invitees, customers, agents, representatives and employees, but only during the Term, the non-exclusive right, but not an easement, in common with others duly authorized by SFMTA, to use the Common Areas as they exist from time to time and the various portions thereof, respectively, for the uses and purposes permitted by SFMTA. It shall be the duty of Tenant to keep the Common Areas free and clear of any obstructions, barricades or barriers placed or created by Tenant or resulting from Tenant's operations or use of the Premises.

(iii) Effective on the Rent Commencement Date, Tenant shall pay to SFMTA, upon demand, but not more often than once a month, a share of the Common Area Costs (based on SFMTA's estimates and subject to adjustment from time to time, as hereinafter provided), which share ("Tenant's Cost Proportionate Share of Common Area Costs") shall be equal to the product which results from multiplying (y) the per square foot Common Area Costs for the retail portion of the Facility by (z) the square foot area of the Premises as a proportion of the Floor Area of all retail stores constructed and available for lease in the retail portion of the Facility from time to time ("Tenant's Cost Proportionate Share"). Tenant's Cost Proportionate Share is subject to change from time to time proportional to changes in the aggregate costs for maintaining the Common Areas of the Retail Center.

3.2. Accessibility Inspection Disclosure.

California law requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("CASp") to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. Tenant is hereby advised that the Premises has not been inspected by a CASp and SFMTA shall have no liability or responsibility to make any repairs or modifications to the Premises in order to comply with accessibility standards. The following disclosure is required by law:

A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

3.3. San Francisco Disability Access Disclosures

Tenant is hereby advised that the Premises may not currently meet all applicable construction-related accessibility standards, including standards for public restrooms and ground floor entrances and exits. Tenant understands and agrees that Tenant may be subject to legal and financial liabilities if the Premises does not comply with applicable federal and state disability access Laws. As further set forth in Section 9 (Compliance with Laws), Tenant further understands and agrees that it is Tenant's obligation, at no cost to SFMTA, to cause the Premises and Tenant's use thereof to be conducted in compliance with the ADA and any other federal or state disability access Laws. Tenant shall notify SFMTA if it is making any Alterations or Improvements to the Premises that might impact accessibility standards required under federal and state disability access Laws.

3.4. No Right to Encroach

(a) If Tenant (including, its Agents, Invitees, successors and assigns) uses or occupies space outside the Premises without the prior written consent of SFMTA (the "Encroachment Area"), then upon written notice from SFMTA ("Notice to Vacate"), Tenant shall immediately vacate such Encroachment Area and pay as Additional Rent for each day Tenant used, occupied, uses or occupies such Encroachment Area, an amount equal to the rentable square footage of the Encroachment Area, multiplied by the then current fair market rent for such Encroachment Area, as reasonably determined by SFMTA (the "Encroachment Area Charge"). If Tenant uses or occupies such Encroachment Area for a fractional month, then the Encroachment Area Charge for such period shall be prorated based on a thirty (30) day month. In no event shall acceptance by SFMTA of the Encroachment Area Charge be deemed a consent by SFMTA to the use or occupancy of the Encroachment Area by Tenant, its Agents, Invitees, successors or assigns, or a waiver (or be deemed as a waiver) by SFMTA of any and all other rights and remedies of SFMTA under this Lease (including Tenant's obligation to Indemnify SFMTA as set forth in the last paragraph of Section 3.4(c), at law or in equity.

(b) In the event SFMTA determines during subsequent inspection(s) that Tenant has failed to vacate the Encroachment Area, then Tenant shall pay to SFMTA, as Additional Rent, an amount equaling Three Hundred Dollars (\$300.00) for each additional Notice to Vacate, if applicable, delivered by SFMTA to Tenant following each inspection. The parties agree that the charges associated with each inspection of the Encroachment Area, delivery of each Notice to Vacate and survey of the Encroachment Area represent a fair and reasonable estimate of the administrative cost and expense which SFMTA will incur by reason of SFMTA's inspection of the Premises, issuance of each Notice to Vacate and survey of the Encroachment Area. Tenant's failure to comply with the applicable Notice to Vacate and SFMTA's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of SFMTA under this Lease, at law or in equity.

(c) In addition to SFMTA's rights and remedies under this Section, the terms and conditions of the indemnity and exculpation provision set forth in Section 19 below (Indemnity and Exculpation) shall also apply to Tenant's (including, its Agents, Invitees, successors and assigns) use and occupancy of the Encroachment Area as if the Premises originally included the Encroachment Area, and Tenant shall additionally Indemnify SFMTA from and against any and all loss or liability resulting from delay by Tenant in surrendering the Encroachment Area including, without limitation, any loss or liability resulting from any Claims against SFMTA made by any tenant or prospective tenant founded on or resulting from such delay and losses to SFMTA due to lost opportunities to lease any portion of the Encroachment Area to any such tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

(d) All amounts set forth in this Section shall be due within three (3) business days following the applicable Notice to Vacate and/or separate invoice relating to the actual cost associated with a survey of the Encroachment Area. By signing this Lease, each party specifically confirms the accuracy of the statements made in this Section and the reasonableness of the amount of the charges described in this Section.

3.5. Intentionally Left Blank

3.6. As-Is Condition

TENANT ACKNOWLEDGES AND AGREES THAT THE PREMISES ARE BEING LEASED AND ACCEPTED IN THEIR "AS IS" CONDITION, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, AND SUBJECT TO ALL APPLICABLE LAWS, RULES AND ORDINANCES GOVERNING THEIR USE, OCCUPANCY AND POSSESSION. TENANT REPRESENTS AND WARRANTS TO SFMTA THAT TENANT HAS INVESTIGATED AND INSPECTED, EITHER INDEPENDENTLY OR THROUGH AGENTS OF TENANT'S OWN

CHOOSING, THE CONDITION OF THE PREMISES AND THE SUITABILITY OF THE PREMISES FOR TENANT'S INTENDED USE. TENANT HAS DETERMINED, BASED SOLELY ON ITS OWN INVESTIGATION, THAT THE PREMISES ARE SUITABLE FOR TENANT'S BUSINESS AND INTENDED USE. TENANT ACKNOWLEDGES AND AGREES THAT NEITHER SFMTA NOR ANY OF ITS AGENTS HAVE MADE, AND SFMTA HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE RENTABLE AREA OF THE PREMISES, THE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PREMISES OR THE PROPERTY, THE PRESENT OR FUTURE SUITABILITY OF THE PREMISES FOR TENANT'S BUSINESS, OR ANY OTHER MATTER WHATSOEVER RELATING TO THE PREMISES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

3.7. Release and Waiver

As part of its agreement to accept the Premises in their "As Is With All Faults" condition, Tenant, on behalf of itself and its successors and assigns, will be deemed to waive any right to recover from, and forever release, acquit and discharge, SFMTA and the other Indemnified Parties of and from any and all Claims, whether direct or indirect, known or unknown, foreseen or unforeseen, that Tenant may now have or that may arise on account of or in any way be connected with (i) the physical, geotechnical or environmental condition in, on, under, above, or about the Facility, including any Hazardous Materials in, on, under, above or about the Facility (including soil and groundwater conditions), (ii) the suitability of the Facility and/or the Premises for the development of the Improvements, the Permitted Uses, (iii) any Laws applicable thereto, including Environmental Laws, (iv) damages by death of or injury to any Person, or to property of any kind whatsoever and to whomever belonging, and (v) goodwill, or business opportunities arising at any time and from any cause in, on, around, under, and pertaining to the Facility and/or the Premises, including all claims arising from the joint, concurrent, active or passive negligence of any of Indemnified Parties, but excluding any intentionally harmful acts committed solely by SFMTA or City.

3.8. SFMTA's Rights Regarding Premises

SFMTA shall have the full right and authority to make, revoke, impose, and amend any Rules and Regulations pertaining to and reasonably necessary for the proper use, operation and maintenance of the Facility. If no Rules and Regulations currently exist for the Facility, Tenant agrees to be bound by any Rules and Regulations SFMTA later imposes on the Facility. Tenant acknowledges receipt of a copy of the Rules and Regulations currently in force for the Facility and agrees to abide by them. Tenant also acknowledges that SFMTA's exercise of any of its rights regarding the Premises and other SFMTA property in the vicinity of the Premises will not entitle Tenant to any abatement or diminution of Rent.

4. TERM OF LEASE; WAIVER OF RELOCATION BENEFITS; EXTENSION OPTION

4.1. Term

The term of this Lease (the "Term") shall be for the period of time specified in the Basic Lease Information commencing on the Commencement Date and expiring on the Expiration Date. If the Commencement Date and Expiration Date occur on a date other than the Commencement Date and the Expiration Date set forth in the Basic Lease Information, then promptly following the actual Commencement Date, SFMTA and Tenant shall execute a Commencement Date and Expiration Date Memorandum substantially in the form attached hereto as Exhibit B, confirming the actual Commencement Date and Expiration Date, but either party's failure to do so shall not affect the commencement or expiration of the Term.

4.2. Intentionally Left Blank

4.3. Waiver of Relocation Benefits

To the extent allowed by applicable Law, Tenant hereby waives any and all rights, benefits or privileges of the California Relocation Assistance Law, California Government Code §§ 7260 et seq., or under any similar law, statute or ordinance now or hereafter in effect, except as specifically provided in this Lease 1.1.

4.4. Extension Option

(a) Option to Extend Term. SFMTA grants to Tenant one (1) option to extend the Term of this Lease as to the entire Premises only (the "Extension Options") for an additional five (5) years (the "Extension Term") commencing on the Expiration Date upon the following terms and conditions. Tenant may exercise the Extension Option at any time during the Term but if it determines to do so it must give written notice to SFMTA thereof not less than one hundred eighty (180) days prior to the Expiration Date. Any such notice by Tenant shall be irrevocable by Tenant. If any event of default by Tenant is outstanding hereunder either at the time of Tenant's exercise of the Extension Option or at any time prior to the first day of the Extension Term (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 SFMTA may elect by notice to Tenant to reject Tenant's exercise of the Extension Option, whereupon the Extension Option shall be null and void.

(b) Base Rent and Other Terms. If Tenant elects to exercise an Extension Option, then the lease for the Extension Term shall cover the entire Premises and shall be upon all of the terms, covenants and conditions of this Lease and the Base Rent hereunder shall remain the same. Notwithstanding the foregoing, in the event Tenant has assigned or sublet its interest hereunder in accordance with Section 20 of this Lease prior to the Extension Term, the Base Rent during the Extension Term shall be adjusted to a Base Rent of Twenty Thousand and Twenty Dollars (\$20,020.00) per month along with Percentage Rent which shall be calculated by multiplying the monthly Gross Revenues by four percent (4%). On the first anniversary of the Extension Term and on each and every anniversary of the Extension Term thereafter, the Base Rent shall be adjusted by one hundred four percent (104%). In no event shall Base Rent on or after any adjustment be less than the Base Rent in effect immediately prior to such adjustment.

5. RENT

Tenant shall pay to SFMTA in the manner herein described, the following Rent:

5.1. Base Rent

From and after the Rent Commencement Date, Tenant shall pay, on or before the tenth day of each calendar month throughout the Term, Percentage Rent. Under no circumstances shall the Rent Commencement Date be delayed due to Force Majeure or other reasons.

5.2. Default Interest

Any Rent, if not paid within five (5) days following the due date and any other payment due under this Lease not paid by the applicable due date, shall bear interest from the due date until paid at the Interest Rate. However, interest shall not be payable on Late Charges incurred by Tenant nor on other amounts 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. Tenant shall also pay any costs, including attorneys' fees incurred by SFMTA by reason of Tenant's failure to pay Rent or other amounts when due under this Lease.

5.3. Returned Checks

If any check for a payment for any Lease obligation is returned without payment for any reason, Tenant shall pay, as Additional Rent, an amount equal to Fifty Dollars (\$50.00) and the outstanding payment shall be subject to a Late Charge as well as interest at the Interest Rate.

5.4. Net Lease

It is the purpose of this Lease and intent of SFMTA and Tenant that all Rent shall be absolutely net to SFMTA, so that this Lease shall yield to SFMTA the full amount of the Rent at all times during the Term, without deduction, abatement or offset. Except as otherwise expressly set forth in this Lease, under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties shall SFMTA be expected or required to incur any expense or make any payment of any kind with respect to this Lease or Tenant's use or occupancy of the Premises, including any Improvements. Without limiting the foregoing, but except as expressly provided to the contrary in this Lease, Tenant shall be solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which SFMTA would otherwise be or become liable by reason of SFMTA's estate or interests in the Premises and any Improvements, any rights or interests of SFMTA in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, renovation, use or occupancy of the Premises, any Improvements, or any portion thereof. 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, except as otherwise expressly provided in this Lease. 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, provided that such waiver shall not affect or impair any right or remedy expressly provided Tenant under this Lease.

5.5. Additional Charges

Without limiting SFMTA's other rights and remedies set forth in this Lease, at law or in equity, in the event Tenant fails to submit to the appropriate party, on a timely basis, the items identified in Sections:12 (Utilities), 15.3 (Tenant's Environmental Condition Notification Requirements), 28.1(d) (CMD Form), and 34 or to provide evidence of the required insurance coverage described in Section 16, then upon written notice from SFMTA of such failure, Tenant shall pay, as Additional Rent, an amount equaling One Hundred Dollars (\$100.00). In the event Tenant fails to provide the necessary document within the time period set forth in the initial notice and SFMTA delivers to Tenant additional written notice requesting such document, then Tenant shall pay to SFMTA, as Additional Rent, an amount equaling One Hundred Fifty Dollars (\$150.00) for each additional written notice SFMTA delivers to Tenant requesting such document. The parties agree that the charges set forth in this Section 5.5 represent a fair and reasonable estimate of the administrative cost and expense which SFMTA will incur by reason of Tenant's failure to provide the documents identified in this Section 5.5 and that SFMTA's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this Lease, at law or in equity. By signing this Lease, each party specifically confirms the accuracy of the statements made in this Section 5.5 and the reasonableness of the amount of the charges described in this Section 5.5.

5.6. Percentage Rent

(a) Tenant agrees to pay to SFMTA, pursuant to Section 5.1 above, a monthly Percentage Rent as set forth in the Basic Lease Information. Percentage Rent due hereunder shall be calculated by multiplying the monthly Gross Revenues by the percentage set forth in the rent schedule as set forth in the Basic Lease Information. The obligation to pay Percentage Rent shall commence on the Rent Commencement Date.

(b) Percentage Rent shall be determined and paid by Tenant for each calendar month within ten (10) days after the end of the prior calendar month, except that in the event this Lease expires or terminates on a day other than the last day of a calendar month, Percentage Rent for such calendar month shall be determined and paid within ten (10) days after such expiration or termination date. At the time of paying the Percentage Rent, Tenant shall furnish a complete statement (the "Monthly Percentage Rent Statement") substantially in the form set forth in Exhibit E attached hereto. In addition, Tenant shall furnish to SFMTA, within thirty (30) days after the expiration of each Lease Year, a complete statement, showing the computation of the Percentage Rent for the immediately preceding Lease Year ("Annual Statement") in a form approved by SFMTA. The Annual Statement is for verification and certification of Monthly Percentage Rent Statements only and shall not result in any averaging of monthly Percentage Rent. Each Monthly Percentage Rent Statement and Annual Statement shall set forth in reasonable detail Gross Revenues for such immediately preceding calendar month or Lease Year, as applicable, including an itemized list of any and all deductions or exclusions from Gross Revenues that Tenant may claim and which are expressly permitted under this Lease, and a computation of the Percentage Rent for the immediately preceding calendar month or Lease Year, as applicable.

(c) Each Monthly Percentage Rent Statement shall be certified as accurate, complete and current by a financial officer or other accountant employed by Tenant who is authorized and competent to make such Monthly Percentage Rent Statement. Each Annual Statement shall be certified as accurate, complete and current by an independent certified public accounting firm acceptable to SFMTA in its sole discretion. Tenant must submit payment of the balance owing together with any Annual Statement showing that Tenant has underpaid Percentage Rent. At SFMTA's option, overpayments may be refunded to Tenant, applied to any other amount then due under the Lease and unpaid, or applied to Rent due at the first opportunity following Tenant's delivery of any Annual Statement showing an overpayment.

If Tenant fails to (i) pay the Percentage Rent on the date due as provided above; (ii) submit the Monthly Percentage Rent Statement therewith (even if the statement indicates that Percentage Rent is not due); or (iii) fails to submit the Annual Statement, such failure in each instance shall be subject to a Late Charge. Tenant shall also pay any costs including attorneys' fees incurred by SFMTA by reason of such failure. Additionally, if Tenant fails to deliver any Monthly Percentage Rent Statement or Annual Statement within the time period set forth in this Section 5.8 (irrespective of whether any Percentage Rent is actually paid or due to SFMTA) and such failure continues for three (3) days after the date Tenant receives (or refuses receipt of) written notice of such failure from SFMTA, SFMTA shall have the right, among its other remedies under this Lease, to employ a certified public accountant to make such examination of Tenant's Books and Records (and the Books and Records of any other occupant of the Premises) as may be necessary to certify the amount of Tenant's Gross Revenues for the period in question and the certification so made shall be binding upon Tenant and Tenant shall promptly pay to SFMTA the total reasonable cost of the examination, together with the full amount of Percentage Rent due and payable for the period in question, including any Late Charge. Tenant acknowledges that late submittal of the Monthly Percentage Rent and Annual Statements and late payment of Percentage Rent will cause SFMTA increased costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. The parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the cost that SFMTA will incur by reason of Tenant's lateness.

Acceptance by SFMTA of any monies paid to SFMTA by Tenant as Percentage Rent as shown by any Monthly Percentage Rent Statement or Annual Statement, shall not be an admission of the accuracy of said Monthly Percentage Rent Statement or Annual Statement or the amount of such Percentage Rent payment.

5.7. Intentionally deleted

5.8. Intentionally deleted

6. TAXES AND ASSESSMENTS

6.1. Payment of Taxes

During the Term, Tenant agrees to pay, when due, to the proper authority any and all real property and personal taxes, general and special assessments, license fees, permit fees and all other governmental charges of any kind or nature whatsoever, including without limitation all penalties and interest thereon, levied or assessed on the Premises, on Tenant's Property, the leasehold or subleasehold estate or Tenant's use of the Premises, whether in effect at the time this Lease is entered into or which become effective thereafter, and all taxes levied or assessed on the possession, use or occupancy, as distinguished from the ownership, of the Premises. Tenant further recognizes and agrees that its leasehold interest may be subject to the payment of special taxes, including without limitation a levy of special taxes to finance energy efficiency, water conservation, water pollution control and similar improvements under the Special Tax Financing Law in Chapter 43 Article X of the Administrative Code. Tenant shall not permit any such taxes, assessments or other charges to become a defaulted lien on the Premises or the Improvements thereon; provided, however, that in the event any such tax, assessment or similar charge is payable in installments, Tenant may make, or cause to be made, payment in installments; and provided, further, that Tenant may, through such proceeding as Tenant considers necessary or appropriate, contest the legal validity or the amount of any tax, assessment or similar charge so long as such assessment or charge does not become a defaulted lien. In the event of any such dispute, Tenant shall Indemnify SFMTA, City, and their Agents from and against all Claims resulting therefrom.

6.2. Possessory Interest Tax

Tenant recognizes and understands 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. Tenant further recognizes and understands that any sublease or assignment permitted under this Lease and any exercise of any option to renew or other extension of this Lease may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Tenant agrees to pay taxes of any kind, including, but not limited to, possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Tenant's usage of the Premises that may be imposed upon Tenant by Law, all of which shall be paid when the same become due and payable and before delinquency. Tenant agrees not to allow or suffer a lien for any such taxes to be imposed upon the Premises or upon any equipment or property located thereon without promptly discharging the same, provided that Tenant, if so desiring, may have reasonable opportunity to contest the validity of the same. San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute) require that the City and County of San Francisco report certain information relating to this Lease, and any renewals thereof, to the County Assessor within sixty (60) days after any such transaction and that Tenant report certain information relating to any assignment of or sublease under this Lease to the County Assessor within sixty (60) days after such assignment or sublease transaction. Tenant agrees to provide such information as may be requested by the City or SFMTA to enable the SFMTA to comply with this requirement within thirty (30) days of a request in writing by SFMTA to do so.

7. SECURITY DEPOSIT

Tenant and SFMTA acknowledge that the Security Deposit in the amount of Twenty-Two Thousand Eight Hundred Eighty Dollars (\$22,880.00) is on file with the SFMTA and has been provided as security for the faithful performance by Tenant of all terms, covenants and conditions of this Lease.

Tenant agrees that SFMTA may (but shall not be required to) apply the Security Deposit in whole or in part to (a) pay any sum due to SFMTA under this Lease; (b) compensate SFMTA for any expense incurred or damage caused by Tenant, its Agents or Invitees; (c) cure any default by Tenant; or (d) cure, or attempt to cure, any failure of Tenant to perform any other covenant, term or condition contained herein. Tenant shall immediately upon demand pay SFMTA a sum equal to the portion of the Security Deposit expended or applied by SFMTA. SFMTA shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to any interest on the Security Deposit. Nothing contained in this Section shall in any way diminish or be construed as waiving any of SFMTA's other remedies set forth in this Lease or provided by law or equity.

Tenant hereby waives the provisions of California Civil Code Section 1950.7 and/or any successor statute, it being expressly agreed that SFMTA may apply all or any portion of the Security Deposit in payment of any and all sums reasonably necessary to compensate SFMTA for any other loss or damage, foreseeable or unforeseeable, caused by the act or omission of Tenant or any Agent or Invitee of Tenant, and that following a default by Tenant, all or any portion of the Security Deposit may be retained by SFMTA following a termination of this Lease and applied to future damages, including damages for future Rent, pending determination of the same.

8. USE OF THE PREMISES

8.1. Permitted Use

The Premises shall be used and occupied only for the Permitted Use specified in the Basic Lease Information and for no other purpose.

9. COMPLIANCE WITH LAWS AND REGULATIONS

Tenant, at Tenant's sole cost and expense, promptly shall comply with all Laws relating to or affecting the condition, use or occupancy of the Premises and shall comply with all Laws relating to Tenant's specific use of the Facility and all Rules and Regulations as set forth, if any, in effect either at the time of execution of this Lease or which may hereafter be in effect at any time during the Term, whether or not the same are now contemplated by the parties. Tenant further understands and agrees that it is Tenant's obligation, at Tenant's sole cost and expense, to cause the Premises and Tenant's activities and operations conducted thereon, to be in compliance with the ADA. Tenant shall be solely responsible for conducting its own independent investigation of this matter and for ensuring that the design of all Alterations and Improvements strictly complies with all requirements of the ADA. If Tenant's use or occupancy of the Premises triggers a requirement to remove barriers or perform other work to any part of the Facility outside of the Premises to comply with the ADA, then, at SFMTA's sole election, SFMTA or Tenant will perform the work at Tenant's sole cost and expense.

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 9 shall include, without limitation, the responsibility of Tenant to make substantial or structural repairs and Alterations to the Premises, 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 SFMTA, 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 Laws involved, and whether the Laws involved are related to Tenant's particular use of the Premises. Any Alteration or Improvements made by or on behalf of Tenant pursuant to the provisions of this Section 9 shall comply with the provisions of Section 13. Except as otherwise expressly set forth 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 of its obligations hereunder, nor give Tenant any right to terminate this Lease in whole or in part or to seek redress

against SFMTA, except to the extent Tenant may have remedies against SFMTA pursuant to this Lease or applicable Law. 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 SFMTA to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

10. SFMTA ACTING AS OWNER OF PROPERTY; REGULATORY APPROVALS; COMPLIANCE WITH CITY'S RISK MANAGER'S REQUIREMENTS

10.1. SFMTA Acting as Owner of Property

Tenant understands and agrees that SFMTA is entering into this Lease in its capacity as a landowner with a proprietary interest in the Premises and not as a Regulatory Agency of the City with certain police powers. By entering into this Lease, SFMTA is in no way modifying or limiting the obligation of Tenant to obtain any required Regulatory Approvals from Regulatory Agencies, and to cause the Premises to be used and occupied in accordance with all Laws and required Regulatory Approvals.

10.2. Regulatory Approvals

Tenant understands that Tenant's operations on the Premises, changes in use, or Improvements or Alterations to the Premises (individually and collectively, "Changes") may require Regulatory Approvals.

Tenant shall be solely responsible for obtaining any Regulatory Approvals, and Tenant shall not seek any Regulatory Approval without first obtaining the prior written approval of SFMTA, which written approval not unreasonably denied or delayed. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne solely and exclusively by Tenant. Tenant shall be solely responsible for complying with any and all conditions imposed by Regulatory Agencies as part of a Regulatory Approval; provided, however, Tenant shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit or other entitlement from any Regulatory Agency, if the SFMTA is required to be a co-permittee under such permit or other entitlement, or if the conditions or restrictions it would impose on the project could affect use or occupancy of the Facility or SFMTA's interest therein or would create obligations on the part of SFMTA (whether on or off of the Premises) to perform or observe, unless in each instance SFMTA has previously approved such conditions in writing, in SFMTA's sole and absolute discretion.

Any fines or penalties imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval shall be promptly paid and discharged by Tenant, and SFMTA shall have no liability, monetary or otherwise, for any fines and penalties. To the fullest extent permitted by Law, Tenant agrees to Indemnify City, SFMTA and their Agents from and against any Claim which City or SFMTA may incur as a result of Tenant's failure to obtain or comply with the terms and conditions of any Regulatory Approval.

Without limiting the terms and conditions of Sections 10.1 and 10.2, by signing this Lease, Tenant agrees and acknowledges that (i) SFMTA has made no representation or warranty that Regulatory Approvals to allow for the Changes, if any, can be obtained, (ii) although SFMTA is an agency of the City, SFMTA has no authority or influence over any Regulatory Agency responsible for the issuance of such required Regulatory Approvals, (iii) SFMTA is entering into this Lease in its capacity as a landowner with a proprietary interest in the Facility and not as a Regulatory Agency of the City with certain police powers, and (iv) Tenant is solely responsible for obtaining any and all required Regulatory Approvals in connection with any Changes. Accordingly, Tenant understands that there is no guarantee, nor a presumption, that any required Regulatory Approvals will be issued by the appropriate Regulatory Agency and SFMTA's status as an agency of the City shall in no way limit the obligation of Tenant to obtain approvals from any Regulatory Agencies (including SFMTA) that have jurisdiction over the

Facility. Tenant hereby releases and discharges SFMTA from any liability relating to the failure of any Regulatory Agency (including SFMTA) from issuing any required Regulatory Approval.

10.3. Compliance with City's Risk Manager's Requirements

Tenant shall faithfully observe, at no cost to SFMTA, any and all requirements of City's Risk Manager with respect to Tenant's use and occupancy of the Premises, so long as such requirements do not unreasonably interfere with Tenant's use of the Premises or are otherwise connected with standard prudent commercial practices of other landlords.

11. MAINTENANCE AND REPAIRS

11.1. Tenant Maintenance and Repair Obligations

Unless otherwise set forth in the Basic Lease Information, Tenant shall at all times during the Term, starting on the Commencement Date, including any period of early entry under this Lease, or occupancy or use of the Premises by Tenant under another lease or license with SFMTA for the same Premises, and at its sole cost and expense, maintain, repair and replace in good and working order, condition and repair the Premises which, for the avoidance of doubt, includes the windows, window frames, and doors, and all Improvements, Alterations, and Facility Systems thereon. SFMTA shall not be obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the Premises nor to any Improvements or Alterations now or hereafter located thereon. Tenant hereby waives all rights to make repairs at SFMTA's expense under Sections 1932(1), 1941 and 1942 of the California Civil Code or under any similar Law now or hereafter in effect. Notwithstanding any maintenance obligations of SFMTA that may be set forth in the Basic Lease Information, in the event that Tenant, its Agents or Invitees cause any damage to the Premises or any other property within SFMTA's jurisdiction, Tenant shall be responsible for repair and SFMTA may repair the same at Tenant's sole cost and expense and Tenant shall immediately reimburse SFMTA therefor.

Tenant shall not make, nor cause or suffer to be made, any repairs or other work for which a permit is required by any applicable building code, standard or regulation, or of any rule or regulation of SFMTA without first obtaining SFMTA's prior written consent therefor.

In the event that damage or deterioration to the Premises or any portion thereof which is Tenant's obligation to maintain results in the same not meeting the standard of maintenance required by SFMTA for such uses as Tenant is making of the Premises, then Tenant shall have the independent responsibility for, and shall promptly undertake, maintenance or repair of the Premises and complete the same with due diligence.

11.2. SFMTA's Right to Inspect

Without limiting Section 24 below, SFMTA may make periodic inspections of the Premises and may advise Tenant when maintenance or repair of the Premises is required, but such right of inspection shall not relieve Tenant of its independent responsibility to maintain such Premises and Improvements in a condition as good as, or better than, their condition at the Commencement Date, excepting ordinary wear and tear.

11.3. SFMTA's Right to Repair

In the event Tenant fails to maintain the Premises in accordance with this Lease or Tenant fails to promptly repair any damage to the Facility or the Facility Systems caused by Tenant or its Agents, SFMTA may repair the same at Tenant's sole cost and expense and Tenant shall immediately reimburse SFMTA therefore. If the cost (including, but not limited to, salaries of SFMTA staff and attorneys' fees) of any such repairs or replacements made at Tenant's expense is in excess of Two Thousand Dollars (\$2,000), then Tenant shall pay to SFMTA an administrative fee equal to ten percent (10%) of the total "Hard Costs" of the work. "Hard Costs" shall include the cost of materials and installation, but shall exclude any costs associated with design, such as architectural fees. With respect to any work where the total hard costs of such

work are less than Two Thousand Dollars (\$2,000), Tenant shall pay to SFMTA, as Additional Rent, an amount equaling Two Hundred Dollars (\$200).

In addition, upon delivery of the initial notice relating to Tenant's failure to maintain the Premises in accordance with Section 11 ("Maintenance Notice"), Tenant shall pay, as Additional Rent, an amount equaling Two Hundred Dollars (\$200.00). In the event SFMTA determines during subsequent inspection(s) that Tenant has failed to maintain the Premises in accordance with Section 11, then Tenant shall pay to SFMTA, as Additional Rent, an amount equaling Three Hundred Dollars (\$300) for each additional Maintenance Notice, if applicable, delivered by SFMTA to Tenant following each inspection. By signing this Lease, each party specifically agrees that the charges associated with each inspection of the Premises and delivery of each Maintenance Notice represent a fair and reasonable estimate of the administrative cost and expense which SFMTA will incur by reason of SFMTA's inspection of the Premises and issuance of each Maintenance Notice. Tenant's failure to comply with the applicable Maintenance Notice and SFMTA's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of SFMTA under this Lease, at law or in equity. The amounts set forth in this Section shall be due within three (3) business days following delivery of the applicable Maintenance Notice.

For purposes of this Lease, the term "ordinary wear and tear" shall not include any deterioration in the condition or diminution of the value of any portion of the Premises and/or the Facility in any manner whatsoever related directly or indirectly to Tenant's failure to comply with the terms and conditions of this Lease.

11.4. Acts of Nature

Nothing contained herein shall require SFMTA to repair or replace the Premises or the Improvements thereon as a result of damage caused by acts of war, earthquake or other acts of nature, except that this provision shall not affect any obligation to make repairs to the Premises pursuant to Section 17 in the event of any damage or destruction of the Premises.

12. UTILITIES AND SERVICES

(a) Tenant, at its sole cost, shall arrange for, and contract directly with, the applicable utility service provider to deliver any and all, telecommunications, telephone and all other utilities, except for water (including sewer) required by Tenant for its use on the Premises. Water service to the Premises is provided via the existing domestic water supply line ("Building Water Line") delivering water to the Premises as measured by a submeter for such water service ("Water Submeter"). Tenant shall maintain the water submeter in good operating condition at Tenant's sole cost and expense. All water utility service provided to the Retail Center through the Facility Water Line shall be contracted for by SFMTA. The cost for all water consumed on the Premises (including related sewer charges) as measured by such Water Submeter, shall be billed to Tenant periodically by SFMTA, consistent with the periodicity of billings received by SFMTA from the applicable utility provider, and Tenant shall pay all such costs as Additional Rent hereunder within ten (10) days of the date of SFMTA's invoice therefor.

(b) All electrical utility services for the Facility, including the Retail Center and any other portion(s) of the Facility leased from SFMTA from time to time to commercial tenants ("Other Retail Spaces"), shall be contracted for by SFMTA with (i) Pacific Gas & Electric ("PG&E") or such other utility provider as may be selected by SFMTA from time to time for the provision of interconnection and wheeling services ("Utility Provider") and (ii) PG&E or such other energy provider as may be selected by SFMTA from time to time for the provision of electrical energy services ("Electrical Energy Provider"). Tenant agrees that Energy Provider and, notwithstanding any contrary provision in this Lease, Tenant may not obtain (A) electrical interconnection or wheeling services directly or indirectly from any utility provider other than Utility Provider, nor (B) electrical energy services directly or

indirectly from other retail spaces leased to other tenants are referred to herein collectively as the "Retail Spaces". Tenant acknowledges and agrees that SFMTA may, from time to time at SFMTA's election, select an Electrical Energy Provider for the Retail Spaces which differs from the Electrical Energy Provider selected by SFMTA for the portions of the Facility excluding the Retail Spaces. The Electrical Energy Provider for the Retail Spaces so selected by SFMTA is referred to herein as the "Retail Energy Provider". The cost for all electricity consumed on the Premises as measured by such meter, shall be billed to Tenant periodically by SFMTA, consistent with the periodicity of billings received by SFMTA from the applicable utility provider, and Tenant shall pay all such costs as Additional Rent hereunder within ten (10) days of the date of SFMTA's invoice therefor.

(c) Tenant, at its sole cost, shall arrange for, and contract directly with, the applicable garbage service provider required by Tenant for its use on the Premises.

13. IMPROVEMENTS AND ALTERATIONS

13.1. SFMTA Consent Required

(a) Tenant shall not make nor cause or suffer to be made, any Alterations or Improvements to the Premises (i) without the prior written consent of SFMTA, which consent shall not be unreasonably withheld, or delayed; provided, however, that SFMTA shall have the right in its sole and absolute discretion to consent or to withhold its consent to any Alterations or Improvements which affect the structural portions of the Premises, the Facility or the Facility Systems, and (ii) until Tenant shall have procured and paid for all SFMTA and other Regulatory Approvals of the various Regulatory Agencies having jurisdiction over the Premises.

(b) At least thirty (30) days before commencing any Alterations or Improvements to the Premises, Tenant shall notify SFMTA. Tenant's notice shall be accompanied by Final Construction Documents for the Alterations or Improvements, if applicable. SFMTA shall have the right to object to any of the Alterations or Improvements within sixty (60) days after receipt of notice from Tenant. SFMTA's failure to notify Tenant of SFMTA's objection within the 60-day period shall be deemed SFMTA's disapproval of the Alterations.

(c) None of the following will constitute Alterations or Improvements requiring SFMTA's consent, unless the installation will affect Facility Systems or the structure of the building: (i) installation of furnishings, trade fixtures, equipment, or decorative improvements; (ii) painting the interior of the Premises; (iii) carpeting the Premises; and (iv) repairs or replacement of exterior glass.

13.2. Intentionally Left Blank (Tenant's Obligation to Construct the Initial Tenant Improvements)

13.3. Construction Requirements

All Subsequent Alteration to the Premises made by or on behalf of Tenant shall be subject to the following conditions, which Tenant covenants faithfully to perform:

(a) All Alterations and Improvements shall be performed in a good and workmanlike manner in accordance with plans and specifications previously approved by SFMTA in writing and in compliance with the applicable building, zoning and other applicable Laws, including, but not limited to, compliance with the ADA, and in compliance with the terms of and conditions imposed in any Regulatory Approval or any permit or authorization for the Premises.

(b) All Alterations and Improvements shall be performed at the sole cost and expenses of Tenant, with reasonable dispatch and prosecuted to completion, and only by duly licensed and bonded contractors or mechanics approved by SFMTA, and subject to any conditions that SFMTA may reasonably impose.

(c) Tenant, while performing any subsequent construction or maintenance or repair of the Improvements (for purposes of this Section only, "Work"), shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining portions of the Premises and Improvements and the surrounding property, or the risk of injury to members of the public, caused by or resulting from the performance of its Work. Tenant shall undertake commercially reasonable measures to minimize damage, disruption or inconvenience caused by the Work and make adequate provision for the safety and convenience of all persons affected by the Work. Dust, noise and other effects of the Work shall be controlled using commercially-accepted methods customarily used to control deleterious effects associated with construction projects in populated or developed urban areas. Tenant shall erect appropriate construction barricades substantially enclosing the area of such construction and maintain them until the Work has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

(d) At the completion of any Work described in this Section, Tenant shall furnish to SFMTA one reproducible "as built" drawing of all Alterations and Improvements made in the Premises. If Tenant fails to provide such as-built drawings to SFMTA within sixty (60) days after completion of the Improvements, SFMTA, after giving notice to Tenant shall have the right, but not the obligation, to cause the preparation by an architect of SFMTA's choice of "as-built" drawings, at Tenant's sole cost, to be paid by Tenant to SFMTA within thirty (30) days after SFMTA's request therefor.

(e) Without limiting Section 15 (Hazardous Materials), in the event that asbestos-containing materials ("ACM") are determined to exist in or about the Premises, Tenant shall ensure that all Alterations and Improvements and any asbestos related work, as further defined in California Health & Safety Code Section 25914.1(b), is performed in compliance with all Laws relating to asbestos, including but not limited to, Cal-OSHA regulations found in Title 8 of the California Code of Regulations, Sections 1502 and 1529. Additionally, Tenant shall distribute notifications to all employees and contractors as required pursuant to California Health & Safety Code Sections 25915 et seq. informing them of the existence of ACM and that moving, drilling, boring, or otherwise disturbing ACM may present a health risk and should not be attempted by an unqualified employee. No Alterations or Improvements affecting ACM-containing areas or any asbestos related work shall be performed without SFMTA's prior written consent in each instance. Without limiting Section 15 (Hazardous Materials), in the event that asbestos-containing materials ("ACM") are determined to exist in or about the Premises, Tenant shall ensure that all Alterations and Improvements and any asbestos related work, as further defined in California Health & Safety Code Section 25914.1(b), is performed in compliance with all Laws relating to asbestos, including but not limited to, Cal-OSHA regulations found in Title 8 of the California Code of Regulations, Sections 1502 and 1529. Additionally, Tenant shall distribute notifications to all employees and contractors as required pursuant to California Health & Safety Code Sections 25915 et seq. informing them of the existence of ACM and that moving, drilling, boring, or otherwise disturbing ACM may present a health risk and should not be attempted by an unqualified employee. No Alterations or Improvements affecting ACM-containing areas or any asbestos related work shall be performed without SFMTA's prior written consent in each instance.

13.4. Improvements Part of Realty

Except as set forth in Section 13.5, all Alterations and Improvements constructed on or affixed to the Premises by or on behalf of Tenant shall immediately upon construction or installation become part of the realty owned by SFMTA and shall, at the end of the Term hereof, remain on the Premises without compensation to Tenant. Tenant may not remove any such property at any time during or after the Term unless SFMTA so requires as further provided in Section 25 (Surrender).

13.5. All-Gender Toilet Facilities

If applicable, Tenant shall comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of any new building on City-owned land and within existing buildings leased by the City, including the Premises, where extensive renovations are made. An "all-gender toilet facility" means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures, and "extensive renovations" means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by this section. If Tenant has any question about applicability or compliance, Tenant should contact the SFMTA's Strategic Real Estate Manager for guidance.

13.6. Removal of Improvements

Prior to the Expiration Date or earlier termination of this Lease, SFMTA shall give written notice to Tenant (herein "Notice of Removal") specifying the Alterations or Improvements that are designated as Tenant's Property as defined in this Lease or as may be specifically provided in the relevant permits or plans approved by SFMTA, which Tenant shall be required to remove and relocate or demolish and remove from the Premises in accordance with Section 25. Any such removal is subject to the requirements of this Section. If termination of this Lease is the result of loss or destruction of the Premises or any Improvements thereon, SFMTA shall deliver the Notice of Removal to Tenant within a reasonable time after the loss or destruction. Tenant shall be obligated at its own expense to remove all Alterations or Improvements specified in the Notice of Removal, including without limitation all telephone wiring and equipment installed by Tenant. Tenant shall promptly repair, at its own expense, in good and workmanlike fashion any damage occasioned thereby. If Tenant fails to complete any required demolition or removal on or before the termination of this Lease, SFMTA may perform such removal or demolition at Tenant's expense, and Tenant shall reimburse SFMTA within three (3) business days after demand therefor.

13.7. Removal of Non-Permitted Improvements

If Tenant constructs any Alterations or Improvements without SFMTA's prior written consent or without complying with Section 13.2, then, in addition to any other remedy available to SFMTA, SFMTA may require Tenant to remove, at Tenant's expense, any or all such Alterations or Improvements and to promptly repair, at Tenant's expense and in good workmanlike fashion, any damage occasioned thereby. Tenant shall pay to SFMTA all special inspection fees as set forth in any applicable building code, standard or regulation, for inspection of work performed without required permits. The foregoing obligation of Tenant to reimburse SFMTA for all cost and expenses incurred by SFMTA in connection with Tenant's failure to comply with the provisions of Section 13 shall survive the expiration or earlier termination of this Lease.

13.8. Signs

Tenant shall not install business signage, awnings or other exterior decoration or notices on the Premises without SFMTA's prior written consent. Any sign that Tenant is permitted to place, construct or maintain on the Premises shall comply with all Laws relating thereto and building permit requirements, and Tenant shall obtain all Regulatory Approvals required by such Laws. SFMTA makes no representation with respect to Tenant's ability to obtain such Regulatory Approval. Tenant, at its sole cost and expense, shall remove all signs placed by it on the Premises at the expiration or earlier termination of this Lease.

13.9. SFMTA's Alterations

SFMTA reserves the right at any time to make Alterations, additions, repairs, deletions or improvements to the Common Areas or any other part of the Facility, the Facility Systems, or adjacent SFMTA property ("SFMTA Work"). SFMTA shall use commercially reasonable efforts to conduct any of the foregoing activities in a manner that, to the extent reasonably practicable, will minimize inconvenience or disturbance to Tenant; SFMTA will have no obligation to

minimize inconvenience or disturbance to Tenant for SFMTA Work when the SFMTA Work is necessary, in SFMTA's sole and absolute discretion, to maintain SFMTA property in safe, hazard-free condition. In no event will inconvenience or disturbance caused by SFMTA Work constitute an actual or constructive eviction of Tenant, entitle Tenant to any abatement or diminution of Rent, or otherwise relieve Tenant from any of its obligations under this Lease. Tenant hereby waives any and all Claims against SFMTA, City and their Agents arising out of any inconvenience or disturbance occasioned by SFMTA Work.

14. LIENS

Tenant shall keep the Premises free from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant or its Agents. In the event that Tenant shall not, within twenty (20) days following the imposition of any such lien, cause the same to be released of record, SFMTA shall have, in addition to all other remedies provided by this Lease or by Law, the right but not the obligation to cause the same to be released by such means as it shall deem proper, including without limitation, payment of the claim giving rise to such lien. All sums paid by SFMTA for such purpose, plus interest at the Interest Rate, and all reasonable expenses incurred by SFMTA in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to SFMTA by Tenant upon demand. SFMTA shall have the right to post on the Premises any notices that SFMTA may deem proper for the protection of SFMTA, the Premises, and the Facility, from mechanics' and materialmen's liens. Tenant shall give to SFMTA at least fifteen (15) days' prior written notice of commencement of any Alteration, repair or construction on the Premises. Tenant agrees to Indemnify SFMTA, City and their respective Agents from and against any Claims for mechanic's, materialmen's or other liens in connection with any Alterations, repairs or construction on the Premises, or materials furnished or obligations incurred by or for Tenant.

Without limiting the foregoing, Tenant shall not create, permit or suffer any liens or encumbrances affecting any portion of the Premises, the Facility or SFMTA's interest therein or under this Lease.

15. HAZARDOUS MATERIALS

15.1. Requirements for Handling

Neither Tenant nor its Agents or Invitees may Handle or permit any other person to Handle any Hazardous Material in, on, under or about the Premises, any other part of the Facility, or other SFMTA property, subject only to the following exceptions, provided that Handling is at all times in full compliance with all Environmental Laws: janitorial and office supplies in limited amounts customarily used for general office purposes.

15.2. Tenant Responsibility

Tenant agrees to protect its Agents and Invitees in its operations on the Premises from hazards associated with Hazardous Materials in accordance with all Environmental Laws and also agrees, for itself and on behalf of its Agents and Invitees, that during its use and occupancy of the Premises, each of them:

(a) will not permit any Hazardous Materials to be present in, on, under or about the Premises, any other part of the Facility, or other SFMTA property except as permitted under Section 15.1;

(b) will not cause or permit any Hazardous Material Condition; and

(c) will comply with all Environmental Laws relating to the Premises and any Hazardous Material Condition, and will not engage in or permit any activity at the Premises, any other part of the Facility, other SFMTA property, or in the operation of any vehicles or vessels used in connection with the Premises in violation of any Environmental Laws.

15.3. Tenant's Environmental Condition Notification Requirements

(a) Tenant must notify SFMTA immediately, orally or by other means that will transmit the earliest possible notice to SFMTA staff, followed within twenty-four (24) hours by written notice, of and when Tenant learns or has reason to believe Hazardous Materials were Released or, except as allowed under Section 15.1, Handled, in, on, or about the Premises, the Facility, other SFMTA property, or the environment, or from any vehicles or vessels that Tenant or its Agents or Invitees use during Tenant's occupancy of the Premises, whether or not the Release or Handling is in quantities that would be required under Environmental Laws to be reported to an Environmental Regulatory Agency.

(b) Tenant must notify SFMTA immediately, orally or by other means that will transmit the earliest possible notice to SFMTA staff, followed within twenty-four (24) hours by written notice, and contemporaneously provide SFMTA with an electronic copy, of:

(i) Any notice of the Release or Handling of Hazardous Materials, in, on, or about the Premises, the Facility, other SFMTA property, or the environment, or from any vehicles or vessels Tenant, or its Agents and Invitees uses during Tenant's occupancy of the Premises that Tenant or its Agents or Invitees provides to an Environmental Regulatory Agency;

(ii) Any notice of a violation, or a potential or alleged violation, of any Environmental Law that Tenant or its Agents or Invitees receives from any Environmental Regulatory Agency;

(iii) Any other Environmental Regulatory Action that is instituted or threatened by any Environmental Regulatory Agency against Tenant or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, or about the Premises, the Facility, other SFMTA property, or the environment;

(iv) Any Hazardous Material Claim that is instituted or threatened by any third party against Tenant or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, or about the Premises, the Facility, other SFMTA property; and

(v) Any notice of the termination, expiration, or substantial amendment of any Environmental Regulatory Approval needed by Tenant or its Agents or Invitees for their operations at the Premises.

(c) Tenant must notify SFMTA of any meeting, whether conducted face-to-face or telephonically, between Tenant and any Environmental Regulatory Agency regarding an Environmental Regulatory Action. SFMTA will be entitled to participate in any such meetings at its sole election.

(d) Tenant must notify SFMTA of any Environmental Regulatory Agency's issuance of an Environmental Regulatory Approval. Tenant's notice to SFMTA must state the issuing entity, the Environmental Regulatory Approval identification number, and the date of issuance and expiration of the Environmental Regulatory Approval. In addition, Tenant must provide SFMTA with a list of any plan or procedure required to be prepared and/or filed with any Environmental Regulatory Agency for operations on the Premises, including a "Spill Prevention Control and Countermeasure Plan." Tenant must provide SFMTA with copies of any of the documents within the scope of this section upon SFMTA's request.

(e) Tenant must provide SFMTA with copies of all communications with Environmental Regulatory Agencies and all non-privileged communications with other persons regarding potential or actual Hazardous Material Claims arising from Tenant's or its Agents' or Invitees' operations at the Premises. Upon SFMTA's request, Tenant must provide SFMTA with a log of all communications withheld under a claim of privilege that specifies the parties to and subject of each withheld communication.

(f) SFMTA may from time to time request, and Tenant will be obligated to provide, information reasonably adequate for SFMTA to determine that any and all Hazardous Materials are being Handled in a manner that complies with all Environmental Laws.

15.4. Requirement to Remediate

(a) Tenant's Remediation obligations under this subsection are subject to subsection (b).

(i) After notifying SFMTA in accordance with Section 15.3(a), Tenant must Remediate at its sole cost in compliance with all Environmental Laws and this Lease, any Hazardous Material Condition occurring during the Term or while Tenant or its Agents or Invitees otherwise occupy any part of the Premises. Tenant must obtain SFMTA's approval of a Remediation work plan, whether or not required under Environmental Laws, then begin Remediation actions immediately following SFMTA's approval of the work plan and continue diligently until Remediation is complete, as determined by SFMTA, in its sole discretion.

(ii) In addition to its obligations under clause (i), before this Lease terminates for any reason, Tenant must Remediate at its sole cost in compliance with all Environmental Laws and this Lease: (A) any Hazardous Material Condition caused by Tenant's or its Agents' or Invitees' Handling Hazardous Materials during the Term; and (B) any Hazardous Material Condition discovered during Tenant's occupancy that any Regulatory Agency requires to be Remediated if Remediation would not have been required but for Tenant's use of or Changes to the Premises.

(iii) If Environmental Laws governing Remediation require a remedial action plan, Tenant must provide a draft of its plan to SFMTA for comment and approval before submittal to the appropriate Environmental Regulatory Agency, and a copy of the final plan as submitted.

(iv) In all situations relating to Handling or Remediating Hazardous Materials, Tenant must take all actions that are reasonably necessary in SFMTA's sole judgment to protect the value of the Premises or the Facility, such as obtaining Environmental Regulatory Approvals related to Hazardous Materials and taking measures to remedy any deterioration in the condition or diminution of the value of any portion of the Premises or the Facility in any manner related directly or indirectly to Hazardous Materials.

(b) Unless Tenant or its Agents or Invitees Exacerbate the Hazardous Material Condition, Tenant will not be obligated to Remediate any Hazardous Material Condition: (i) caused solely by City, SFMTA, or their Agents during Tenant's occupancy of the Premises; or (ii) arising before the Commencement Date or the date of Tenant's first use of the Premises, whichever is earlier.

15.5. SFMTA's Right to Audit

SFMTA will have the right, but not the obligation, to inspect and audit the Premises for any Hazardous Materials, including the right to Investigate, at reasonable times under Section 24 (SFMTA's Entry on Premises). SFMTA's failure to inspect or obtain samples or to detect conditions attributable to Tenant's operations if an inspection is conducted may not be deemed to be a release of any liability for any Hazardous Materials subsequently determined to be Tenant's responsibility under this Lease.

15.6. Presence of Hazardous Materials

California Law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Tenant is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Premises, including, but not limited to, vehicle

fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as asbestos, naturally-occurring radionuclides, lead and formaldehyde. By execution of this Lease, Tenant acknowledges that the notice set forth in this section satisfies the requirements of California Health and Safety Code Section 25359.7 and related Laws. Tenant must disclose the information contained in this Section 15.6 to any subtenant, licensee, transferee, or assignee of Tenant's interest in this Lease. Tenant also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

15.7. Survival

Tenant's obligations under Section 15 shall survive any expiration or earlier termination of this Lease.

16. INSURANCE

Tenant, at its sole cost and expense, shall maintain, or cause to be maintained, throughout the Term, the following insurance:

(a) General Liability Insurance. Comprehensive or commercial general liability insurance, with limits not less than One Million Dollars (\$1,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for liquor liability, contractual liability, independent contractors, broad form property damage, personal injury, products and completed operations, fire damage and legal liability with limits not less than Two Hundred Fifty Thousand Dollars (\$250,000.00), and explosion, collapse and underground (XCU) coverage during any period in which Tenant is conducting any activity on or Alteration or Improvement to the Premises with risk of explosion, collapse, or underground hazards. This policy must also cover non-owned and for-hire vehicles and all mobile equipment or unlicensed vehicles, such as forklifts.

(b) Automobile Liability Insurance. Comprehensive or business automobile liability insurance with limits not less than One Million Dollars (\$1,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for owned and hired vehicles and for employer's non-ownership liability, which insurance shall be required if any automobiles or any other motor vehicles are operated in connection with Tenant's activity on the Premises or the Permitted Use.

(c) Worker's Compensation. Worker's Compensation Insurance with Employer's Liability limit not less than One Million Dollars (\$1,000,000.00) for each accident, injury or illness, on employees eligible for each. In the event Tenant is self-insured for the insurance required pursuant to this Section 16.1(c), it shall furnish to SFMTA a current Certificate of Permission to Self-Insure signed by the Department of Industrial Relations, Administration of Self-Insurance, Sacramento, California.

(d) Personal Property Insurance. Tenant, at its sole cost and expense, shall procure and maintain on all of its personal property and Alterations, in, on, or about the Premises, property insurance on an all risk form, excluding earthquake and flood, to the extent of full replacement value. The proceeds from any such policy shall be used by Tenant for the replacement of Tenant's personal property.

(e) Construction Activities. At all times during any period of Tenant's construction of Improvements or Alterations subject to Section 13,

(i) Tenant shall require Tenant's contractor to maintain (a) commercial general liability insurance with limits of not less than Three Million Dollars (\$3,000,000) combined single limit for bodily injury and property damage (including personal injury and death), and products and completed operations coverage in an amount not less than Five Hundred Thousand Dollars (\$500,000) per incident, One Million Dollars (\$1,000,000) in the aggregate; (b) comprehensive automobile liability insurance with a policy limit of not less

than One Million Dollars (\$1,000,000) each accident for bodily injury and property damage, providing coverage at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, "any auto", and insuring against all loss in connection with the ownership, maintenance and operation of automotive equipment that is owned, hired or non-owned; (c) worker's compensation with statutory limits and employer's liability insurance with limits of not less than One Hundred Thousand Dollars (\$100,000) per accident, Five Hundred Thousand Dollars (\$500,000) aggregate disease coverage and One Hundred Thousand Dollars (\$100,000) disease coverage per employee; and (d) owners and contractors protective liability with limits of not less than Three Million Dollars (\$3,000,000) combined single limit for bodily injury and property damage (including personal injury and death). Tenant shall cause Tenant's Agents (other than Tenant's contractor) to carry such insurance as shall be reasonably approved by SFMTA taking into account the nature and scope of the work and industry custom and practice.

(ii) In addition, Tenant shall carry "Builder's All Risk" insurance on a form reasonably approved by SFMTA, in the amount of one hundred percent (100%) of the completed value of all new construction, insuring all new construction, including all materials and equipment incorporated in, on or about the Premises, and in transit or storage off-site, that are or will be part of the permanent Improvements, against "all risk" and "special form" hazards.

(iii) Tenant shall require all providers of professional services, including architectural, design, engineering, geotechnical, and environmental professionals under contract with Tenant for any Improvements or any Alterations to maintain professional liability (errors or omissions) insurance, with limits not less than One Million Dollars (\$1,000,000.00) each claim and aggregate, with respect to all professional services provided to Tenant therefor.

(f) **Property Insurance;** Tenant shall maintain property insurance policies with coverage at least as broad as Insurance Services Office ("ISO") form CP 10 30 06 95 ("Causes of Loss – Special Form", or its replacement).

(g) **Builders Risk Insurance.** At all times prior to Completion of the Initial Tenant Improvements and during any period of Subsequent Alteration, Tenant shall maintain, on a form reasonably approved by SFMTA, builders' risk insurance in the amount of one hundred percent (100%) of the completed value of all new construction, insuring all new construction, including all materials and equipment incorporated in, on or about the Premises, and in transit or storage off-site, that are or will be part of the permanent Improvements, against "all risk" and "special form" hazards, water damage (including groundwater damage and water damage resulting from backed up sewers and drains) and flood insurance (subject to the provisions of Section 16.6(c)).

(h) **Boiler and Machinery Insurance.** Unless same is not included within Tenant's property insurance, Tenant shall maintain boiler and machinery insurance covering damage to or loss or destruction of machinery and equipment located on the Premises or in the Improvements that is used by Tenant for heating, ventilating, air-conditioning, power generation and similar purposes, in an amount not less than one hundred percent (100%) of the actual replacement value of such machinery and equipment.

(i) **Business Interruption Insurance.** shall maintain business interruption insurance for loss caused by any of the perils or hazards set forth in and required to be insured pursuant to Sections 16.1(d), 16.1(e) and 16.1(f) above, with a limit of not less than the annual Rent applicable immediately prior to the hazard causing the loss.

(j) **Professional Liability.** Tenant shall require all providers of professional services, including architectural, design, engineering, geotechnical, and environmental professionals under contract with Tenant for the Initial Tenant Improvements or any Subsequent Alteration to maintain professional liability (errors or omissions) insurance, with limits not less

than One Million Dollars (\$1,000,000.00) each claim and aggregate, with respect to all professional services provided to Tenant therefor.

(k) Other Coverage. Not more often than every year and upon not less than sixty (60) days prior written notice, SFMTA may require Tenant to increase the insurance limits set forth above or to provide other coverage and/or different coverage amounts as may be required by Law, the City's Risk Manager or as is generally required by commercial owners of buildings similar in size, character, age and location as the Facility with respect to risks comparable to those associated with the use of the Premises.

16.2. Claims-Made Policies

If any of the insurance required in Section 16.1 is provided under a claims-made form of policy, Tenant shall maintain such coverage continuously throughout the Term and without lapse for a period of three (3) years beyond the termination of this Lease, to the effect that should occurrences during the Term give rise to claims made after termination of this Lease, such claims shall be covered by such claims-made policies.

16.3. Annual Aggregate Limits

If any of the insurance required in Section 16.1 is provided under a form of coverage which includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be double the occurrence limits specified herein.

16.4. Payment of Premiums

Tenant shall pay the premiums for maintaining all required insurance.

16.5. Waiver of Subrogation Rights

Notwithstanding anything to the contrary contained herein, SFMTA and Tenant (each a "Waiving Party") each hereby waives any right of recovery against the other party for any loss or damage sustained by such other party with respect to the Facility or the Premises 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, to the extent such loss or damage is covered by insurance which is required to be purchased by the Waiving Party under this Lease or is actually covered by insurance obtained by the Waiving Party. Each Waiving Party agrees to cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Facility or the Premises; provided, the failure to obtain any such endorsement shall not affect the above waiver.

16.6. General Insurance Matters

(a) All liability insurance policies required to be maintained by Tenant hereunder shall contain a cross-liability clause, shall name as additional insureds by written endorsement the "CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS," shall be primary and non-contributory to any other insurance available to the additional insureds with respect to claims arising under this Lease, and shall provide that such insurance applies separately to each insured against whom complaint is made or suit is brought except with respect to the limits of the company's liability.

(b) All insurance policies required to be maintained by Tenant hereunder shall be issued by an insurance company or companies reasonably acceptable to SFMTA with an AM Best rating of not less than A-VIII and authorized to do business in the State of California. Tenant's compliance with this Section shall in no way relieve or decrease Tenant's liability under this Lease.

(c) All insurance policies required to be maintained by Tenant hereunder shall be endorsed to provide for thirty (30) days prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to Tenant and SFMTA.

(d) Tenant shall deliver to SFMTA certificates of insurance, additional insured policy endorsements and waiver of subrogation endorsements in a form satisfactory to and at the direction of SFMTA, such as hard copy documentation or use of an internet-based insurance compliance tracking systems such as EXIGIS, evidencing the coverages required herein, together with evidence of payment of premiums, on or before the Commencement Date, and upon renewal of each policy not less than thirty (30) days before expiration of the term of the policy. Tenant shall, upon SFMTA's request, promptly furnish SFMTA with a complete copy of any insurance policy required hereunder.

17. DAMAGE AND DESTRUCTION

17.1. Damage and Destruction

If the Premises or the Facility is damaged by fire or other casualty, then SFMTA shall repair the same provided that funds for such repairs are appropriated by SFMTA, in its sole discretion, for such purpose and that such repairs can be made within the Repair Period. In the event such conditions are satisfied, this Lease shall remain in full force and effect except that so long as such damage or casualty is not attributable to Tenant, its Agents or Invitees, Tenant shall be entitled to a proportionate reduction of Base Rent during the Repair Period based upon the extent to which such damage and the making of such repairs materially interferes with Tenant's use or occupancy of the Premises less any insurance proceeds Tenant receives, or would have received if Tenant complied with the requirements set forth in Section 16, which proceeds are to be applied against the payment of Rent during any Repair Period.

SFMTA shall use its commercially reasonable efforts to notify Tenant within ninety (90) days after the date of such damage whether or not such repairs can be made within the Repair Period, and SFMTA's determination thereof shall be binding on Tenant. If such repairs cannot be made within the Repair Period, SFMTA shall have the option to notify Tenant of: (a) SFMTA's intention to repair such damage and diligently prosecute such repairs to completion within a reasonable period after the Repair Period, subject to appropriation of funds, in which event this Lease shall continue in full force and effect and the monthly Base Rent shall be reduced as provided herein; or (b) SFMTA's election to terminate this Lease as of the date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by SFMTA. In case of termination, the monthly Base Rent shall be reduced as provided above, and Tenant shall pay such reduced monthly Base Rent up to the date of termination.

If SFMTA elects not to appropriate funds for such repair, SFMTA shall give written notice to Tenant within sixty (60) days after the date SFMTA elects not to appropriate funds of its election to terminate this Lease as of the date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by SFMTA. In case of termination, the monthly Base Rent shall be reduced as provided above, and Tenant shall pay such reduced monthly Base Rent up to the date of termination.

If at any time during the last six (6) months of the Term, the Premises or the Facility is damaged or destroyed, then either SFMTA or Tenant may terminate this Lease by giving written notice to the other party of its election to do so within thirty (30) days after the date of the occurrence of such damage; provided, however, Tenant may terminate only if such damage or destruction substantially impairs its use or occupancy of the Premises for the Permitted Use. The effective date of termination shall be specified in the notice of termination, which date shall not be more than thirty (30) days from the date of the notice.

Notwithstanding anything to the contrary in this Lease, (i) SFMTA shall have no obligation to repair the Premises or the Facility, (ii) Tenant shall not be entitled to any abatement of Rent, and (iii) Tenant shall not be entitled to terminate this Lease, in the event the damage or

destruction is attributable to any act or omission of Tenant, its Agents, or Invitees. In no event shall SFMTA be required to repair any damage to Tenant's Property or any paneling, decorations, railings, floor coverings, or any Improvements or other Alterations installed or made on the Premises by or at the expense of Tenant. Notwithstanding any other provision of this Lease, in the event the Premises or the Facility is substantially damaged or destroyed and SFMTA intends to rebuild for a SFMTA program or project that is inconsistent with this Lease, SFMTA may terminate this Lease upon written notice to Tenant.

17.2. Waiver

SFMTA and Tenant intend that the provisions of Section 17 govern fully in the event of any damage or destruction and accordingly, SFMTA and Tenant each hereby waives the provisions of Section 1932, subdivision 2, Section 1933, subdivision 4, Sections 1941 and 1942 of the Civil Code of California or under any similar Law now or hereafter in effect.

18. EMINENT DOMAIN

18.1. General

If all or part of the Premises shall be taken by any public or quasi-public authority under the power of eminent domain or conveyance in lieu thereof, this Lease shall terminate as to any portion of the Premises so taken or conveyed on the Date of Taking.

18.2. Partial Takings

If (a) a part of the Premises shall be taken by any public or quasi-public authority under the power of eminent domain or conveyance in lieu thereof, and (b) Tenant is reasonably able to continue the operation of Tenant's business in that portion of the Premises remaining, and (c) SFMTA elects to restore the Premises to an architectural whole, then this Lease shall remain in effect as to the portion of the Premises remaining, and the Base Rent payable from the Date of Taking shall be reduced by an amount that is in the same ratio to the Base Rent as the value of the area so taken bears to the total value of the Premises immediately before the Date of Taking. If, after a partial taking, Tenant is not reasonably able to continue the operation of its business in the Premises or SFMTA elects not to restore the Premises to an architectural whole, this Lease may be terminated by either SFMTA or Tenant by giving written notice to the other party no earlier than thirty (30) days prior to the Date of Taking and no later than thirty (30) days after the Date of Taking. Such notice shall specify the date of termination, which shall be not less than thirty (30) nor more than sixty (60) days after the date of notice.

18.3. Taking of the Facility

If any substantial portion of the Facility is taken under the power of eminent domain or conveyance in lieu thereof, whether any portion of the Premises is taken or not, SFMTA shall have the right to terminate this Lease by written notice to Tenant within thirty (30) days of the Date of Taking.

18.4. Temporary Takings

Notwithstanding anything to the contrary contained in Section 18, if a taking occurs with respect to all or any part of the Premises for a limited period of time, 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. 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 SFMTA shall be entitled to receive the balance of any award.

18.5. Award; Waiver; Termination of Lease; Rent

Upon termination of this Lease in its entirety pursuant to Section 18.3, or pursuant to an election under Section 18.2, then: (i) Tenant's obligation to pay Rent shall continue up until the

date of termination and thereafter shall cease, and (ii) SFMTA 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 any Improvements Pertaining to the Realty), and Tenant shall have no claim against SFMTA 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 Property. SFMTA and Tenant intend that the provisions of Section 18 shall govern fully in the event of condemnation and accordingly, SFMTA and Tenant each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.110, 1265.120, 1265.130, and 1265.140 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

19. INDEMNITY AND EXCULPATION

19.1. General Indemnity

19.2. Tenant shall Indemnify SFMTA, City, including, but not limited to, all of their respective boards, commissions, departments, agencies, and other subdivisions, and their respective Agents (collectively, "Indemnified Parties") from, and shall defend them, without cost to the Indemnified Parties, against any and all Claims arising directly or indirectly out of: (a) any accident, injury to or death of any person, including any Agents and/or Invitees of Tenant, or loss or damage to or destruction of any property occurring in, on or about the Premises, the Facility or any other SFMTA property, from any cause whatsoever, or (b) any default by Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease, including the provisions of Section 20, or (c) the use, occupancy, manner of use or occupancy, or condition of the Premises or the activities therein by Tenant, its Agents, or Invitees, or (d) any construction or other work undertaken by Tenant on the Premises whether before or during the Term, or (e) any acts, omissions or negligence of Tenant, its Agents or Invitees, in, on or about the Premises, the Facility or any other SFMTA property. **Hazardous Material Indemnity**

(a) In addition to its obligations under Section 19.1, Tenant, for itself and on behalf of its Agents and Invitees, agrees to Indemnify the Indemnified Parties from any and all Claims and Hazardous Material Claims that arise as a result of: (i) any Hazardous Material Condition, and (ii) Tenant's Exacerbation of any Hazardous Material Condition.

(b) Tenant's obligation to Indemnify the Indemnified Parties includes: (i) costs incurred in connection with any Investigation or Remediation requested by SFMTA or required by any Environmental Regulatory Agency and to restore the affected area to its condition before the Release; (ii) damages for diminution in the value of the Premises or the Facility; (iii) damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises or the Facility; (iv) damages arising from any adverse impact on marketing the space; (v) sums paid in settlement of Claims, Hazardous Material Claims, Environmental Regulatory Actions, including fines and penalties; (vi) natural resource damages; and (vi) attorneys' fees, consultant fees, expert fees, court costs, and all other litigation, administrative or other judicial or quasi-judicial proceeding expenses. If SFMTA pays any costs within the scope of this section, Tenant must reimburse SFMTA for SFMTA's costs, plus interest at the Interest Rate from the date SFMTA incurs each cost until paid, within three (3) business days after SFMTA's payment demand. Tenant's obligations hereunder shall survive the expiration or earlier termination of this Lease.

19.3. Scope of Indemnities

The Indemnification obligations of Tenant set forth in this Lease shall be enforceable regardless of the joint or concurrent, active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the Indemnified Parties. The Indemnification obligations of Tenant set forth in this Lease shall be enforceable 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. Except as specifically provided otherwise, the Indemnification obligations of Tenant set forth in this Lease shall exclude Claims resulting solely from the willful misconduct or gross negligence of the Indemnified Parties.

In addition to Tenant's obligation to Indemnify the Indemnified Parties, Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Indemnified Parties from any Claim which actually or potentially falls within the Indemnification obligations of Tenant set forth in this Lease, even if the allegations are or may be groundless, false or fraudulent. This Indemnification by Tenant shall begin from the first notice that any claim or demand is or may be made and shall continue at all times thereafter.

19.4. Exculpation and Waiver

Tenant, as a material part of the consideration to be rendered to SFMTA, hereby waives any and all Claims, including without limitation all Claims arising from the joint or concurrent, active or passive, negligence of the Indemnified Parties, but excluding any Claims caused solely by the Indemnified Parties' willful misconduct or gross negligence. The Indemnified Parties shall not be responsible for or liable to Tenant, and Tenant hereby assumes the risk of, and waives and releases the Indemnified Parties from all Claims for, any injury, loss or damage to any person or property in or about the Premises by or from any cause whatsoever including, without limitation, (i) any act or omission of persons occupying adjoining premises or any part of the Facility adjacent to or connected with the Premises, (ii) theft, (iii) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (iv) stopped, leaking or defective Facility Systems, (v) Facility defects, (vi) damages to goods, wares, goodwill, merchandise, equipment or business opportunities, (vii) Claims by persons in, upon or about the Premises, the Facility or any other SFMTA property for any cause arising at any time, (viii) alleged facts or circumstances of the process or negotiations leading to this Lease prior to the Commencement Date, (ix) inability to use all or any portion of the Premises due to sea level rise, and (x) any other acts, omissions or causes.

Tenant understands and expressly accepts and assumes the risk that any facts concerning the Claims released in this Lease might be found later to be other than or different from the facts now believed to be true, and agrees that the releases in this Lease shall remain effective. Therefore, with respect to the Claims released in this Lease, Tenant waives any rights or benefits provided by Section 1542 of the Civil Code, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY 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 OR RELEASED PARTY.

Tenant specifically acknowledges and confirms the validity of the release made above and the fact that Tenant was represented by counsel who explained the consequences of the release at the time this Lease was made, or that Tenant had the opportunity to consult with counsel, but declined to do so.

19.5. Survival

The provisions of Section 19 shall survive the expiration or earlier termination of this Lease.

20. ASSIGNMENT AND SUBLetting

20.1. Transfer to Affiliate

(a) Tenant may only make an Affiliate Transfer upon receiving SFMTA's prior written consent, which consent will not be unreasonably withheld, if Tenant gives SFMTA:

(i) prior written notice at least thirty (30) business days before the Transfer Date; and (ii) copies of all documentation evidencing Tenant's relationship with the Affiliate and the Transfer Agreement within five (5) days after the actual Transfer Date.

(b) SFMTA will have the right to: (i) request additional documentation and information relating to Tenant's relationship with the Transferee for three (3) months after Tenant has delivered all documents required under Subsection (a); and (ii) object to the Affiliate Transfer on the grounds that the Transferee is not an Affiliate as defined in this Lease, if written notice is delivered to Tenant within three (3) months after SFMTA's receipt of all required and requested information.

20.2. Transfer to Non-Affiliate

(a) Tenant must obtain SFMTA's prior written consent to any Transfer, which SFMTA will not withhold unreasonably.

(i) Tenant agrees that any of the following will be a reasonable basis for SFMTA to withhold its consent: (1) at the time Tenant requests SFMTA's consent, an Event of Default, or an event that with notice or the passage of time or both would constitute an Event of Default if not cured, has occurred and remains uncured; (2) the Transfer is an Assignment or a Sublease by a Transferee of Tenant; (3) the Transferee's financial condition is or may become insufficient to support all of the financial and other obligations of this Lease; (4) the Transferee's intended use of the Premises is inconsistent with this Lease or otherwise will affect any SFMTA interest materially and adversely; (5) the nature of the Transferee's use of the Premises would involve an increased risk of the Handling or Release of Hazardous Materials or of fire or other casualty; (6) the business reputation or character of the Transferee or any of its Affiliates is not reasonably acceptable to SFMTA; (7) the Transferee is not likely to conduct a business in the Premises of a quality substantially equal to Tenant's or otherwise reasonably acceptable to SFMTA; or (8) Tenant has not cured an Event of Default or an event that with notice or the passage of time or both would constitute an Event of Default if not cured.

(ii) Tenant also agrees that SFMTA will have the right to impose reasonable conditions to a requested consent to a Transfer, which may include: (1) requiring the Transferee to assume all of Tenant's obligations under this Lease; (2) requiring the Transferee to agree to an increase in the Base Rent to the Prevailing Market Rate which shall be calculated in accordance with Section 4.4(b)(i) above; and (3) giving SFMTA the right to terminate without notice all of Tenant's then-existing Subleases if this Lease is terminated before the existing Subleases expire.

(b) At least sixty (60) days before any Transfer to a Non-Affiliate, Tenant must give SFMTA a Transfer Notice and the following: (i) financial statements for the three (3) years before the Transfer Date (or each year of the proposed Transferee's existence, if shorter) for the Transferee and for any other Person who will be liable for Tenant's obligations under this Lease; (ii) Tenant's current financial statements; (iii) a copy of the proposed Transfer Agreement; and (iii) the Transferee's completed pre-screening and leasing application. In addition, Tenant must provide: (1) any other information, documentation, or evidence that SFMTA requests to enable SFMTA to evaluate the Transfer and the Transferee; and (2) if any of the Transfer Terms are modified before the Transfer Date, a new Transfer Notice and all relevant documentation for any modified Transfer Terms. Tenant's Transfer Notice will not be complete until Tenant has provided SFMTA with all information required under this Subsection.

(c) If SFMTA consents to the Transfer, Tenant must close the Transfer on the Transfer Terms stated in the Transfer Notice within ninety (90) days after SFMTA notifies Tenant of SFMTA's consent. If the Transfer Agreement does not close within the 90-day period, then SFMTA's consent will expire, unless Tenant gives SFMTA a new Transfer Notice, in which case SFMTA again will be entitled to exercise any of the options under this Section.

(d) Any Transfer that does not comply with this Section fully will constitute an incurable Event of Default and will be void as to SFMTA and this Lease. SFMTA's consent to one Transfer will have no effect with respect to any other Transfer.

(e) Tenant agrees to reimburse SFMTA for all costs, including attorneys' fees, that SFMTA incurs to review, investigate, process, document, disapprove, or approve any Transfer request.

20.3. Sublease

In addition to all requirements in Section 20.2, the following provisions apply to any Transfer in the form of a Sublease.

(a) Until the occurrence of an Event of Default, Tenant will have the right to receive and collect rents from the Sublease. The Sublease must require the Transferee to pay the rent and other sums due under the Sublease directly to SFMTA upon receiving SFMTA's written notice that Tenant is in default under this Lease, a copy of which SFMTA will deliver to Tenant. Tenant agrees that it will hold in trust for SFMTA's benefit any Sublease rent or other sums that Tenant collects from the Transferee after SFMTA's notice to the Transferee, and Tenant will be obligated to forward the same to SFMTA immediately upon receipt. SFMTA's collection of rents and other sums under this Section will not constitute SFMTA's acceptance of attorney by the Transferee.

(b) Tenant agrees to pay to SFMTA immediately upon receipt all Excess Rent, less Subletting Expenses, as Additional Rent. In calculating Excess Rent, Subletting Expenses will be amortized on a straight-line basis over the term of the Sublease, without interest. For example, if: (i) the term of the Sublease is 5 years; (ii) Sublease rent is \$5,000 per month; (iii) Tenant's concurrent Rent payable for the Sublease premises is \$3,000 per month; (iv) Tenant's Subletting Expenses are \$15,000 in brokerage commissions and \$15,000 for new tenant improvements for the Sublease premises, then the amount of Excess Rent Tenant must pay to SFMTA in connection with the Sublease is \$1,500 per month, as shown in the calculation below.

Term of Sublease: 5 years x 12 months = 60 months

Subletting Expenses: \$15,000 + \$15,000 = \$30,000

Amortized Subletting Expenses: \$30,000/60 months = \$500/month

Excess Rent: \$5,000/month - \$3,000/month = \$2,000/month

Additional Rent: \$2,000/month - \$500/month = \$1,500/month

In the event Tenant subleases some or all of the Premises, Tenant hereby agrees to include Sublessee as an additional insured for all insurance required under Section 16.

20.4. Notice to SFMTA

In addition to the obligations under Section 6.2, within thirty (30) days of entering into any agreement under which Tenant grants any person the right to occupy or use any portion of the Premises for any period of time, including without limitation, any assignment, sublease, license, permit, concession or vendor agreement or other agreement or renewal thereof, Tenant shall provide written notice to SFMTA and a copy of such agreement, regardless of whether SFMTA consent is required under this Lease for such agreement. Tenant agrees to provide such further information as may be requested by City or SFMTA to enable compliance with reporting obligations under state Law and San Francisco Administration Code Sections 23.38 and 23.39 (or any successor ordinance).

20.5. Transfer Agreement Requirements

Any Transfer Agreement must include the provisions set forth below.

(a) The Transferee's express assumption of, and acknowledgement and agreement that the Transferee will be jointly and severally liable for, all of Tenant's obligations under this Lease;

(b) The Indemnification clause and waiver of claims provisions in Section 19 (Indemnity and Exculpation);

(c) Insurance provisions requiring that all of the Transferee's liability and other insurance policies name "The City and County of San Francisco, the San Francisco Municipal Transportation Agency, and their officers, agents, employees, and representatives" as additional insureds and acknowledging SFMTA's right to demand increased coverage to amounts customarily required by other San Francisco landlords for premises where business activities similar to the Transferee's are conducted;

(d) A provision stating that if this Lease is terminated for any reason, the Transferee's right to possession under the Transfer Agreement will terminate; and

(e) A provision under which the Transferee expressly waives any and all relocation assistance and benefits in connection with this Lease to the extent permitted by applicable Laws.

20.6. Transfer Audit

Tenant agrees to make its Books and Records available to, and cooperate with, any SFMTA representative for the purpose of conducting an audit of the accuracy of Tenant's financial reporting on the Transfer for one (1) year after the Expiration Date. If an audit reveals that Tenant has overstated Subletting Expenses or any other costs in connection with a Transfer, Tenant must pay SFMTA promptly upon demand the difference between the amount Tenant deducted and the amount it should have deducted, plus interest at the Interest Rate from the Transfer Date until paid. As used in this section, Tenant includes Affiliates where applicable.

20.7. Acknowledgment

Tenant acknowledges and agrees that SFMTA's rights with respect to Transfers are reasonable limitations for purposes of California Civil Code Section 1951.4 and waives any Claims arising from SFMTA's actions under Section 20.2.

20.8. Transfer Decisions

For the purpose of this Section, references to this Lease and the Premises mean this Lease and the Premises to the extent Tenant's leasehold interest is affected by a Transfer. Other applicable definitions are in Section 2.

21. DEFAULT BY TENANT

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

(a) failure to pay to SFMTA any Rent or other sum payable hereunder when due, and such default continues for a period of three (3) days following written notice from SFMTA. Notwithstanding the foregoing, SFMTA shall not be required to provide such notice more than twice during any 12-month period, and any such failure by Tenant after Tenant has received two (2) such notices in such 12-month period shall constitute an Event of Default by Tenant hereunder without any further action by SFMTA or opportunity of Tenant to cure except as may be required by Section 1161 of the California Code of Civil Procedure; or

(b) failure by Tenant to deliver the Monthly Percentage Rent Statement or Annual Statement when due and such default continues for a period of three (3) days following written notice from SFMTA. Notwithstanding the foregoing, SFMTA shall not be required to provide such notice more than twice during any twelve (12) month period, and any such failure

by Tenant after Tenant has received two (2) such notices in such twelve (12) month period shall, at the option of SFMTA, constitute an Event of Default by Tenant hereunder without any further action by SFMTA (including, but not limited to, notice to Tenant of such failure) or opportunity of Tenant to cure except as may be required by Section 1161 of the California Code of Civil Procedure; or

(c) a second understatement by Tenant of its Gross Revenues for any audit period by five percent (5%) or more within any three (3) Lease Year period of the first such understatement; or

(d) failure to comply with Tenant's management covenants set forth in Section 31, as determined by SFMTA in its sole and absolute discretion and such failure continues for a period of two (2) days following written notice from SFMTA; or

(e) abandonment or vacation of the Premises by Tenant for a continuous period in excess of three (3) business days; or

(f) failure to use the Premises solely for the Permitted Use, as determined by SFMTA in its sole and absolute discretion and such failure continues for a period of twenty-four (24) hours following written notice from SFMTA; provided, however, that notwithstanding the foregoing, failure to use the Premises solely for the Permitted Use shall, at SFMTA's sole and absolute discretion, be deemed an incurable breach of this Lease, allowing SFMTA to immediately terminate this Lease upon written notice without an opportunity to cure; or

(g) failure by Tenant to execute and deliver to SFMTA the estoppel certificate within the time period and in the manner required by Section 34, and Tenant's failure to cure the foregoing default within five (5) days following written notice from SFMTA; or

(h) a Transfer, or attempted Transfer, of this Lease or the Premises by Tenant contrary to the provision of Section 20; or

(i) failure by Tenant or Tenant's broker as applicable to provide evidence of insurance coverage complying with the provisions of Section 16, failure to maintain any insurance required to be maintained by Tenant pursuant to this Lease, or if any such insurance shall be canceled or terminated or shall expire or be reduced or materially changed, except as permitted in this Lease, and Tenant's or Tenant's broker's failure to deliver evidence of such coverage or failure to reinstate such coverage, all within three (3) business days following written notice from SFMTA; or

(j) failure by Tenant to comply with the provisions of Section 15 and Tenant's failure to cure the foregoing default within twenty-four (24) hours following written notice from SFMTA. If such default cannot reasonably be cured within such twenty-four (24) hour period, Tenant shall not be in default of this Lease if Tenant commences to cure the default within such twenty-four (24) hour period and diligently and in good faith continues to cure the default, provided, however, in no event shall Tenant have more than thirty (30) days to cure such default; or

(k) failure by Tenant to discharge any lien or encumbrance placed on the Facility or any part thereof in violation of this Lease within ten (10) days after the date such lien or encumbrance is filed or recorded against the Facility or any part thereof, or if Tenant has no knowledge of such lien, then Tenant shall discharge such lien or encumbrance within fifteen (15) days following Tenant's knowledge of such lien or encumbrance; or

(l) failure by Tenant to observe, keep or perform any of the other terms, covenants, agreements or conditions contained in this Lease and required to be observed or performed by Tenant and not specifically enumerated in this Section 21, and such failure continues for a period of fifteen (15) days after written notice by SFMTA, provided that if such default is not capable of cure within such fifteen (15) day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within

such fifteen (15) day period and thereafter diligently prosecutes the same to completion within sixty (60) days after the receipt of notice of default from SFMTA. SFMTA shall not be required to provide such notice more than twice in any twelve (12) month period with respect to any material non-monetary defaults and after the second notice in any calendar year, any subsequent failure by Tenant during such twelve (12) month period shall automatically constitute an Event of Default hereunder; or

(m) Tenant shall become bankrupt or insolvent or make a transfer in fraud of creditors, or make an assignment for the benefit of creditors, or bring or have brought against Tenant any action or proceedings of any kind under any provision of the U.S. Bankruptcy Code or under any other insolvency, bankruptcy or reorganization act and, in the event such proceedings are involuntary, Tenant is not discharged from the same within sixty (60) days thereafter; or

(n) a receiver is appointed for a substantial part of the assets of Tenant and such receiver is not discharged within sixty (60) days; or

(o) this Lease or any estate of Tenant under this Lease shall be levied upon by any attachment or execution and such attachment is not stayed or lifted within sixty (60) days; or

(p) without limiting the provisions of Section 21(j) above or lengthening the cure periods under those subsections, failure by Tenant to comply with Laws and Tenant's failure to cure the foregoing default within forty-eight (48) hours following written notice from SFMTA.

22. SFMTA'S REMEDIES

Upon default by Tenant, SFMTA shall, without further notice or demand of any kind to Tenant or to any other person, have the following remedies:

22.1. Tenant's Right to Possession Not Terminated

SFMTA has the remedy described in Section 1951.4 of the California Civil Code (a landlord may continue the lease in effect after a tenant's breach and abandonment and recover rent as it becomes due, if the tenant has the right to sublet and assign subject only to reasonable limitations) under which it may continue this Lease in full force and effect and SFMTA may enforce all of its rights and remedies under this Lease, including the right to collect Rent when due. During the period Tenant is in default, SFMTA may enter the Premises without terminating this Lease and relet them, or any part of them, to third parties for Tenant's account. Tenant shall be liable immediately to SFMTA for all reasonable costs SFMTA incurs in reletting the Premises, including, but not limited to, broker's commissions, expenses of remodeling the Premises required by the reletting and like costs. Reletting can be for a period shorter or longer than the remaining Term, at such rents and on such other terms and conditions as SFMTA deems advisable. Tenant shall pay to SFMTA the Rent due under this Lease on the dates the Rent is due, less the Rent SFMTA receives from any reletting. In the event that SFMTA shall elect to so relet, then rentals received by SFMTA from such reletting shall be applied in the following order: (i) to reasonable attorneys' fees incurred by SFMTA as a result of a default and costs in the event suit is filed by SFMTA to enforce such remedies; (ii) to the payment of any indebtedness other than Rent due hereunder from Tenant to SFMTA; (iii) to the payment of any costs of maintaining, preserving, altering, repairing and preparing the Premises for reletting, the other costs of reletting, including but not limited to brokers' commissions, attorneys' fees and expenses of removal of Tenant's Personal Property, trade fixtures and Alterations; (iv) to the payment of Rent due and unpaid hereunder; (v) to the payment of future Rent and other sums payable by Tenant hereunder as the same may become due and payable hereunder; and (vi) the balance, if any, shall be paid to Tenant upon (but not before) expiration of the Term. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of Rent hereunder, be less than the Rent payable during the month by Tenant hereunder, then Tenant shall pay such deficiency to SFMTA. Such deficiency shall be calculated and paid

monthly. No act by SFMTA allowed by this Section 22.1 shall terminate this Lease unless SFMTA notifies Tenant that SFMTA elects to terminate this Lease. After Tenant's default and for as long as SFMTA does not terminate Tenant's right to possession of the Premises, if Tenant obtains SFMTA's consent Tenant shall have the right to assign or sublet its interest in this Lease, but Tenant shall not be released from liability.

22.2. Termination of Tenant's Right to Possession

SFMTA may terminate Tenant's right to possession of the Premises at any time. No act by SFMTA other than giving notice of termination to Tenant shall terminate this Lease. Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on SFMTA's initiative to protect SFMTA's interest under this Lease shall not constitute a termination of Tenant's right to possession. If SFMTA elects to terminate this Lease, SFMTA has the rights and remedies provided by California Civil Code Section 1951.2, including the right to recover from Tenant the following.

(a) The worth at the time of award of the unpaid Rent which had been earned at the time of termination; plus

(b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(c) The worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of Rent that Tenant proves could be reasonably avoided; plus

(d) Any other amounts necessary to compensate SFMTA for the detriment proximately caused by Tenant's default, or which, in the ordinary course of events, would likely result, including, but not limited to, attorneys' fees and court costs, the costs of carrying the Premises such as repairs, maintenance, taxes and insurance premiums, utilities, security precautions and the reasonable costs and expenses incurred by SFMTA in (i) retaking possession of the Premises; (ii) cleaning and making repairs and alterations necessary to return the Premises to good condition and preparing the Premises for reletting; (iii) removing, transporting and storing any of Tenant's Property left at the Premises (although SFMTA shall have no obligation so to do); and (iv) reletting the Premises, including, without limitation, brokerage commissions, advertising costs and attorneys' fees. Efforts by SFMTA to mitigate the damages caused by Tenant's breach of this Lease do not waive SFMTA's rights to recover damages upon termination.

The "worth at the time of award" of the amounts referred to in Sections 22.2(a) and 22.2(b) above shall be computed by allowing interest at an annual rate equal to the lesser of the Interest Rate or the maximum non-usurious rate SFMTA is permitted by Law to charge. The "worth at the time of award" of the amount referred to in Section 22.2(c) above shall be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%).

22.3. Appointment of Receiver

If Tenant is in default of this Lease, SFMTA shall have the right to have a receiver appointed to collect Rent and conduct Tenant's business. Neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by SFMTA to terminate this Lease.

22.4. SFMTA's Right to Cure Tenant's Default

SFMTA, at any time after Tenant commits a default, may, at SFMTA's sole option, cure the default at Tenant's cost. If SFMTA at any time, by reason of Tenant's default, undertakes any act to cure or attempt to cure such default that requires the payment of any sums, or otherwise

incurs any costs, damages, or liabilities (including without limitation, attorneys' fees), all such sums, costs, damages or liabilities paid by SFMTA shall be due immediately from Tenant to SFMTA at the time the sum is paid, and if paid by Tenant at a later date shall bear interest at the lesser of the Interest Rate or the maximum non-usurious rate SFMTA is permitted by Law to charge from the date such sum is paid by SFMTA until SFMTA is reimbursed by Tenant.

22.5. No Accord and Satisfaction

No payment by Tenant or receipt by SFMTA of an amount less than the Rent due under this Lease shall be deemed to be other than "on account" of the earliest Rent due; nor shall any endorsement or statement on any check or payment, or letter accompanying such check or payment, be deemed an accord and satisfaction. SFMTA may accept any such partial payment or tender without prejudice to its right to recover the balance of any amount due and to pursue any other remedy herein provided at Law or in equity.

22.6. Waiver of Redemption

Tenant hereby waives, for itself and all persons claiming by and under Tenant, redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179, or under any other pertinent present or future Law, in the event Tenant is evicted or SFMTA takes possession of the Premises by reason of any default of Tenant hereunder.

22.7. Habitual Late Payer

In the event Tenant is deemed to be a Habitual Late Payer, in addition to any other remedies available to SFMTA, SFMTA may require that Tenant enter into direct electronic payment arrangements and/or SFMTA may require payments of Rent be made in advance on a quarterly basis.

22.8. Remedies Not Exclusive

The remedies set forth in Section 22 are not exclusive; they are cumulative and in addition to any and all other rights or remedies of SFMTA now or later allowed by Law or in equity. Tenant's obligations hereunder shall survive any termination of this Lease.

23. LITIGATION EXPENSES; ATTORNEYS' FEES

23.1. Litigation Expenses

The prevailing party in any action or proceeding (including any cross-complaint, counterclaim, or bankruptcy proceeding) against the other party by reason of a claimed default, or otherwise arising out of a party's performance or alleged non-performance under this Lease, shall be entitled to recover from the other party its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. **"Prevailing Party"** within the meaning of this Section shall include, without limitation, a party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other party of its claim or defense.

23.2. Appeals

Attorneys' fees under this Section shall include attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal.

23.3. City Attorney

For purposes of this Lease, reasonable fees of attorneys of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the Bar of any State) who practice in San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

24. SFMTA'S ENTRY ON PREMISES

24.1. Entry for Inspection

SFMTA and its authorized Agents shall have the right to enter the Premises without notice at any time during normal business hours of generally recognized business days, provided that Tenant or Tenant's Agents are present on the Premises (except in the event of an emergency), for the purpose of inspecting the Premises to determine whether the Premises is in good condition and whether Tenant is complying with its obligations under this Lease.

24.2. General Entry

In addition to its rights pursuant to Section 24.1 above, SFMTA and its authorized Agents shall have the right to enter the Premises at all reasonable times and upon reasonable notice for any of the following purposes:

- (a)** To perform any necessary maintenance, repairs or restoration to the Premises or to perform any services which SFMTA has the right or obligation to perform;
- (b)** To serve, post, or keep posted any notices required or allowed under the provisions of this Lease;
- (c)** To post "For Sale" signs at any time during the Term; to post "For Lease" signs during the last six (6) months of the Term or during any period in which Tenant is in default;
- (d)** On an occasional basis, at all reasonable times after giving Tenant reasonable advance written or oral notice, to show the Premises to prospective tenants or other interested parties;
- (e)** If any excavation or other construction is undertaken or is about to be undertaken on any property or street adjacent to the Premises, to shore the foundations, footings or walls of the Premises and to erect scaffolding and protective barricades around and about the Premises as reasonably necessary in connection with such activities (but not so as to prevent or unreasonably restrict entry to the Premises), and to do any other act or thing necessary for the safety or preservation of the Premises during such excavation or other construction; or
- (f)** To obtain environmental samples and perform equipment and Facility testing.

24.3. Emergency Entry

SFMTA may enter the Premises at any time, without notice, in the event of an emergency. SFMTA shall have the right to use any and all means which SFMTA may deem proper in such an emergency in order to obtain entry to the Premises. Entry to the Premises by any of these means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion of the Premises.

24.4. No Liability

SFMTA shall not be liable in any manner, and Tenant hereby waives any Claim for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, including without limitation any abatement or reduction in Rent, arising out of SFMTA's entry onto the Premises as provided in Section 24 or performance of any necessary or required work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, except damage resulting solely from the willful misconduct or gross negligence of SFMTA or its authorized representatives.

24.5. Nondisturbance

SFMTA shall use its commercially reasonable best efforts to conduct its activities on the Premises as allowed in Section 24 in a manner which, to the extent reasonably practicable, will minimize annoyance or disturbance to Tenant.

25. SURRENDER AND QUITCLAIM

25.1. Surrender

Upon expiration or earlier termination of this Lease, Tenant shall surrender to SFMTA the Premises in good order, condition, and repair (except for ordinary wear and tear occurring after the last necessary maintenance made by Tenant and except for destruction or condemnation as described in Sections 17 and 18 hereof). Ordinary wear and tear shall not include any damage or deterioration that would have been prevented by proper maintenance by Tenant, or Tenant otherwise performing all of its obligations under this Lease. The Premises shall be surrendered clean, free of debris, waste, and Hazardous Materials, and free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this Lease and any other encumbrances created by SFMTA. On or before the expiration or earlier termination of this Lease, Tenant at its sole cost shall remove from the Premises, and repair any damage caused by removal of, Tenant's Property, including any signage and Alterations and Improvements specified in SFMTA's Notice of Removal. Except for those designated in SFMTA's Notice of Removal, Alterations and Improvements shall remain in the Premises as SFMTA property.

If the Premises is not surrendered at the end of the Term or sooner termination of this Lease, and in accordance with the provisions of this Section 25 and Section 13.5, Tenant shall continue to be responsible for the payment of Rent (as the same may be increased pursuant to Section 26.2 or 26.3 as applicable) until the Premises is surrendered in accordance with these Sections, and Tenant shall Indemnify SFMTA from and against any and all loss or liability resulting from delay by Tenant in so surrendering the Premises including, without limitation, any costs of SFMTA to obtain possession of the Premises; any loss or liability resulting from any Claim against SFMTA made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to SFMTA due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each instance, reasonable attorneys' fees and costs.

No act or conduct of SFMTA, including, but not limited to, the acceptance of the keys to the Premises, shall constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the Term. Only a written notice from SFMTA to Tenant confirming termination of this Lease and surrender of the Premises by Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of this Lease.

25.2. Quitclaim

Upon the expiration or earlier termination of this Lease, the Premises shall automatically, and without further act or conveyance on the part of Tenant or SFMTA, become the property of SFMTA, free and clear of all liens and without payment therefore by SFMTA and shall be surrendered to SFMTA upon such date. Upon or at any time after the expiration or earlier termination of this Lease, if requested by SFMTA, Tenant shall promptly deliver to SFMTA, without charge, a quitclaim deed to the Premises and any other instrument reasonably requested by SFMTA 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 portion that SFMTA agrees are to remain part of the Premises.

25.3. Abandoned Property

Any items, including Tenant's Property, not removed by Tenant as required herein shall be deemed abandoned. SFMTA may retain, store, remove, and sell or otherwise dispose of abandoned Tenant's Property, and Tenant waives all Claims against SFMTA for any damages resulting from SFMTA's retention, removal and disposition of such property; provided, however,

that Tenant shall be liable to SFMTA for all costs incurred in storing, removing and disposing of abandoned Tenant's Property and repairing any damage to the Premises or the Facility resulting from such removal. Tenant agrees that SFMTA may elect to sell abandoned Tenant's Property and offset against the sales proceeds SFMTA's storage, removal, and disposition costs without notice to Tenant or otherwise according to the procedures set forth in California Civil Code Section 1993, the benefits of which Tenant waives.

25.4. Survival

Tenant's obligation under this Section 25 shall survive the expiration or earlier termination of this Lease.

26. HOLDING OVER

26.1. Terms of Holdover Tenancy

Any holding over after the expiration of the Term shall not constitute a renewal of this Lease, but shall be deemed a month-to-month tenancy upon the terms, conditions, and covenants of this Lease, except as provided in this Section. Either party may cancel the month-to-month tenancy upon thirty (30) days written notice to the other party. Tenant shall Indemnify SFMTA from and against any and all loss or liability resulting from Tenant's delay in surrendering the Premises including, without limitation, any loss or liability resulting from any claim against SFMTA made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to SFMTA due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

26.2. With Consent

If Tenant holds over with the prior written consent of SFMTA, monthly Base Rent shall be equal to one hundred fifty percent (150%) of the monthly Base Rent payable in the month immediately preceding the expiration of this Lease; provided that if both Tenant and SFMTA desire to enter into a new lease or extend the existing term of this Lease but have not yet executed such new lease or extension solely due to SFMTA's delay to produce such document, then the monthly Base Rent during such holdover period shall be equal to the Base Rent payable in the month immediately preceding the expiration of this Lease together with any monthly charge of Additional Rent payable under this Lease.

26.3. Without Consent

If Tenant holds over without the prior written consent of SFMTA, monthly Base Rent shall equal two hundred percent (200%) of the monthly Base Rent payable in the month immediately preceding the expiration of this Lease.

27. MINERAL RESERVATION

The State of California ("State"), pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the Premises and Tenant acknowledges such reserved rights including necessary ingress and egress rights. In no event shall SFMTA be liable to Tenant for any Claims arising from the State's exercise of its rights nor shall such action entitle Tenant to any abatement or diminution of Rent or otherwise relieve Tenant from any of its obligations under this Lease.

28. CITY AND SFMTA REQUIREMENTS

The San Francisco Municipal Codes (available at www.sfgov.org) and City and SFMTA policies described or referenced in this Lease are incorporated by reference as though fully set forth in this Lease. The descriptions below are not comprehensive but are provided for notice purposes only; Tenant is charged with full knowledge of each such ordinance and policy and any

related implementing regulations as they may be amended from time to time. Tenant understands and agrees that its failure to comply with any provision of this Lease relating to any such code provision shall be deemed a material breach of this Lease and may give rise to penalties under the applicable ordinance. Capitalized or highlighted terms used in this Section and not defined in this Lease shall have the meanings ascribed to them in the cited ordinance.

28.1. Nondiscrimination

(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, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under Article 131 or 132 of the San Francisco Labor Code or in retaliation for opposition to any practices forbidden under Article 131 or 132 of the Labor Code against any employee of Tenant, any City and County employee working with Tenant, any applicant for employment with Tenant, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant in the City and County of San Francisco.

(b) Subleases and Other Contracts. Tenant shall include in all subleases and other contracts relating to the Premises a non-discrimination clause applicable to such subtenant or other contractor in substantially the form of Section 28.1(a). In addition, Tenant shall incorporate by reference in all subleases and other contracts the provisions of Sections 131.2 (a), 131.2 (c)-(k) and 132.3 of the Labor Code and shall require all subtenants and other contractors to comply with such provisions.

(c) Nondiscrimination 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, 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 (collectively "Core Benefits") as well as any benefits other than the Core Benefits 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 131.2 of the Labor Code.

(d) CMD Form. On or prior to the Lease Commencement Date, Tenant shall execute and deliver to SFMTA the "Nondiscrimination in Contracts and Benefits" form approved by CMD.

(e) Penalties. Tenant understands that pursuant to Section 131.2(h) of the Labor Code, a penalty of \$50.00 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.

28.2. 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 Labor Code Article 121 (Article 121).

(a) For each Covered Employee Tenant shall provide the appropriate health benefit set forth in Section 121.3 of the HCAO.

(b) Notwithstanding the above, if Tenant meets the requirements of a "small business" by the City pursuant to Section 121.3(d) of the HCAO, it shall have no obligation to comply with Section 28.2.

(c) If, within 30 days after receiving 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 30-day period, Tenant fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion, the City shall have the remedies set forth in Section 121.5(f). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(d) Any Sublease or Contract regarding services to be performed on the Premises entered into by Tenant shall require the Subtenant or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in Article 121 of the Labor Code. Tenant shall notify the Office of Labor Standards Enforcement (“OLSE”) when it enters into such a Sublease or Contract and shall certify to OLSE that it has notified the Subtenant or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Subtenant or Contractor through written agreement with such Subtenant or Contractor. Tenant shall be responsible for ensuring compliance with the HCAO for each Subtenant, Contractor and Subcontractor performing services on the Premises. If any Subtenant, Contractor or Subcontractor fails to comply, the City may pursue the remedies set forth in Section 121.5 of the Labor Code against Tenant based on the Subtenant's, Contractor's, or Subcontractor's failure to comply, provided that OLSE has first provided Tenant with notice and an opportunity to cure the violation.

(e) Tenant shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying the City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any 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 requirements of the HCAO.

(g) Tenant shall keep itself informed of the requirements of the HCAO, as they may change from time to time.

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

(i) Within ten (10) business days of any request, Tenant shall provide the City with access to pertinent records relating to any Tenant's compliance with the HCAO. In addition, the City and its agents may conduct random audits of Tenant at any time during the Term. Tenant agrees to cooperate with City in connection with any such audit.

(j) If a Contractor or Subcontractor is exempt from the HCAO because the amount payable to such Contractor or Subcontractor under all of its contracts with the City or relating to City-owned property is less than \$25,000.00 (or \$50,000.00 for nonprofits) in that fiscal year, but such Contractor or Subcontractor later enters into one or more agreements with the City or relating to City-owned property that cause the payments to such Contractor or Subcontractor to equal or exceed \$75,000.00 in that fiscal year, then all of the Contractor's or Subcontractor's contracts with the City and relating to City-owned property shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements to equal or exceed \$75,000.00 in the fiscal year.

28.3. First Source Hiring

Chapter 83 of the San Francisco Administrative Code requires that Tenant enter into a first source hiring agreement on or before the Effective Date. Accordingly, Tenant and City are

parties to the First Source Agreement attached to this Lease as **Exhibit F** under San Francisco Administrative Code, Chapter 83 (the “**First Source Agreement**”). Any default by Tenant under the First Source Agreement will be a default under this Lease.

28.4. Local Business Enterprises

The SFMTA encourages the participation of local business enterprises (“LBEs”) in Tenant's operations. Tenant agrees to consult with the Contract Monitoring Division (“CMD”) of the City's General Services Agency to determine appropriate methods for promoting participation by LBEs. Architecture, Engineering, Laboratory Services (Materials Testing), Trucking and Hauling, and Security Guard Services are categories of services that may provide opportunities for certified LBE participation. City maintains a list of certified LBEs at: <http://sfgov.org/cmd/lbe-certification-0>.

28.5. Indoor Air Quality

Tenant agrees to comply with Section 711(g) of the Environment Code and any additional regulations adopted by the Director of the Department of the Environment pursuant to Environment Code Section 703(b) relating to construction and maintenance protocols to address indoor air quality.

28.6. Prohibition of Tobacco Sales and Advertising

Tenant acknowledges and agrees that no sales or advertising of cigarettes or tobacco products is allowed on the Premises. This advertising 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 advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of cigarettes and tobacco products, or (ii) encourage people not to smoke or to stop smoking.

28.7. Graffiti Removal

Tenant agrees to remove all graffiti from the Premises, including from the exterior of the Facility if included within the Premises, within forty-eight (48) hours of the earlier of Tenant's: (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a tenant to breach any lease or other agreement that it may have concerning its use of the real property. “Graffiti” means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and that is visible from the public right-of-way, but does not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of this Lease; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (Calif. Civil Code §§ 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

28.8. Restrictions on the Use of Pesticides

Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or “**IPM Ordinance**”) describes an integrated pest management (“IPM”) policy to be implemented by all City departments. Tenant shall not use or apply or allow the use or application of any pesticides on the Premises, and shall not contract with any party to provide pest abatement or control services to the Premises, without first receiving City's written approval of an integrated pest management plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the term of this Lease, (ii) describes the steps Tenant will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and

telephone number, an individual to act as the Tenant's primary IPM contact person with the City. Tenant shall comply, and shall require all of Tenant's contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Tenant were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (d) require Tenant to keep certain records and to report to City all pesticide use by Tenant's staff or contractors. If Tenant or Tenant's contractor will apply pesticides to outdoor areas, Tenant must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation and any such pesticide application shall be made only by or under the supervision of a person holding a valid Qualified Applicator certificate or Qualified Applicator license under state law. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

28.9. MacBride Principles Northern Ireland

SFMTA and the City urge companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. SFMTA and the City urge San Francisco companies to do business with corporations that abide by the MacBride Principles.

28.10. Tropical Hardwood and Virgin Redwood Ban

SFMTA and the City urge Tenant not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the Environment Code, Tenant shall not provide any items to the construction of Alterations, 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 Environment Code, Tenant shall be liable for liquidated damages for each violation in any amount equal to the contractor's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

28.11. 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 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 Department of Environment.

28.12. Notification of Limitations on Contributions

For the purposes of this Section, a "City Contractor" is a party that contracts with, or seeks to contract with, the City for the sale or leasing of any land or building to or from the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual

serves. Through its execution of this Agreement, Tenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits a City Contractor from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for that contract or twelve (12) months after the date that 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 \$100,000 or more. Tenant further acknowledges that (i) the prohibition on contributions applies to Tenant, each member of Tenant's board of directors, Tenant's chief executive officer, chief financial officer and chief operating officer, any person with an ownership interest of more than ten percent (10%) in Tenant, any subcontractor listed in the contract, and any committee that is sponsored or controlled by Tenant, and (ii) within thirty (30) days of the submission of a proposal for the contract, the City department seeking to enter into the contract must notify the Ethics Commission of the parties and any subcontractor to the contract. Additionally, Tenant certifies it has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract to the City, and has provided the names of the persons required to be informed to the City department seeking to enter into that contract within thirty (30) days of submitting its contract proposal to the City department receiving that submittal, and acknowledges the City department receiving that submittal was required to notify the Ethics Commission of those persons.

28.13. Sunshine Ordinance

In accordance with Section 67.24(e) of the Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between SFMTA 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.

28.14. Conflicts of Interest

Through its execution of this Lease, Tenant acknowledges that it is familiar with the provisions of Article III, Chapter 2 of Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the California Government Code, and certifies that it does not know of any facts which would constitute a violation of these provisions, and agrees that if Tenant becomes aware of any such fact during the Term, Tenant shall immediately notify the SFMTA.

28.15. Drug-Free Workplace

Tenant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101 et seq.), the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City or SFMTA premises.

28.16. Prevailing Wages and Working Conditions

Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Tenant shall require its contractors and subcontractors performing (i) labor in connection with a "public work" as defined under California Labor Code Section 1720 et seq. (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction to: (A) pay workers

performing such work not less than the highest prevailing rate of wages, (B) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (C) employ apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, “Prevailing Wage Requirements”). Tenant agrees to cooperate with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Prevailing Wage Requirements.

Tenant shall include and shall require its subtenants, and contractors and subcontractors (regardless of tier), to include the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any contractor or subcontractor in accordance with San Francisco Administrative Code Section 23.61. Tenant’s failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A contractor’s or subcontractor’s failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party.

Tenant shall also pay, and shall require its subtenants, and contractors and subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities on the Premises as set forth in and to the extent required by San Francisco Labor Code Article 102 a Show (as defined in Section 102.4), a Special Event (as defined in Section 102.8), Broadcast Services (as defined in Section 102.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 102.10), and Security Guard Services for Events (as defined in Section 102.11).

28.17. 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 Facility and encouraging use of such facilities, all at Tenant's sole expense.

28.18. Food Service and Packaging Waste Reduction Ordinance

Tenant agrees to comply fully with and be bound by all of the provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. 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 one hundred dollars (\$100.00) liquidated damages for the first breach, two hundred dollars (\$200.00) liquidated damages for the second breach in the same year, and five hundred dollars (\$500.00) liquidated damages for-subsequent breaches in the same year is a 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.

28.19. Consideration of Criminal History in Hiring and Employment Decisions

(a) Tenant agrees to comply with and be bound by all of the provisions of San Francisco Labor Code Article 142 (Criminal History in Hiring and Employment Decisions; “Article 142”), which are hereby incorporated, including the remedies and implementing regulations as may be amended from time to time, with respect to applicants and employees of Tenant who would be or are performing work at the Premises.

(b) Tenant shall incorporate by reference the provisions of Article 142 in all subleases of some or all of the Premises, and shall require all subtenants to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) Tenant and subtenants shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

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

(e) Tenant and subtenants shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Tenant or subtenant at the Premises, that the Tenant or subtenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Article 142.

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

(g) Tenant and subtenants understand and agree that upon any failure to comply with the requirements of Article 142, the City shall have the right to pursue any rights or remedies available under Article 142 or this Lease, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Lease.

(h) If Tenant has any questions about the applicability of Article 142, it may contact SFMTA for additional information. SFMTA may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

28.20. Local Hire

Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.62 (the "Local Hiring Requirements"). Tenant Improvements and Alterations under this Lease are subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than \$750,000 per building permit; (ii) is in connection with the set-up, execution and strike of special events of three (3) or fewer days costing in excess of the Threshold Amount; or (iii) meets any of the other exemptions in the Local Hiring Requirements. Tenant agrees that it will comply with the Local Hiring Requirements to the extent applicable. Before starting any Tenant Improvements or Alterations, Tenant shall contact City's Office of Economic Workforce and Development ("OEWD") to determine whether the work is a Covered Project subject to the Local Hiring Requirements.

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

28.21. San Francisco Bottled Water Ordinance

Tenant is subject to all applicable provisions of Environment Code Chapter 24 (which are hereby incorporated) prohibiting the sale or distribution of drinking water in plastic bottles with a capacity of twenty-one (21) fluid ounces or less at City-permitted events held on the Premises with attendance of more than 100 people.

28.22. Vending Machines; Nutritional Standards and Calorie Labeling Requirements; Offerings

Tenant shall not install or permit any vending machine on the Premises without the prior written consent of SFMTA. Any permitted vending machine must comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code section 4.9- 1(c), as may be amended from time to time (the "**Nutritional Standards Requirements**"). Tenant agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section shall be deemed a material breach of this Lease. Without limiting SFMTA's other rights and remedies under this Lease, SFMTA shall have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements. In addition, any Restaurant including any employee eating establishment located on the Premises is encouraged to ensure that at least twenty-five percent (25%) of Meals (as capitalized terms are defined in San Francisco Administrative Code section 4.9-1) offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code section 4.9-1(e), as may be amended.

28.23. Employee Signature Authorization Ordinance

The City has adopted an Employee Signature Authorization Ordinance (S.F. Admin Code Sections 23.50-23.56). That ordinance requires employers of employees in hotel or restaurant projects on public property with fifty (50) or more employees (whether full-time or part-time) to enter into a "card check" agreement with a labor union regarding the preference of employees to be represented by a labor union to act as their exclusive bargaining representative. Tenant shall comply with the requirements of such ordinance, if applicable, including, without limitation, any requirements in the ordinance with respect to its Subtenants or operators.

29. NOTICES

Except as otherwise expressly provided in this Lease or by Law, all notices (including notice of consent or non-consent) required or permitted by this Lease or by Law must be in writing and be delivered by: (a) hand delivery; (b) first class United States mail, postage prepaid; or (c) overnight delivery by a nationally recognized courier or the United State Postal Service, delivery charges prepaid. Notices to a party must be delivered to that party's mailing address in the Basic Lease Information, unless superseded by a notice of a change in that party's mailing address for notices, given to the other party in the manner provided above, or by information

provided by Tenant in Tenant's written response to SFMTA's written request for such information.

All notices under this Lease shall be deemed to be duly delivered: (a) on the date personal delivery actually occurs; (b) if mailed, on the business day following the business day deposited in the United States mail or, if mailed return receipt requested, on the date of delivery or on which delivery is refused as shown on the return receipt; or (c) the business day after the business day deposited for overnight delivery.

Notices may not be given by facsimile or electronic mail, but either party may deliver a courtesy copy of a notice by facsimile or electronic mail.

30. REPRESENTATIONS AND WARRANTIES OF TENANT

Tenant represents, warrants and covenants to SFMTA as follows, as of the date hereof and as of the Commencement Date:

(a) Valid Existence, Good Standing. Tenant is a limited liability corporation duly formed and validly existing under the laws of the State of California. Tenant has the requisite power and authority to own its property and conduct its business as presently conducted. Tenant is in good standing in the State of California.

(b) Authority. Tenant has the requisite power and authority to execute and deliver this Lease and the agreements contemplated hereby and to carry out and perform all of the terms and covenants of this Lease and the agreements contemplated hereby to be performed by Tenant.

(c) No Limitation on Ability to Perform. No applicable Law prohibits Tenant's entry into this Lease or its performance hereunder. No consent, authorization or approval of, and no notice to or filing with, any governmental authority, regulatory body or other person is required for the due execution and delivery of this Lease by Tenant and Tenant's performance hereunder, except for consents, authorizations and approvals which have already been obtained, notices which have already been given and filings which have already been made. There are no undischarged judgments pending against Tenant, and Tenant has not received notice of the filing of any pending suit or proceedings against Tenant before any court, governmental agency, or arbitrator, which might materially adversely affect the enforceability of this Lease or the business, operations, assets or condition of Tenant.

(d) Valid Execution. The execution and delivery of this Lease and the performance by Tenant hereunder have been duly and validly authorized. When executed and delivered by SFMTA and Tenant, this Lease will be a legal, valid and binding obligation of Tenant.

(e) Defaults. The execution, delivery and performance of this Lease (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default by Tenant under (A) any agreement, document or instrument to which Tenant is a party or by which Tenant is bound, (B) any Law applicable to Tenant or its business, or (C) the articles of organization or the operating agreement of Tenant, and (ii) do not result in the creation or imposition of any lien or other encumbrance upon the assets of Tenant, except as contemplated hereby.

(f) Financial Matters. Except to the extent disclosed to SFMTA in writing, (i) Tenant is not in default under, and has not received notice asserting that it is in default under, any agreement for borrowed money, (ii) Tenant has not filed a petition for relief under any chapter of the U.S. Bankruptcy Code, (iii) to Tenant's knowledge, no involuntary petition naming Tenant as debtor has been filed under any chapter of the U.S. Bankruptcy Code, and (iv) Tenant has not suffered any material adverse change to its financial condition that could reasonably effect its ability to perform its obligations under this Lease.

The representations and warranties herein shall survive any termination of this Lease.

31. TENANT'S MANAGEMENT COVENANTS

31.1. Covenants

Tenant shall maintain and operate the Premises, or cause the Premises to be maintained and operated, in a manner consistent with standards for the maintenance and operation of businesses located in the surrounding area. Tenant shall be exclusively responsible, at no cost to SFMTA, for the management and operation of the Improvements in addition to all other aspects of the Premises. In connection with managing and operating the Premises, Tenant shall provide (or require others to provide) services as necessary and appropriate to the uses to which the Premises are put, including, but not limited to, (a) repair and maintenance of the Improvements, as more fully described in Section 11, (b) utility and telecommunications services, (c) cleaning, janitorial, extermination, and trash removal, (d) landscaping and groundskeeping and (e) security services for the Premises.

31.2. Continuous Operations

Tenant shall use commercially reasonable efforts to ensure that all of the Premises are used continuously during the Term for the Permitted Use and shall not allow any portion of the Premises to remain unoccupied or unused without the prior written consent of SFMTA, which consent may be withheld in SFMTA's sole and absolute discretion. Notwithstanding the foregoing, the SFMTA shall not unreasonably withhold its consent to any cessation of operations for any reasonably necessary time period due to the following causes or in the following circumstances: (a) if the Premises become untenable due to fire or other casualty, (b) as may be necessary in connection with performing repairs to the Premises, or (c) while conducting periodic inventory of Tenant's goods and merchandise.

32. MISCELLANEOUS PROVISIONS

32.1. California Law

This Lease is governed by, and shall be construed and interpreted in accordance with, the Laws of the State of California and City's Charter. SFMTA and Tenant hereby irrevocably consent to the jurisdiction of and proper venue in the Superior Court for the City and County of San Francisco.

32.2. Entire Agreement

This Lease contains all of the representations and the entire agreement between the parties with respect to the subject matter of this Lease. Any prior correspondence, memoranda, agreements, warranties, or representations, whether written or oral, relating to such subject matter are superseded in total by this Lease. No prior drafts of this Lease or changes from those drafts to the executed version of this Lease shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider those drafts in interpreting this Lease.

32.3. Amendments

No amendment of this Lease or any party thereof shall be valid unless it's in writing and signed by all of the parties hereto.

32.4. 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 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.

32.5. Interpretation of Lease

(a) References in this Lease to Tenant's acts or omissions will mean acts or omissions by Tenant and its Agents and Invitees unless the context requires or specifically stated otherwise.

(b) Whenever an exhibit or schedule is referenced, it means an attachment to this Lease unless otherwise specifically identified. All exhibits and schedules are incorporated in this Lease by reference.

(c) Whenever a section, article or paragraph is referenced, it refers to this Lease unless otherwise specifically provided. 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 must be disregarded in the construction and interpretation of this Lease. Wherever reference is made to any provision, term, or matter "in this Lease," "herein" or "hereof" or words of similar import, the reference will be deemed to refer to any reasonably related provisions of this Lease in the context of the reference, unless the reference refers solely to a specific numbered or lettered article, section, subdivision, or paragraph of this Lease.

(d) References to all Laws, including specific statutes, relating to the rights and obligations of either party mean the Laws in effect on the effective date of this Lease and as they are amended, replaced, supplemented, clarified, corrected, or superseded at any time during the Term or while any obligations under this Lease are outstanding, whether or not foreseen or contemplated by the parties. References to specific code sections mean San Francisco ordinances unless otherwise specified.

(e) The terms "include," "included," "including" and "such as" or words of similar import when following any general term, statement, or matter may not be construed to limit the term, statement, or matter to the specific items or matters, whether or not language of non-limitation is used, but will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of the term, statement, or matter, and will be deemed to be followed by the phrase "without limitation" or "but not limited to."

(f) This Lease has been negotiated at arm's length between persons sophisticated and knowledgeable in the matters addressed. In addition, each party has been represented by experienced and knowledgeable legal counsel, or has had the opportunity to consult with counsel. Accordingly, the provisions of this Lease must be construed as a whole according to their common meaning in order to achieve the intents and purposes of the parties, without any presumption (including a presumption under California Civil Code § 1654) against the party responsible for drafting any part of this Lease.

(g) The party on which any obligation is imposed in this Lease will be solely responsible for paying all costs and expenses incurred in performing the obligation, unless the provision imposing the obligation specifically provides otherwise.

(h) Whenever required by the context, the singular includes the plural and vice versa, the masculine gender includes the feminine or neuter genders and vice versa, and defined terms encompass all correlating forms of the terms (e.g., the definition of "waive" applies to "waiver," "waivers," "waived," "waiving," etc.).

(i) References to days mean calendar days unless otherwise specified, provided that if the last day on which a party must give notice, respond to a notice, or take any other action under this Lease occurs on a day that is not a business day, the date by which the act must be performed will be extended to the next business day.

32.6. Successors

The terms, covenants, agreements and conditions set forth in this Lease shall bind and inure to the benefit of SFMTA and Tenant and, except as otherwise provided herein, their personal representatives and successors and assigns.

32.7. Real Estate Broker's Fees

SFMTA will not pay, nor will SFMTA be liable or responsible for, any finder's or broker's fee in connection with this Lease. Tenant agrees to Indemnify SFMTA from any Claims, including attorneys' fees, incurred by SFMTA in connection with any such Claim or Claims of any person(s), finder(s), or broker(s) to a commission in connection with this Lease.

32.8. Counterparts

For convenience, the signatures of the parties to this Lease may be executed and acknowledged on separate pages which, when attached to this Lease, shall constitute one complete Lease. This Lease may be executed in any number of counterparts each of which shall be deemed to be an original and all of which shall constitute one and the same Lease.

32.9. Authority

If Tenant signs as a corporation, limited liability corporation or a partnership, 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 SFMTA's request, Tenant shall provide SFMTA with evidence reasonably satisfactory to SFMTA confirming the foregoing representations and warranties.

32.10. No Implied Waiver

No failure by SFMTA 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, and no acceptance of full or partial Rent during the continuance of any such breach shall constitute a waiver of such breach or of SFMTA's rights to demand strict compliance with such term, covenant or condition. SFMTA's consent to or approval of any act by Tenant requiring SFMTA's consent or approval shall not be deemed to waive or render unnecessary SFMTA's consent to or approval of any subsequent act by Tenant. Any waiver by SFMTA of any default must be in writing and shall not be a waiver of any other default (including any future default) concerning the same or any other provision of this Lease.

32.11. Time is of Essence

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

32.12. 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.

32.13. Survival of Indemnities

Termination or expiration of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, the ability to collect any sums due, nor shall it affect any provision of this Lease that expressly states it shall survive termination or expiration hereof.

32.14. Relationship of Parties

SFMTA is not, and none of the provisions in this Lease shall be deemed to render SFMTA, 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. 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.

32.15. No Recording

Tenant shall not record this Lease or any memorandum hereof in the Official Records.

32.16. Additional Written Agreement Required

Tenant expressly agrees and acknowledges that no officer, director, or employee of SFMTA or City is authorized to offer or promise, nor is SFMTA or the City required to honor, any offered or promised rent credit, concession, abatement, or any other form of monetary consideration (individually and collectively, "Concession") without a written agreement executed by either the Executive Director of SFMTA or the Deputy Director of Real Estate authorizing such Concession and, if applicable, certification of the Concession from the City's Controller.

33. LIMITATION ON DAMAGES

33.1. No Recourse Beyond Value of Premises

Notwithstanding anything to the contrary contained in this Lease, Tenant agrees that Tenant will have no recourse with respect to, and SFMTA shall not be liable for, any obligation of SFMTA under this Lease, or for any claim based upon this Lease, except to the extent of the fair market value of SFMTA's fee interest in the Premises (as encumbered by this Lease). Tenant shall look solely to the fair market value of SFMTA's fee interest in the Premises for the recovery of any judgment or award. By Tenant's execution and delivery hereof and as part of the consideration for SFMTA's obligations hereunder, Tenant expressly waives all other liability. Before filing suit for an alleged default by SFMTA, Tenant shall give SFMTA notice and reasonable time to cure the alleged default.

33.2. Non-Liability of City Officials, Employees and Agents

No elective or appointive board, commission, member, officer, employee or other Agent of City and/or SFMTA shall be personally liable to Tenant, its successors and assigns, in the event of any default or breach by City and/or SFMTA or for any amount which may become due to Tenant, its successors and assigns, or for any obligation of City and/or SFMTA under this Lease. Under no circumstances shall SFMTA, City, or their respective Agents be liable under any circumstances for any consequential, incidental or punitive damages.

33.3. Limitation on SFMTA's Liability Upon Transfer

In the event of any transfer of SFMTA's interest in and to the Facility, SFMTA (and in case of any subsequent transfers, the then transferor), subject to the provisions hereof, will be automatically relieved from and after the date of such transfer of all liability with regard to the performance of any covenants or obligations contained in this Lease thereafter to be performed on the part of SFMTA, but not from liability incurred by SFMTA (or such transferor, as the case may be) on account of covenants or obligations to be performed by SFMTA (or such transferor, as the case may be) hereunder before the date of such transfer.

34. TENANT ESTOPPEL CERTIFICATES

Tenant, at any time and from time to time upon not less than ten (10) days' prior notice from SFMTA, shall execute and deliver to SFMTA or to any party designated by SFMTA a certificate in substantially the same form as that attached to this Lease as Exhibit C. If Tenant shall fail to provide such certificate within ten (10) days of receipt by Tenant of a written request by SFMTA as herein provided, such failure shall, at SFMTA's election, constitute a default under this Lease, and Tenant shall be deemed to have admitted the accuracy of any information supplied by SFMTA to a prospective purchaser or mortgagee.

35. APPROVAL OF BOARD OF SUPERVISORS

Notwithstanding anything to the contrary contained in this Lease, Tenant acknowledges and agrees that this Lease shall not be effective unless and until the City's Board of Supervisors shall have duly adopted a resolution approving this Lease and authorizing the transactions contemplated hereby. Therefore, any obligations or liabilities of City hereunder are contingent upon adoption of such resolution. Approval of this Lease by the SFMTA shall not be deemed to imply that such resolution will be enacted, nor will any such approval create any binding obligations on City.

IN WITNESS WHEREOF, SFMTA and TENANT execute this Lease as of the last date set forth below.

SFMTA:

CITY AND COUNTY OF SAN
FRANCISCO, a municipal corporation,
acting by and through its
MUNICIPAL TRANSPORTATION
AGENCY

By: _____

Julie Kirschbaum
Director of Transportation

Date: _____

TENANT:

San Francisco C&C, a California general
partnership, dba "Mel's Drive-In"

By: Gabriel Mendez Gabriel Mendez
Its: general Partner
Date: 7/31/25

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: _____
Stephanie Stuart,
Deputy City Attorney

EXHIBIT A

LEASE PREMISES

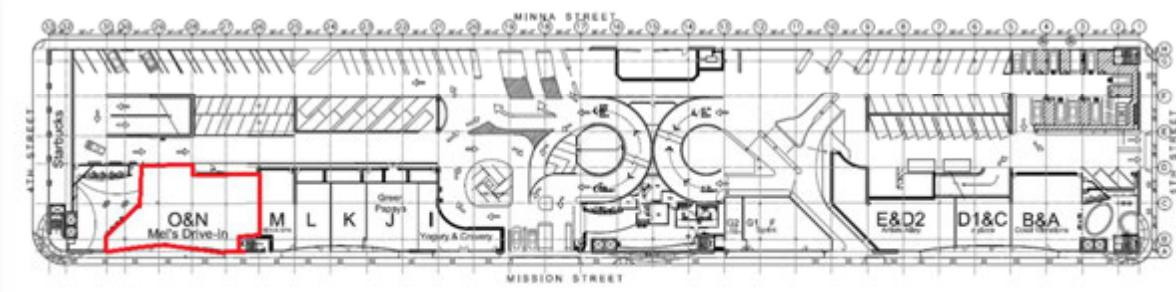


EXHIBIT B
NOTICE OF COMMENCEMENT DATE

[Date]

Senior Manager – Strategic Real Estate
San Francisco Municipal
Transportation Agency
1 South Van Ness Avenue, 8th Floor
San Francisco, California 94103

RE: Acknowledgement of Commencement Date, Lease Between [Tenant] (Tenant), and the City and County of San Francisco, acting by and through its Municipal Transportation Agency (Landlord), for the Premises located at [Address], San Francisco, California.

Dear M_____:

This letter will confirm that for all purposes of the Lease, the Commencement Date is hereby established as _____ 202_____, and the Rent Commencement Date of the Lease is hereby established as _____ 202_____.

SFMTA: City and County of San Francisco
a municipal corporation, operating by and through
the San Francisco Municipal Transportation
Agency

By: _____

Julie Kirschbaum Director of Transportation

Date signed: _____

Tenant: San Francisco C&C, a California general partnership, dba “Mel’s Drive-In”
By: _____ Name: _____
Title: _____ Date signed: _____

EXHIBIT C

The undersigned, San Francisco C&C, a California general partnership, dba "Mel's Drive-In", is the tenant of the real property commonly known as 801 Mission Street located in San Francisco, California (the "Property"), and hereby certifies to **THE CITY AND COUNTY OF SAN FRANCISCO THROUGH THE SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY ("SFMTA")** [and to

_____ ("Developer/Lender")] the following:

1. That there is presently in full force and effect a lease (as modified, assigned, supplemented and/or amended as set forth in paragraph 2 below, the "Lease") dated as of _____ 20____, between the undersigned and SFMTA, covering approximately _____ square feet of the Property (the "Premises").
2. That the Lease has not been modified, assigned, supplemented or amended except by:
3. That the Lease represents the entire agreement between SFMTA and the undersigned with respect to the Premises.
4. That the commencement date under the Lease was _____, 20____, the expiration date of the Lease is _____, 20____.
5. That the present minimum monthly Base Rent which the undersigned is paying under the Lease is \$_____.
6. The security deposit held by SFMTA under the terms of the Lease is \$_____ and SFMTA holds no other deposit from Tenant for security or otherwise.
7. That the undersigned has accepted possession of the Premises and that, to the best of the undersigned's knowledge, any improvements required to be made by SFMTA to the Premises by the terms of the Lease and all other conditions of the Lease to be satisfied by SFMTA have been completed or satisfied to the satisfaction of the undersigned.
8. That, to the best of undersigned's knowledge, the undersigned, as of the date set forth below, has no right or claim of deduction, charge, lien or offset against SFMTA under the Lease or otherwise against the rents or other charges due or to become due pursuant to the terms of the Lease.
9. That, to the best of the undersigned's knowledge, SFMTA is not in default or breach of the Lease, nor has SFMTA committed an act or failed to act in such a manner, which, with the passage of time or notice or both, would result in a default or breach of the Lease by SFMTA.
10. That, to the best of undersigned's knowledge, the undersigned is not in default or in breach of the Lease, nor has the undersigned committed an act or failed to act in such a manner which, with the passage of time or notice or both, would result in a default or breach of the Lease by the undersigned.
11. The undersigned is not the subject of any pending bankruptcy, insolvency, debtor's relief,

reorganization, receivership, or similar proceedings, nor the subject of a ruling with respect to any of the foregoing.

This Certificate shall be binding upon and inure to the benefit of the undersigned, SFMTA,[Developer/Lender] and [its/their respective] successors and assigns.

Dated: _____, 20__.

[Tenant]

By:

Name:

EXHIBIT D
RULES AND REGULATIONS

1. The sidewalks, halls, passages, exits, entrances, elevators and stairways of the Facility shall not be obstructed by Tenant or used by it for any purpose other than for ingress to and egress from the Premises. City shall in all cases retain the right to control and prevent access to the halls, passages, exits, entrances, elevators, escalators and stairways that are not for the use of the general public, and City shall in all cases retain the right to control and prevent access thereto of all persons whose presence in the judgment of City would be prejudicial to the safety, character, reputation and interests of the Facility and its tenants, provided that nothing herein contained shall be construed to prevent such access to persons with whom Tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities.
2. No sign, placard, picture, name, advertisement or notice visible from the exterior of the Premises shall be installed or displayed by Tenant on any part of the outside or inside of the Facility without the prior written consent of City. City shall have the right to remove, at Tenant's expense and without notice, any sign installed or displayed in violation of this rule. All approved signs or lettering on doors shall be printed, painted, affixed or inscribed at the expense of Tenant by a person approved by City, which approval will not be unreasonably withheld. Material visible from outside the Facility will not be permitted.
3. The Premises shall not be used for the storage of merchandise held for sale to the general public or for lodging.
4. City will furnish Tenant with two (2) keys to the Premises, free of charge. City may make a reasonable charge for such additional keys and for having locks changed. Tenant shall not make or have made additional keys without City's prior written consent, nor shall Tenant alter such lock without City's prior written consent, which consent shall not be unreasonably withheld or delayed. Tenant shall not alter any lock or install any new or additional locking devices without the prior written consent of City. All locks installed in the Premises, excluding Tenant's vaults and safes, or special security areas (which shall be designated by Tenant in a written notice to City), shall be keyed to the Facility master key system. City may make reasonable charge for any additional lock or any bolt (including labor) installed on any door of the Premises. Tenant, upon the termination of its tenancy, shall deliver to City all keys to doors in the Premises. If Tenant loses any keys, Tenant shall pay City for the cost of re-keying the Premises.
5. The elevators to be used for the loading of freight shall be available to Tenant in accordance with such reasonable scheduling as City shall deem appropriate. Tenant shall schedule with City, by written notice given no less than forty-eight (48) hours in advance, its move into or out of the Facility, which moving shall occur only on weekend days if required by City; and Tenant shall reimburse City upon demand for any additional security or other charges incurred by City as a consequence of such moving. The persons employed by Tenant to move equipment or other items in or out of the Facility must be acceptable to City. The floors, corners and walls of elevators and corridors used for the moving of equipment or other items in or out of the Facility must be adequately covered, padded and protected, and City may provide such padding

and protection, at Tenant's expense, if City determines that such measures undertaken by Tenant or Tenant's movers are inadequate City shall have the right to prescribe the weight, size and position of all equipment, materials, supplies, furniture or other property brought into the Facility. Heavy objects shall, if considered necessary by City, stand on wood strips of such thickness as is necessary to properly distribute the weight of such objects. City will not be responsible for loss of or damage to any such property from any cause, and all damage done to the Facility by moving or maintaining Tenant's property shall be repaired at the expense of Tenant.

6. Tenant shall not use or keep in the Premises or the Facility any kerosene, gasoline or flammable, combustible or noxious fluid or materials or use any method of heating or air conditioning other than those limited quantities necessary for the operation and maintenance of normal office equipment. Tenant shall not use, keep or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to City or other occupants of the Facility by reason of noise, odors, and/or vibrations, or interfere in any way with other tenants or those having business in the Facility.
7. City reserves the right to exclude from the Facility all persons who do not present a pass to the Facility signed by City and properly in the possession of the person presenting such pass. City will furnish passes to persons for whom Tenant requests the same in writing. Tenant shall be responsible for all persons for whom it requests passes and shall be liable to City for all acts of such persons. City shall in no case be liable for damages for any error with regard to the admission to or exclusion from the Facility of any person. In the case of invasion, mob, riot, public excitement or other circumstances rendering such action advisable in City's opinion, City reserves the right to prevent access to the Facility during the continuance of same by such action as City may deem appropriate, including closing any doors in the Facility.
8. The directory of the Facility will be provided for the display of the name and location of tenants and a reasonable number of the principal officers and employees of tenants, and City reserves the right to exclude any other names therefrom. Any additional name that Tenant shall desire to place upon the directory must first be approved by City and, if so approved, a charge will be made for each such name.
9. Tenant shall not cut or bore holes for wires in the partitions, woodwork or plaster of the Premises. Tenant shall not affix any floor covering to the floor of the Premises in any manner except as approved by City.
10. No curtains, draperies, blinds, shutters, shades, screens or other coverings, hangings or decorations shall be attached to, hung or placed in, or used in connection with any window of the Facility without City's prior written consent. In any event, with the prior written consent of City, such items shall be installed on the office side of City's standard window covering and shall in no way be visible from the exterior of the Facility.
11. Tenant shall see that the doors of the Premises are closed and locked and that all water faucets, water apparatus and utilities are shut off before Tenant or Tenant's employees leave the Premises, so as to prevent waste or damage, and for any default or carelessness in this regard Tenant shall make good all injuries sustained by other tenants or occupants of the Facility or City. On multiple-tenancy floors, all tenants

shall keep the doors to the Facility corridors closed at all times except for ingress and egress, and all tenants shall at all times comply with any rules or orders of the fire department with respect to ingress and egress.

12. The toilet rooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed, no foreign substance of any kind whatsoever shall be deposited therein. The expense of any breakage, stoppage or damage resulting in any violation of this rule shall be borne by Tenant.
13. Except with City's prior consent, Tenant shall not sell, or permit the sale from the Premises or, or use or permit the use of any sidewalk or mall area adjacent to the Premises for the sale of, newspapers, magazines, periodicals, theater tickets or any other goods, merchandise or service, nor shall Tenant carry on, or permit or allow any employee or other person to carry on, business in or from the Premises for the service or accommodation of occupants or any other portion of the Facility, nor shall the Premises be used for manufacturing of any kind, or for any business or activity other than that specifically provided for in Tenant's lease.
14. Tenant shall not install any radio or television antenna, loudspeaker, or other device on or about the roof area or exterior walls of the Facility. Tenant shall not interfere with radio or television broadcasting or reception from or in the Facility or elsewhere.
15. Tenant shall not use in any space, or in the common areas of the Facility, any hand-trucks except those equipped with rubber tires and side guards or such other material-handling equipment as City may approve. No other vehicles of any kind shall be brought by Tenant into the Facility or kept in or about the Premises.
16. Tenant shall store all its trash and garbage within the Premises until removal of the same to such location in the Facility as may be designated from time to time by City. No material shall be placed in the Facility trash boxes or receptacles if such material is of such nature that it may not be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage in the City of San Francisco without being in violation of any law or ordinance governing such disposal.
17. All loading and unloading of merchandise, supplies, materials, garbage and refuse shall be made only through such entryways and freight elevators and at such times as City shall designate. In its use of the loading areas of the Facility, Tenant shall not obstruct or permit the obstruction of said loading areas, and at no time shall Tenant park vehicles therein except for immediate loading and unloading purposes.
18. Canvassing, soliciting, peddling or distribution of handbills or any other written material in the Facility is prohibited and Tenant shall cooperate to prevent the same.
19. Tenant shall immediately, upon request from City (which request need not be in writing), reduce its lighting in the Premises for temporary periods designated by City, when required in City's judgment to prevent overloads of the mechanical or electrical systems of the Facility.
20. City reserves the right to select the name of the Facility and to make such change or

changes of name as it may deem appropriate from time to time, and Tenant shall not refer to the Facility by any name other than: (i) the name as selected by City (as the same may be changed from time to time), or (ii) the postal address approved by the United States PostOffice. Tenant shall not use the name of the Facility in any respect other than as an address of its operation in the Facility without the prior written consent of the City.

21. Tenant assumes all responsibility for protecting its Premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry closed.
22. No vending machine shall be maintained or operated within the Premises or the Facility without City's prior written consent.
23. All incoming mail and package deliveries shall be received at the area in the Facility designated by City for such purposes and distributed through means established by City. No messenger or other delivery personnel shall be permitted to enter any area of the Facility other than the area designated by City for the pick-up and receipt of such deliveries.
24. City reserves the right to exclude or expel from the Facility any person who is, in the judgment of City, intoxicated or under the influence of alcohol or other drug or who is in violation of any of the Rules or Regulations of the Facility.
25. No animal or bird shall be permitted in the Premises or the Facility, except for seeing eye dogs when in the company of their masters.
26. The requirements of Tenant will be attended to only upon application by telephone or writing or in person at the management office of the Facility. Employee of City shall not perform any work or do anything outside of their regular duties unless under special instructions from City.
27. City may waive any one or more of these Rules and Regulations for the benefit of any particular tenant or tenants, but no such waiver by City shall be construed as a waiver of these Rules and Regulations in favor of any other tenant or tenants, nor prevent City from thereafter enforcing any such Rules and Regulations against any or all of the tenants of the Facility.
28. Wherever the word "Tenant" occurs in these Rules and Regulations, it is understood and agreed that it shall mean Tenant's associates, agents, clerks, employees and visitors. Wherever the word "City" occurs in these Rules and Regulations, it is understood and agreed that it shall mean City's assigns, agents, officers, employees and visitors.
29. These Rules and Regulations are in addition to, and shall not be construed in any way to modify, alter or amend, in whole or part, the terms, covenants, agreements and conditions of any lease of premises in the Facility.

30. City reserves the right to make such other and reasonable rules and regulations as in its judgment may from time to time be needed for the safety, care and cleanliness of the Facility, and for the preservation of good order therein.
31. Tenant shall be responsible for the observance of all the foregoing Rules and Regulations by Tenant's employees, agents, clients, customers, invitees and guests.

EXHIBIT E

MONTHLY PERCENTAGE RENT STATEMENT

[DATE]

Manager – Strategic Real Estate
San Francisco Municipal
Transportation Agency\\
1 South Van Ness Avenue, 8th Floor
San Francisco, California 94103

RE: Gross Revenue Reporting, [Month: _____], Lease Between [Tenant] (Tenant), and the City and County of San Francisco, acting by and through its Municipal Transportation Agency (Landlord), for the Premises located at 801 Mission Street, San Francisco, California

Dear Senior Manager:

The gross revenue for the month of _____ is:

By signing below, I certify all the information is true and correct.

Very truly yours,

San Francisco C&C,
a California general partnership,
dba “Mel’s Drive-In”

By: _____
Title: _____

EXHIBIT F



CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT



FIRST SOURCE HIRING PROGRAM

WORKFORCE PROJECTIONS FORM

EXHIBIT B WORKFORCE PROJECTIONS FOR BUSINESS, COMMERCIAL, OPERATION AND LEASE OCCUPANCY

Business Name: SAN FRANCISCO C&C DBA MELS DRIVE-IN
Main Contact: GABRIEL MENDEZ

Phone: 415 609 9552
Email: mgtconcepts@comcast.net

gabriel mendez
Signature of authorized representative*

1/26/25
Date

*By signing this form, the lessee agrees to participate in the Workforce System managed by the Office of Economic and Workforce Development (OEWD) and comply with the provisions of its First Source Hiring Agreement pursuant to San Francisco Administrative Code Chapter 83.

Instructions:

- Upon entering into leases for the commercial space of the building, the Lessee must submit to OEWD, a signed First Source Agreement, including its signature to Exhibit A thereto. Lessee will also complete and submit Exhibit A annually to reflect employment conditions.
- The employer must notify the First Source Hiring Program (Contact Info below) if an Entry Level Position becomes available.

Section 1: Select your Industry

<input type="checkbox"/> Auto Repair	<input type="checkbox"/> Entertainment	<input type="checkbox"/> Personal Services
<input type="checkbox"/> Business Services	<input type="checkbox"/> Elder Care	<input type="checkbox"/> Professionals
<input type="checkbox"/> Consulting	<input type="checkbox"/> Financial Services	<input type="checkbox"/> Real Estate
<input type="checkbox"/> Construction	<input type="checkbox"/> Healthcare	<input type="checkbox"/> Retail
<input type="checkbox"/> Government Contract	<input type="checkbox"/> Insurance	<input type="checkbox"/> Security
<input type="checkbox"/> Education	<input type="checkbox"/> Manufacturing	<input type="checkbox"/> Wholesale
<input checked="" type="checkbox"/> Food and Drink	<input type="checkbox"/> I don't see my industry (Please Describe) _____	

Section 2: Describe Primary Business Activity

Restaurant

Section 3: Provide information on all Entry Level Positions

Entry-Level Position Title	Job Description	Number of New Hires	Projected Hiring Date
none at this time			

Please email, fax, or mail this form SIGNED to:

ATTN: Employer Services
Office of Economic and Workforce Development
1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103
Tel: 415-701-4848
Fax: 415-701-4897
<mailto:Employer.Services@sfgov.org>
[Website: www.workforcedevelopmentsf.org](http://www.workforcedevelopmentsf.org)

IF(1/22/2025)



SFMTA



Mel's Drive-In New Lease Agreement

Continuing to Serve Customers at 801 Mission Street

SFMTA's Fifth and Mission Garage

BOS Budget and Finance Committee
November 5, 2025

File No. 25-1052

Resolution Request



The SFMTA is seeking the Board of Supervisors approval for:

- Commercial Lease Agreement between the City and County of San Francisco and San Francisco C&C, doing business as Mel's Drive-In
- Space located at 801 Mission Street in the Fifth and Mission Garage
- An initial five-year term that will result in an estimated \$1,908,684 in revenue, and one five-year option to extend

Mel's History



- The first Mel's Drive-In opened in 1947
- Featured in *American Graffiti* (1973) and *Guess Who's Coming to Dinner* (1967)
- Four locations in San Francisco
- Serving traditional "American" food
- Known for late hours during the weekends
- Anchor Tenant at Fifth and Mission Garage



Existing Lease

- Signed April 2000 with prior landlord, Downtown Parking Corporation
- Property transferred to the SFMTA in 2013
- Four amendments with rent in final year at \$475,069
- Due to pandemic, rent was restructured without a lease amendment to 8% of gross revenues

Fiscal Year (July to June)	Annual Rent Amount
FY 2022-23	\$392,279
FY 2023-24	\$387,825
FY 2024-25	\$396,872
3-year Avg.	\$392,325



New Proposed Lease

- Percentage Rent at 8% of gross revenues
- Based upon FY 23-24 projected revenues, 8% is estimated at \$381,737 annually, or \$66.73 per square foot per year
- Fair market comparable with CoStar data is \$30-\$35 per square foot per year
- Projects to \$1,908,684 over 5-year term
- Includes a 5-year option to extend
- If sublet or assigned prior to option period, rent will include base rent of \$20,020 plus 4% of gross revenues
- If Mel's rebounds, the SFMTA will benefit from a high rental rate



Approval Status

SFMTA Board of Directors' Approval

On October 7, 2025, the SFMTA Board of Directors approved Resolution No. 251007-092 and forward to the Board of Supervisors for final approval

Administrative Code

City Charter Section 9.118(c) states that any lease, modification, amendment, or termination of a lease that had an initial term of ten years or more, including options to extend, or that had anticipated revenues of \$1 million or more is subject to Board of Supervisors approval.

Final approval is requested from the Board of Supervisors.



Commercial Lease Agreement with San Francisco C&C

The San Francisco Municipal Transportation Agency (SFMTA) Board of Directors propose to authorize the Director of Transportation to execute a Commercial Lease Agreement with San Francisco C&C, doing business as "Mel's Drive-In" (Mel's), for the retail space located at 801 Mission Street in the Fifth and Mission Garage. The lease is for a five-year term with one five-year option to extend the lease and will result in an estimated \$1,908,684 in revenue. and one five-year option to extend the lease. San Francisco Board of Supervisors approval of the lease is required pursuant to Charter Section 9.118 (c).

Mel's has occupied the existing space at 801 Mission Street for decades. The proposed lease does not include any expansion or change in service levels.

Approval Action:

SFMTA Board Hearing

Not a "project" under CEQA pursuant to CEQA Guidelines Sections 15060(c) and 15378(b) because the action would not result in a direct or a reasonably foreseeable indirect physical change to the environment.

Jenny Delumo

9/15/25

Jenny Delumo

Date

San Francisco Municipal Transportation Agency

Sherie George

09/15/25

Sherie George

Date

San Francisco Planning Department

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. 251007-092

WHEREAS, The Fifth and Mission Garage, located at 833 Mission Street, is owned by the City and County of San Francisco and is under the jurisdiction of the SFMTA; and,

WHEREAS, The tenant San Francisco C&C, doing business as Mel's Drive-In (Mel's) has been a longtime tenant at 801 Mission Street, and their existing lease expired on August 31, 2025; and,

WHEREAS, The SFMTA and Mel's desire to enter into a new lease agreement; and,

WHEREAS, The proposed new lease agreement is for an initial five-year term that will result in an estimated \$1,908,684 in revenue and includes one five-year option to extend the lease; and,

WHEREAS, On September 15, 2025, the SFMTA, under authority delegated by the Planning Department, determined that the Commercial Lease Agreement with Mel's is not defined as a "project" under the California Environmental Quality Act (CEQA) pursuant Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors, and is incorporated herein by reference; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute a Commercial Lease Agreement with Director of Transportation to execute a Commercial Lease Agreement with San Francisco C&C, doing business as Mel's Drive-In, for the retail space located at 801 Mission Street in the Fifth and Mission Garage, for an initial five-year term that will result in an estimated \$1,908,684 in revenue, and one five-year option to extend the lease; and, be it further

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to submit this Commercial Lease Agreement to the Board of Supervisors for approval.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of October 7, 2025.



Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

**President, District 8
BOARD of SUPERVISORS**



**City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Tel. No. 554-6968
Fax No. 554-5163
TDD/TTY No. 544-5227**

RAFAEL MANDELMAN

PRESIDENTIAL ACTION

Date:

To: Angela Calvillo, Clerk of the Board of Supervisors

Madam Clerk,

Pursuant to Board Rules, I am hereby:

Waiving 30-Day Rule (Board Rule No. 3.23)

File No.

(Primary Sponsor)

Title.

Transferring (Board Rule No 3.3)

File No.

(Primary Sponsor)

Title.

From:

Committee

To:

Committee

Assigning Temporary Committee Appointment (Board Rule No. 3.1)

Supervisor:

Replacing Supervisor:

For:

Meeting

(Date)

(Committee)

Start Time:

End Time:

Temporary Assignment: Partial

Full Meeting

A handwritten signature in black ink, appearing to read "Rafael Mandelman".

Rafael Mandelman, President
Board of Supervisors



San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102
 Phone: 415.252.3100 . Fax: 415.252.3112
ethics.commission@sfgov.org . www.sfethics.org

Received On:

File #: 251052

Bid/RFP #:

Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)
 A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

1. FILING INFORMATION

TYPE OF FILING	DATE OF ORIGINAL FILING <i>(for amendment only)</i>
Original	
AMENDMENT DESCRIPTION – Explain reason for amendment	

2. CITY ELECTIVE OFFICE OR BOARD

OFFICE OR BOARD	NAME OF CITY ELECTIVE OFFICER
Board of Supervisors	Members

3. FILER'S CONTACT

NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Angela Calvillo	415-554-5184
FULL DEPARTMENT NAME	EMAIL
Office of the Clerk of the Board	Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT

NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Pham Ngo	415-646-2188
FULL DEPARTMENT NAME	DEPARTMENT CONTACT EMAIL
MTA	pham.ngo@sfmta.com

5. CONTRACTOR	
NAME OF CONTRACTOR San Francisco C&C, doing business as Mel's Drive-In	TELEPHONE NUMBER 415-775-8950
STREET ADDRESS (including City, State and Zip Code) 801 Mission Street, San Francisco, CA 94103	EMAIL wertheimlaw@gmail.com

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	ORIGINAL BID/RFP NUMBER	FILE NUMBER (If applicable) 251052
DESCRIPTION OF AMOUNT OF CONTRACT An initial five-year term that will result in an estimated \$1,908,684 in revenue		
NATURE OF THE CONTRACT (Please describe) Commercial Lease Agreement with City and County of San Francisco, by and through San Francisco Municipal Transportation Agency (SFMTA) as landlord, and San Francisco C&C, doing business as Mel's Drive-In as tenant, for retail space located at 801 Mission Street in the Fifth and Mission Garage, for an initial five-year term that will result in an estimated \$1,908,684 in revenue, and one five-year option to extend the lease.		

7. COMMENTS	

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Weiss	Steven	Board of Directors
2	Weiss	Colton	Board of Directors
3	Weiss	Chasen	Board of Directors
4	Cyher	Terry	Board of Directors
5	Mendez	Gabriel	Board of Directors
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
20			
21			
22			
23			
24			
25			
26			
27			
28			
29			
30			
31			
32			
33			
34			
35			
36			
37			
38			

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
39			
40			
41			
42			
43			
44			
45			
46			
47			
48			
49			
50			
<input type="checkbox"/>	Check this box if you need to include additional names. Please submit a separate form with complete information. Select "Supplemental" for filing type.		

10. VERIFICATION

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK	DATE SIGNED
BOS Clerk of the Board	

OFFICE OF THE MAYOR
SAN FRANCISCO



DANIEL LURIE
MAYOR

TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Adam Thongsavat, Liaison to the Board of Supervisors
RE: New Lease Agreement for Mel's Drive-In At 801 Mission Street
DATE: October 21, 2025

Resolution approving a Commercial Lease Agreement between the City and County of San Francisco and San Francisco C&C, doing business as Mel's Drive-In, for the retail space located at 801 Mission Street in the Fifth and Mission Garage, for an initial five-year term that will result in an estimated \$1,908,684 in revenue, and one five-year option to extend the lease.

Should you have any questions, please contact Adam Thongsavat at adam.thongsavat@sfgov.org