

FIRST AMENDMENT TO LEASE

The First Amendment to Lease (this "First Amendment"), dated for reference purposes only as April 1, 2004 is made by and between the CITY AND COUNTY OF SAN FRANCISCO ("City" or Landlord) and TWIN PEAKS PETROLEUM, INC., a California corporation, d/b/a Twin Peaks Auto Care ("Tenant"), as successor in interest to Michael Gharib.

RECITALS

This Amendment is made with reference to the following facts:

City and Tenant are parties to that certain lease dated for reference purposes only as of August 1, 1994 (hereinafter referred to as the "Lease") pursuant to which City leased to Tenant's predecessor in interest certain premises in the real property and improvements described as 598 Portola, San Francisco, California, comprising an approximate 15,000 square feet area (the "Lease").

City and Tenant desire to make modifications and amendments to the provisions of the Lease described below.

AGREEMENT

Therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Tenant hereby agree as follows:

1. Amendment to Lease. The Lease is hereby modified and amended as follows:

1.01 Option to Extend Term. As provided in Section 23.1 of the Lease, Tenant has exercised the Extension Option with proper notice to City. Section 23.1 of the Lease is hereby modified and amended such that the Lease option period is extended an additional five (5) years for a total Extension Term of ten (10) years. Section 23.1 of the Lease is further modified and amended such that City shall have the right to terminate the Extension Term after the fifth year with eighteen (18) months written notice.

1.02 Additional Rent. Section 4.3 of the Lease is hereby modified and amended to remove the provision for the payment of Additional Rent.

1.03 Base Rent and Other Terms. Section 1 of the Lease is hereby modified and amended to provide that, at the commencement of the Extension Option period, the Base Rent shall be \$6,806.25 per month, which represents the fair market rental provided by an independent appraisal.

1.04 Adjustment Dates. Section 4.2 of the Lease is hereby modified and amended such that the base rent for the Extension Term shall be adjusted annually to reflect changes in the Consumer Price Index. The Parties shall use the formula set forth in Section 4.2 to determine the amount of each annual increase in Base Rent, provided, however, that the minimum and maximum amounts for such increases set forth in Section 4.2 shall not apply.

1.05 The Lease is hereby modified and amended to add a new Section 6.1(a), which provides that Tenant, through its contractor, shall make at Tenant's sole cost improvements necessary to comply with mandated regulations set forth by the State of California and shall provide City with a detailed description of the mandated improvements, including costs, together with copies of all payments and permits associated with this work.

Tenant shall comply with and give notices required by all laws, rules, regulations, ordinances, building restrictions and lawful orders of public authorities bearing on construction of the mandated improvements.

1.06 Tenant's Indemnity. Section 17.2 of the Lease is amended and restated in its entirety to read as follows:

X Section 17.2 Tenant's Indemnity. Tenant, on behalf of itself and its successors and assigns, shall indemnify, defend and hold harmless ("Indemnify") City, its Agents and their respective heirs, legal representatives, successors and assigns (individually and collectively, the "Indemnified Parties"), and each of them, from and against any and all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, including, without limitation, direct and vicarious liability of every kind (collectively, "Claims"), incurred in connection with or arising in whole or in part from: (a) any accident, injury to or death of a person, including, without limitation, employees of Tenant, or loss of or damage to property, howsoever or by whomsoever caused, occurring in or on the Property; (b) any default by Tenant in the observation or performance of any of the terms, covenants or conditions of this Lease to be observed or performed on Tenant's part; (c) the use or occupancy or manner of use or occupancy of the Property by Tenant, its Agents or Invitees or any person or entity claiming through or under any of them; (d) the condition of the Property; (e) any construction or other work undertaken by Tenant on the Property whether before or during the Term of this Lease; or (f) any acts, omissions or negligence of Tenant, its Agents or Invitees, in or on the Property; all regardless of the active or passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that such Indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Lease and further except only such Claims as are caused exclusively by the willful misconduct or gross negligence of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and

City's costs of investigating any Claim. Tenant's obligations under this Section shall survive the termination of the Lease.

1.07 General Provisions. Section 24 of the Lease is hereby modified and amended as follows:

Section 24.24 is amended and restated in its entirety to read as follows:

24.24. Non-Discrimination in City Contracts and Benefits Ordinance

(a) Covenant Not to Discriminate

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

(b) Subleases and Other Subcontracts

Tenant shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such Subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Tenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subtenants and other subcontractors to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) Non-Discrimination in Benefits

Tenant does not as of the date of this Lease and will not during the Term, in any of its operations or in San Francisco or with respect to its operations under this Lease elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where

the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) HRC Form

As a condition to this Lease, Tenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission. Tenant hereby represents that prior to execution of this Lease, (i) Tenant executed and submitted to the HRC Form HRC-12B-101 with supporting documentation, and (ii) the HRC approved such form.

(e) Incorporation of Administrative Code Provisions by Reference

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

Section 24.25 is amended and restated in its entirety to read as follows:

24.25. No Relocation Assistance; Waiver of Claims

Tenant acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and Tenant fully RELEASES, WAIVES AND DISCHARGES forever any and all Claims against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any laws, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 et seq.), except as otherwise specifically provided in this Lease with respect to a Taking.

Section 24.28 is amended and restated in its entirety to read as follows:

24.28. Tropical Hardwood and Virgin Redwood Ban

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

Section 24.29 is amended and restated in its entirety to read as follows:

24.29. Conflicts of Interest

Through its execution of this Lease, Tenant acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provision, and agrees that if Tenant becomes aware of any such fact during the term of this Lease Tenant shall immediately notify the City.

New Section 24.33 is added and reads in its entirety as follows:

24.33. Pesticide Prohibition

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

Tenant's primary IPM contact person with the City. In addition, Tenant shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

New Section 24.34 is added and reads in its entirety as follows:

24.34. First Source Hiring Ordinance

The City has adopted a First Source Hiring Ordinance (Board of Supervisors Ordinance No. 264-98) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry level positions. Within thirty (30) days after the City and County of San Francisco Real Estate Division of the Department of Administrative Services adopts a First Source Hiring Implementation and Monitoring Plan in accordance with the First Source Hiring Ordinance, Landlord shall enter into a First Source Hiring Agreement meeting applicable requirements of Section 83.9 of the First Source Hiring Ordinance.

New Section 24.35 is added and reads in its entirety as follows:

24.35. Sunshine Ordinance

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

New Section 24.36 is added and reads in its entirety as follows:

24.36. Requiring Health Benefits for Covered Employees

Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Lease as though fully set forth. The text of the HCAO is available on the web at www.sfgov.org/oca/lwlh/hcao/12q.htm.

Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Chapter 12Q.

- (a) For each Covered Employee, Tenant shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Tenant chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.
- (b) Notwithstanding the above, if the Tenant is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with part (a) above.
- (c) Tenant's failure to comply with the HCAO shall constitute a material breach of this Lease. City shall notify Tenant if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Tenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.
- (d) Any Subcontract entered into by Tenant shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Tenant shall notify City's Purchasing Department when it enters into such a Subcontract and shall certify to the Purchasing Department that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Tenant shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Tenant based on the Subcontractor's failure to comply, provided that City has first provided Tenant with notice and an opportunity to obtain a cure of the violation.
- (e) Tenant shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Tenant's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.
- (f) Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

- (g) Tenant shall keep itself informed of the current requirements of the HCAO.
- (h) Tenant shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.
- (i) Tenant shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least five (5) business days to respond.
- (j) City may conduct random audits of Tenant to ascertain its compliance with HCAO. Tenant agrees to cooperate with City when it conducts such audits.
- (k) If Tenant is exempt from the HCAO when this Lease is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Tenant later enters into an agreement or agreements that cause Tenant's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Tenant and the Contracting Department to be equal to or greater than \$75,000 in the fiscal year.

New Section 24.37 is added and reads in its entirety as follows:

24.37. Notification of Limitations on Contributions

Through its execution of this Lease, Tenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three (3) months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City

and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

New Section 24.38 is added and reads in its entirety as follows:

24.38. Preservative-Treated Wood Containing Arsenic

As of July 1, 2003, Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement 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. This provision does not preclude Tenant from purchasing preservative-treated wood containing arsenic for saltwater immersion.

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

1.09 No Other Amendments. Except as expressly amended as provided herein, the Lease shall continue unmodified and remain in full force and effect. The Lease as amended by this First Amendment constitutes the entire agreement between City and Tenant and may not be modified except by an instrument in writing signed by the party to be charged. In the event of any conflict between the terms of the Lease and the terms of this First Amendment, the terms of the First Amendment shall control.

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

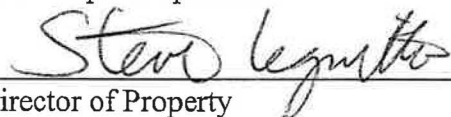
1.11 Further Instruments. The Parties hereto agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this First Amendment.

1.12 Effective Date. The date of which this First Amendment shall become effective is the latter of (i) a resolution authorizing this First Amendment is approved by the Board of Supervisors and signed by the Mayor, and (ii) this First Amendment is duly executed and exchanged by the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment as of the date first written above.

CITY:

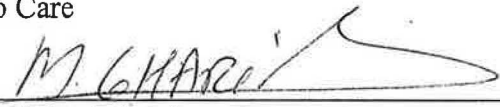
CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation



Director of Property

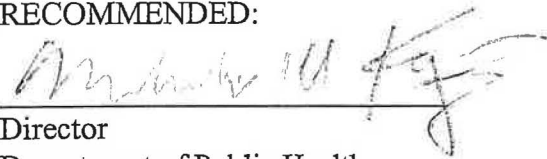
TENANT:

TWIN PEAKS PETROLEUM, INC.,
a California corporation, d/b/a Twin Peaks
Auto Care




By: Michael Gharib
Its: President and Chief Financial Officer

RECOMMENDED:



Director
Department of Public Health

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: 

Deputy City Attorney