

COMMERCIAL GROUND LEASE AGREEMENT
by and between

CITY AND COUNTY OF SAN FRANCISCO
And

BROADWAY DAVIS RETAIL ASSOCIATES LLC,
a California limited liability company
for

725 DAVIS STREET COMMERCIAL SPACE
San Francisco, CA 94111

DATED AND EXECUTED AS OF [_____], 2024

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THIS COMMERCIAL GROUND LEASE AGREEMENT (this “**Commercial Ground Lease**” or this “**Lease**”) is entered into as of [_____], 2024 by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**City**” or “**Landlord**”), represented by the Mayor, acting through its Real Estate Division and the Mayor’s Office of Housing and Community Development (“**MOHCD**”), and Broadway Davis Retail Associates LLC, a California limited liability company (“**Tenant**”). The “**Effective Date**” of this Lease is the date of recordation of the Memorandum of this Lease in the Official Records of the City and County of San Francisco.

RECITALS

A. The City is the fee owner of certain real property described in Exhibit 1 attached hereto (the “**Site**”).

B. The Site is comprised of the land and two (2) air-rights parcels, as shown on Parcel Map 10133 recorded in the Official Records of the City and County of San Francisco (“**Official Records**”) on December 17, 2020, as Document Number 202007061 (the “**Parcel Map**”). Parcel 1 (Block 0140, Lot 009 and 010) is developed and built as affordable housing. Parcel 2 (1,240 square feet addressed as 725 Davis Street, Block 0140, Lot 011) has been developed and used for commercial purposes (the “**Commercial Parcel**”).

C. BRIDGE HOUSING, a California nonprofit public benefit corporation (“**BRIDGE**”), and John Stewart Company, Inc., a California corporation (“**JSCo**” and, together with BRIDGE, the “**Sponsors**”), were selected by the City as joint venture partners to develop the Site, pursuant to a Request for Proposals issued by the City in February 2016. Sponsors subsequently formed 735 Davis Senior LP, a California limited partnership (“**Residential Borrower**”), to develop the Site with 52 units of affordable housing, plus one managers unit, for low-income seniors, including 15 units set aside for homeless seniors (the “**Residential Project**”). Sponsors have also formed Tenant for the purpose of operating the Commercial Parcel (the “**Commercial Project**”).

D. The City entered into that certain Amended and Restated Loan Agreement with Residential Borrower, dated as of May 30, 2019, as amended by that certain First Amendment to Loan Agreement (collectively, the “**MOHCD Residential Loan Agreement**”), for the purpose of constructing, developing, and operating the Residential Project, as well as constructing and developing certain warm-shell improvements for the Commercial Project.

E. The City and Residential Borrower entered into that certain Ground Lease dated as of May 20, 2019 (“**Residential Ground Lease**”), and that certain Memorandum of Ground Lease dated as of May 30, 2019 and recorded in the Official Records on May 31, 2019 as Document Number 2019-K777036-00, for the development, construction, and operation of the Site. In particular, Section 14.02 of the Residential Ground Lease states that if Tenant subdivides the Commercial Space from the Residential Space, the City will not unreasonably withhold consent to a partial assignment of this Lease to an Affiliate of Tenant who would lease the Commercial Space. As part of such conveyance, City intends to enter into this Commercial Ground Lease with Tenant for the Commercial Parcel, in accordance with all applicable approvals and

MOHCD's Commercial Underwriting Guidelines, and intends to amend the Residential Ground Lease to remove the Commercial Parcel from the leasehold of the Residential Ground Lease.

F. Residential Borrower represents that it has completed the Residential Project and cold shell construction of the improvements for the Commercial Project in accordance with the MOHCD Residential Loan Agreement and all applicable requirements. Tenant and Residential Borrower have also entered into that certain Purchase and Sale Agreement dated as _____ (the "PSA") regarding the sale of the Commercial Parcel to Tenant. Tenant will undertake the operation and management of the Commercial Project, including leasing the Commercial Parcel for public benefit or community-serving purposes.

G. City is willing to lease the Commercial Parcel to Tenant for the purposes of Tenant owning, operating, and managing the Commercial Project City-approved uses during the Term and in accordance with the provisions of this Lease.

H. Concurrently with execution of this Lease, City and Tenant will execute that certain Commercial Loan Agreement dated as of _____, 2024 (the "**MOHCD Commercial Loan Agreement**" or "Loan Agreement") and corresponding commercial loan documents to reflect Tenant's assumption of a portion of the MOHCD loan to Residential Borrower under the MOHCD Residential Loan Agreement, in an amount equal to the cost to develop the Commercial Parcel ("**MOHCD Commercial Loan**"). Also, concurrently with execution of this Lease, City and Residential Borrower will (1) amend the Residential Ground Lease and MOHCD Residential Loan Agreement to remove the Commercial Parcel from the leasehold of the Residential Ground Lease and (2) reduce the amount of the MOHCD loan by the MOHCD Commercial Loan amount, remove the encumbrances relating to the financing from the Residential Project from the Commercial Parcel and terminate the provisions of the MOHCD Residential Loan Agreement to the extent they pertain to the Commercial Project; and (3) remove the encumbrances of the Commercial Deed of Trust from the Residential Parcel.

NOW, THEREFORE, in consideration of the mutual promises and covenants, the purposes stated in the above Recitals, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant (the "**Parties**") hereby agree as follows:

ARTICLE 1 PREMISES; TERMS; EXTENSION OPTIONS; DEFINITIONS

1.1 Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Commercial Parcel and all appurtenances thereto (the "**Premises**"), for and in consideration of the ground rents and the covenants and agreements contained in this Lease. The Parties understand, acknowledge, and agree that as of the Effective Date of this Lease, the Premises is comprised of the Commercial Parcel, as more particularly described in Exhibit 2, together with all rights, privileges, and licenses appurtenant to such Commercial Parcel.

1.2 Term of Commercial Ground Lease; Commercial Ground Lease Effective Date. The Term of this Lease (the "**Term**") will commence on the Effective Date and will terminate on

May 20,2094 (the “**Termination Date**”), unless such Term is extended for an additional twenty-four (24) years, as set forth below, or earlier terminated under this Lease.

1.3 Notice of Extension. Provided that Tenant is not in default under the terms of this Lease or the MOHCD Commercial Loan documents beyond any notice, grace, or cure period either at the time of giving of an Extension Notice (as defined below) or on the Termination Date, not later than one hundred eighty (180) days prior to the Termination Date, Tenant may notify the Landlord in writing that it wishes to exercise its option to extend the term of this Lease (an “**Extension Notice**”). The extended term shall be for twenty-four (24) years from the Termination Date, which option Tenant may exercise only once, for a total term of not to exceed May 20, 2118. If the Term is extended pursuant to this Section, all references in this Lease to the “Term” will mean the Term as extended by this extension period.

1.4 Definitions and Exhibits

(a) Capitalized Terms. All capitalized terms used herein have the meanings given them when first defined or as set forth in this Section 1.4, unless the context clearly requires otherwise. Whenever an Attachment is referenced, it means an attachment to this Lease unless otherwise specifically identified. Whenever a section, article, or paragraph is referenced, it is a reference to this Lease unless otherwise specifically referenced.

“Additional Ground Rent” means all sums (other than Ground Rent) that may be or become payable by Tenant to Landlord under this Lease.

“Annual Statement” is defined in Section 2.2(a).

“Base Rent” is defined in Section 2.1(b).

“Business Day” means a day in which normal business is transacted. Generally, Monday through Friday but not weekends or holidays.

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

“CNA” means a 20-year capital needs assessment or analysis of replacement reserve requirements.

“Commercial Expenses” mean all operating expenses or other costs attributable to Tenant's operation and management of the Improvements, including property taxes, assessments, insurance, business taxes, utility services, leasing fees or commissions, auditing, commercial property and asset management fees, operating reserves, any other reserves as permitted pursuant to Section 7.4 below, expenditures for tenant improvement allowances as permitted under the terms of the Loan Agreement (if applicable) or otherwise approved by Landlord, income taxes and any other taxes on the proceeds of the operations, payments made pursuant to this Lease other than Base Rent, required payments of interest and principal on any financing secured by the Commercial Parcel that has been approved by the City, and any other imposition, costs or reserves related to the ownership, operation, and maintenance of the Improvements that Tenant is

responsible to pay, including, but not limited to, costs and expenses incurred in connection with the REA, provided that such expenses are commercially reasonable and approved by the Landlord (which shall not be unreasonably withheld, delayed or conditioned). Unpaid Commercial Expenses shall accrue for the purposes of calculating the cash flow payments owed pursuant to the Commercial Loan Agreement and related documents and for the payment of Percentage Rent.

“Commercial Income” means any and all retail/commercial rental income, pass-throughs, subtenant charges, subtenant reimbursements to Tenant under all leases and subleases of its interests in the Commercial Parcel, real estate tax rebates or refunds, and insurance proceeds received by or for the account of Tenant for renting/leasing/letting of retail/commercial spaces on the Commercial Parcel.

“Commercial Ground Lease” means this Lease.

“Commercial Parcel” has the meaning set forth in Recital B.

“Condemnation” means the taking of all or any part of any property or the possession thereof under the power of eminent domain or voluntary sale of all or any part of any property to any person having the power of eminent domain, provided that the property or such part thereof is then under the threat of condemnation.

“Condemnation Date” means the earlier of: (a) the date when possession of the condemned property is taken by the condemning authority; or (b) the date when title to the condemned property (or any part thereof) vests in the condemning authority.

“Effective Date” is defined in the first sentences of this Lease.

“Event of Default” is defined in Section 17.1.

“Extension Notice” is defined in Section 1.3.

“First Mortgage Lender” means the entity (other than Landlord or the lender of Affordable Housing Program funds) holding the first Mortgage on Tenant’s leasehold estate in the Commercial Parcel and approved by the City, if any.

“Force Majeure” means events which result in delays in a party's performance of its obligations hereunder due to causes beyond such party's control, including, but not restricted to, acts of God or of the public enemy, acts of the government, terrorist actions, acts of the other party, fires, floods, strikes, freight embargoes, epidemic, quarantine restrictions, delays of subcontractors, general scarcity, and unusually severe weather and, in the case of Tenant, any delay resulting from a defect in Landlord's title to the Premises. Force Majeure does not include failure to obtain financing or to have adequate funds.

“Ground Rent” is defined in Section 2.1(a).

“Hazardous Material” shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health, welfare or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a “hazardous substance,” or “pollutant” or “contaminant” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“**CERCLA**”, also commonly known as the “Superfund” law), as amended, (42 U.S.C. Section 9601 et seq.) or pursuant to Section 25316 of the California Health & Safety Code; any “hazardous waste” listed pursuant to Section 25140 of the California Health & Safety Code; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.

“Hazardous Materials Claims” means any and all enforcement, cleanup, removal, remedial or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Hazardous Materials Laws, together with any and all claims made or threatened by any third party against Landlord, Tenant or the Premises relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials.

“Hazardous Materials Laws” (or Environmental Law) means any federal, state or local laws, ordinances or regulations relating to the environment, health and safety, any Hazardous Materials (including, without limitation, the use, handling, transportation, production, disposal, discharge or storage thereof) or to industrial hygiene or the environmental conditions on, under or about the Premises, including, without limitation, soil, groundwater and indoor and ambient air conditions.

“Impositions” is defined in Section 3.1.

“Improvements” means all buildings (or portions thereof), structures and anything else erected, built, placed, installed or constructed upon or within the Premises (exclusive of personal property, and furniture, fixtures and equipment), whether existing at the date hereof or hereafter constructed and referred to as the Commercial Improvements in the REA.

“Index” means the Consumer Price Index for All Urban Consumers (base years 1982-1984 =100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is modified during the Term, the modified Index shall be used in place of the Index. If compilation or publication of the Index is discontinued during the Term, the City shall select another similar published index, generally reflective of increases in the cost of living, subject to Tenant's approval, which shall not be unreasonably withheld or delayed, in order to obtain substantially the same result as would be obtained if the Index had not been discontinued.

“Indexed” means, whenever any amount is referred to in this Lease as being “Indexed,” that such amount or amounts shall be adjusted on the anniversary date of this , using the Index as a mutually determined index by the Parties for such adjustment.

“Landlord” is defined in the introductory paragraph hereof.

“Laws and Ordinances” or “Laws or Ordinances” shall mean all present and future applicable laws, ordinances, rules, regulations, permits, authorizations, orders and requirements, including, without limitation, all consents or approvals required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, or the departments, bureaus, agencies or commissions thereof, authorities, board of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of, or which may affect or be applicable to the Premises or any part thereof, including, without limitation, any vault space, sidewalks, curbs or alleyways, use thereof and the buildings and Improvements thereon, and similarly the phrase “Law and Ordinance” shall be construed to mean the same as the above in the singular as well as the plural.

“Lease Year” means each calendar year during the term hereof, beginning on January 1 and ending on December 31, provided that the first Lease Year shall commence on the Effective Date and continue through December 31st of that same calendar year and the last Lease Year" shall end upon the expiration of the Term.

“MOHCD Commercial Loan” is defined in Recital H.

“MOHCD Commercial Loan Agreement” is defined in Recital H.

“Mortgage” means any mortgage, deed of trust, trust indenture, letter of credit or other security instrument, and any assignment of the rents, issues and profits from the Premises, or any portion thereof, which constitute a lien on the leasehold estate created by this Lease.

“Mortgagee” means the holder of a Mortgage.

“Net Commercial Cash Flow” means Commercial Income minus Commercial Expenses for a given period.

“Occupant” or “Occupants” means any Commercial Parcel subtenant, licensees, concessionaire, or other person, firm or entity entitled to use and occupy any area within the Premises under Tenant.

“Percentage Rent” means forty percent (40%) of annual Net Commercial Cash Flow after Commercial Loan has been paid in full.

“Permitted Exceptions” means liens in favor of the Landlord, real property taxes and assessments that are not delinquent, any leasehold liens created pursuant to Section 35.2(a), and any other liens and encumbrances the Landlord expressly approves in writing.

“Permitted Transferee” means a transferee or proposed transferee, with whom Landlord is not otherwise prevented by law or adopted policy of Landlord from transacting business or entering into contract, possessing the experience, qualifications and financial resources necessary for the proper performance of Tenant's obligations under this Lease in a manner consistent with

the operational quality and character and requirements for economic viability of the Premises and business practices of Tenant as applied to Tenant's operation of the Premises (collectively, “**Transferee Criteria**”), as determined by Landlord, in its reasonable judgment; provided however, that if the Premises are owned by a party other than Landlord or other governmental entity and there shall exist a dispute between Tenant and Landlord as to whether a proposed transferee constitutes a Permitted Transferee, such dispute shall be resolved by a court of competent jurisdiction provided, however, in any such proceeding Landlord shall have burden of proof in establishing that the proposed transferee does not meet the Transferee Criteria. Affiliates of the John Stewart Company or BRIDGE Housing Corporation are Permitted Transferees.

“Personal Property” means all fixtures, furniture, furnishings, equipment, machinery, supplies, software and other personalty that is incident to the ownership, development or operation of the Improvements and/or the Premises, whether now or hereafter located in, upon or about the Premises, belonging to Tenant and/or in which Tenant has or may hereafter acquire an ownership interest, together with all present and future attachments, accessions, replacements, substitutions and additions thereto or therefor.

“Premises” is defined in Section 1.1.

“Prime Rate” as reported by the Wall Street Journal’s bank survey.

“Public Benefit Use” is a land use, typically programs or services, that primarily benefits low-income persons, is implemented by one or more 501(c)(3) public benefit corporations, and has been identified by the City or community as a priority use.

“REA” is defined as that certain Declaration Establishing Reciprocal Easements and Covenants Running with the Land for the Mixed Use Development Located at [] Street, San Francisco, California, dated as of [] and recorded in the Official Records on [], under Document Number [], as may be amended from time to time.

“Residential Project” is defined in Recital C.

“Significant Change” means voluntary or involuntary sale, assignment, conveyance, lease, trust or power, or transfer in any other form with respect to this Lease or any portion of or interest in the Premises, or any contract or agreement to do any of the same (except for contracts and agreements referred to in this Lease).

“Space Sublease” means any lease, sublease, license, concession or other agreement by which any Tenant leases, subleases, demises, licenses or otherwise grants to any person, firm or corporation, in conformity with the provisions of this Lease, the right to occupy portions of the Premises to the exclusion of others.

“Space Subtenant” means any person, firm or corporation, including its agents, subtenants, assignees, licensees, and concessionaires, that leases, occupies or has the right to

occupy under and by virtue of a Space Sublease or otherwise occupies and/or conducts any operation of any kind in the Commercial Project.

“Tenant” is defined in the introductory paragraph hereof.

“Term” means the term commencing as of the Effective Date and ending upon the expiration or termination of the Term.

“Termination Date” is defined in Section 1.2.

“Transferee Criteria” is defined in the definition of Permitted Transferee.

(b) Exhibits to this Lease. Whenever an “Exhibit” is referenced, it means an attachment to this Lease unless otherwise specifically identified. All such Exhibits are incorporated herein. Whenever an article, section, subsection, or paragraph is referenced, it is a reference to this Lease unless otherwise specifically referenced.

ARTICLE 2 RENT AND FINANCIAL ACCOUNTING

2.1 Ground Rent During Term.

(a) Payment of Ground Rent. Tenant shall pay the City per lease year (i) Base Rent, as defined in Section 2.1(b), and (ii) if applicable, Percentage Rent, as defined in Section 2.2(a), without offset of any kind and without necessity of demand, notice or invoice from the City (together, “**Ground Rent**”).

(b) Base Rent. “**Base Rent**” means, One and No/100 Dollars (\$1.00) in any given Lease Year. Base Rent shall be due and payable in arrears on January 31st of each Lease Year, provided, however, that at Tenant’s election, Tenant may prepay the cumulative Base Rent for the entire Term in one lump sum in the first Lease Year.

2.2 Percentage Rent. After full repayment of the MOHCD Commercial Loan, Tenant will pay to City the Percentage Rent, if any, in addition to the Base Rent under Section 2.1.

(a) Annual Statements.

(i) On or before May 30th immediately following each anniversary of the Effective Date, Tenant will deliver a complete statement (each, an “**Annual Statement**”) showing the computation of the Commercial Income and Commercial Expenses for the immediately preceding Lease Year in a form approved by City. Each Annual Statement must show in reasonable detail (i) the Commercial Income for the immediately preceding Lease Year, including an itemized list of any and all deductions or exclusions from Commercial Income that Tenant may claim and that are commercially reasonable and approved by the City or that are otherwise expressly permitted under this Commercial Ground Lease, (ii) the Commercial Expenses for the immediately preceding Lease Year, and (iii) a computation of the Percentage

Rent for the immediately preceding Lease Year. Each Annual Statement must be certified as accurate, complete, and current by an independent certified public accounting firm acceptable to MOHCD or the City's Director of Property in his or her sole discretion. Tenant may coordinate with Sponsors to submit a joint annual statement that combines the Annual Statement with Sponsors' Annual Monitoring Report.

(ii) If Tenant fails to deliver any Annual Statement within the time period set forth in this subsection (regardless of whether any Percentage Rent is actually paid or due to City for the preceding Lease Year) and that failure continues for three (3) days after the date Tenant receives (or refuses receipt of) written notice of the failure from the City, the City will have the right, among its other remedies under this Commercial Ground Lease, to employ a certified public accountant to make an examination of Tenant's Books and Records (and the Books and Records of any other occupant of the Commercial Parcel) as may be necessary to certify the amount of the Commercial Income and Commercial Expenses for the period in question. The certification will be binding upon Tenant and Tenant will promptly pay to the City the total reasonable cost of the examination and the City's other reasonable costs (including attorneys' fees) in exercising its examination rights, together with the full amount of Percentage Rent due and payable for the period in question. Tenant acknowledges that the late submittal of any Annual Statement will cause the City increased costs not contemplated by this Commercial Ground 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 City will incur by reason of Tenant's lateness, but the City's acceptance of any such amount will not limit the City's rights or remedies under this Commercial Ground Lease for Tenant's failure to perform its obligations under this Section.

(b) Payments of Percentage Rent.

(i) After full repayment of the MOHCD Commercial Loan, by no later than June 30 immediately following each anniversary of the date the MOHCD Commercial Loan is fully repaid, Tenant will pay to the City, in addition to the Base Rent payable by Tenant, the Percentage Rent for the Lease Year immediately preceding such payment date. Notwithstanding anything to the contrary in the foregoing sentence, if this Commercial Ground Lease terminates before the anniversary of the Effective Date, then Tenant will pay to the City a final payment of Percentage Rent on or before the sixtieth (60th) day immediately following such termination, which payment shall be in an amount equal to forty percent (40%) of the Net Commercial Cash Flow for the period (i) between the last anniversary of the Effective Date before such termination date and (ii) the termination of this Commercial Ground Lease.

(ii) The City's acceptance of any sums paid by Tenant as Percentage Rent as shown by the applicable Annual Statement will not be an admission of the accuracy of the Annual Statement or the amount of the Percentage Rent payment. The City's receipt of a portion of Percentage Rent will be deemed strictly as rental and nothing in this Commercial Ground Lease will be construed to create the legal relation of a partnership or joint venture between the City and Tenant.

(iii) Tenant will maintain adequate accounting systems and controls reasonably satisfactory to Landlord to ensure that Commercial Income collected and all Commercial Expenses incurred are properly accounted for and recorded on a cash basis.

(iv) Any provision to the contrary notwithstanding, it will be a material breach of this Lease if, at any time, Tenant takes any action or enters into any arrangement or agreement with any subtenant of any portion of the Commercial Parcel, or Tenant's employees, creditors, officers or any other person which arrangement or agreement is intended to understate or to conceal Tenant's Percentage Rent under this Lease.

(v) Notwithstanding anything to the contrary contained herein, for purposes of calculating the Percentage Rent, Landlord and Tenant agree that Tenant shall be allowed to recoup in future years its Commercial Expenses for the Commercial Project to the extent Net Commercial Income is negative in any year. In the event Tenant's Commercial Expenses exceed Tenant's Commercial Income in any given year (a "**Rental Shortfall**"), the calculation of Net Commercial Income in any following year shall be reduced by any Rental Shortfall accumulated from prior years until all prior Commercial Expenses have been recovered by Tenant.

(c) Books and Records; Audit.

(i) "Books and Records" means all of Tenant's books, records, and accounting reports or statements relating to the business at or use of the Commercial Parcel, this Commercial Ground Lease, the Improvements, any alterations, and the operation and maintenance of the Commercial Parcel, including, without limitation, cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the business in or use of the Commercial Parcel, and any other bookkeeping documents Tenant utilizes in its business operations for the Commercial Parcel. Tenant must maintain a separate set of accounts to allow a determination of all Commercial Expenses, all Commercial Income generated directly from the Commercial Parcel, and all exclusions therefrom.

(ii) Tenant agrees that the business conducted in the Commercial Parcel will be operated with a non-resettable register and so that a duplicate dated sales slip or such other recording method reasonably acceptable to the City is issued with each sale, whether for cash, credit, or exchange. Furthermore, Tenant will keep (and will cause its agents, subtenants, assignees, licensees, and concessionaires, or otherwise to keep) at the Commercial Parcel, at all times between the Effective Date and the expiration or earlier termination of this Commercial Ground Lease, complete and accurate Books and Records that contain all information required to permit the City to verify Commercial Income, deductions and exclusions therefrom, and Commercial Expenses that are in accordance with this Commercial Ground Lease and with generally accepted accounting practices consistently applied from period to period with respect to all operations of the business to be conducted in or from the Commercial Parcel. Tenant will retain (and will cause its agents, subtenants, assignees, licensees, and concessionaires, or otherwise to retain) such Books and Records for a period (the "**Audit Period**") that is the later of (1) four (4) years after the end of each Lease Year (or portion thereof) to which such Books and Records apply or, (2) if an audit is commenced or if a controversy arises between the parties regarding the Percentage Rent payable, until such audit or controversy is terminated. The

provisions of this paragraph will not apply to Space Subtenants and the business and records of such Space Subtenants.

(iii) Tenant will make its Books and Records available to the City, any City auditor, or any auditor or representative designated by the City (each referred to in this subsection as “**City’s Audit Representative**”), on no less than fifteen (15) business days’ prior written notice to Tenant, for the purpose of examining said Books and Records to determine the accuracy of Tenant's reporting of Percentage Rent for a period not to exceed the Audit Period after an Annual Statement is delivered to the City. Tenant will cooperate with the City’s Audit Representative during the course of any audit, provided however, such audit will occur at Tenant's business office, or at such other location in San Francisco where the Books and Records are kept, and no books or records may be removed by City’s Audit Representative without the prior express written consent of Tenant (but copies may be made by City’s Audit Representative on site), and once commenced, with Tenant's cooperation, the audit will be diligently pursued to completion by the City within a reasonable time, so long as that Tenant makes available to the City’s Audit Representative all the relevant Books and Records in a timely manner. If an audit is made of the Books and Records and the City claims that errors or omissions have occurred, the Books and Records will be retained by Tenant and made available to the City’s Audit Representative until those matters are expeditiously resolved with Tenant's cooperation. If Tenant operates the Commercial Parcel through one or more subtenants or agents or otherwise, Tenant will require each such subtenant or agent or other party to provide the City with the copy of this audit right. Upon completion of the audit, the City will promptly deliver a copy of the audit report to Tenant.. The provisions of this paragraph will not apply to Space Subtenants and the business and records of such Space Subtenants.

(iv) If an audit reveals that Tenant has understated its Net Commercial Cash Flow for the applicable audit period, Tenant will pay the City, promptly upon demand, the difference between the Percentage Rent payment Tenant has paid and the Percentage Rent payment it should have paid to the City, plus, if the difference is a material amount and Tenant’s understatement arises from or relates to the negligence or willful misconduct of Tenant, and if required by the City, interest from the date of the error in the payment equal to ten percent (10%) per year or, if a higher rate is legally permissible, the highest rate an individual is permitted to charge under applicable law, if the City elects to charge such interest. If an audit reveals that Tenant has overstated its Net Commercial Cash Flow for the applicable audit period, Tenant shall be entitled to a credit equal to the difference between the amount Tenant has paid and the amount it should have paid to City against the next installment of Percentage Rent owed by Tenant. If Tenant understates the Net Commercial Cash Flow for any audit period by five percent (5%) or more, Tenant will pay the reasonable cost of the audit.

(d) Tenant’s Compliance with City Business and Tax and Regulations Code. Tenant acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment City is required to make to Tenant under this Commercial Ground Lease is withheld, then City will not be in breach or default under this Lease, and the Treasurer and Tax Collector

will authorize release of any payments withheld under this paragraph to Tenant, without interest, late fees, penalties, or other charges, upon Tenant coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

2.3 Triple Net Lease. This Lease is a “triple net lease,” and it means Tenant shall pay for all taxes, maintenance and other costs, charges, impositions and obligations attributed to the Commercial Parcel, Improvements located in the Commercial Parcel, and its leasehold interest under this Lease (“**Carrying Costs**”). If Landlord pays any Carrying Costs, whether to cure a default or otherwise protect its interests hereunder, and provided Landlord has provided Tenant with notice and an opportunity to cure, as required below in this Section 2.3, Tenant shall reimburse Landlord the Carrying Costs as Additional Ground Rent on the next Ground Rent payment date. Tenant is responsible for all of Tenant's expenses, and Landlord shall be indemnified against all liabilities and expenses arising from the development and operation of the Commercial Parcel, except those arising from Landlord's gross negligence or willful misconduct. Landlord shall not pay any Carrying Costs without providing at least fifteen (15) days prior written notice to Tenant unless for immediate safety reasons or to prevent cancellation of required insurance policies or to avoid the imposition of penalties if earlier payment is required, and in such instances Landlord shall provide written notice to Tenant as soon as possible.

ARTICLE 3 PAYMENT OF IMPOSITIONS

3.1 Taxes

(a) Tenant's Covenant to Pay Impositions. Subject to any available exemptions to Tenant, Tenant covenants and agrees to pay, before delinquency and before any fine, penalty, interest or cost may be added thereto for the nonpayment thereof, all Impositions which are or may have been or shall be assessed, levied, confirmed, imposed or become a lien upon the Commercial Parcel or any part thereof that become payable until the later of (i) the last day of the Term, or (ii) the last day Tenant has possession of the Commercial Parcel. If any applicable law, code, regulation or rule permits Tenant to pay any such Imposition in installments, Tenant may pay the same (and any accrued interest thereon) in installments prior to delinquency and before any fine, penalty, interest or cost may be added thereto for the nonpayment thereof. As used herein, “**Impositions**” means all taxes and all transit taxes, possessory interest taxes associated with the Commercial Parcel and assessments (including, without limitation, all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the Term of this Lease), taxes assessed by any governmental authority by virtue of any operations by Tenant conducted in on or out of the Commercial Parcel and the Improvements located thereon, fees, water, sewer or similar rents, rates and charges, excises, levies, vault license fees or rentals, license fees, permit fees, inspection fees and other authorization fees and other governmental charges of any kind or nature whatsoever, whether general or special, ordinary or extraordinary, foreseen or unforeseen, or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing of every character, except as expressly stated herein to the contrary (including all interest and penalties thereon), which at any time during or in respect of the period to the later of (i) the last day of the

Term, or (ii) the later of the last day Tenant (a) is in or (b) has a right to possession of the Commercial Parcel, may be assessed, levied, confirmed or imposed on or in respect of or be a lien upon the Commercial Parcel, any buildings or Improvements which are now or hereafter located thereon, any Personal Property now or hereafter located thereon, on the leasehold estates created hereby or which may be imposed upon any taxable interest of Tenant acquired pursuant to this Lease or on account of any taxable possessory right which Tenant may have acquired pursuant to this Lease, or any part thereof. Tenant must pay or reimburse Landlord, as the case may be, for any fine, penalty, interest or cost which may be added by the collecting authority for the late payment or nonpayment of any Imposition required to be paid by Tenant hereunder. All Impositions imposed for the tax years in which Tenant vacates the Commercial Parcel will be apportioned and prorated between Tenant and Landlord. Upon demand made from time to time by Landlord, Tenant will furnish to Landlord for inspection, immediately upon receipt thereof, official receipts of the appropriate taxing authority, or other proof satisfactory to Landlord evidencing the payment of such Imposition.

(b) Landlord's Right to Pay. Unless Tenant is exercising its right to contest under and in accordance with the provisions of Article 4, if Tenant fails to pay and discharge any amounts payable pursuant to this Article 3 Landlord, at its option, may (but is not obligated to) pay or discharge the same; and the amount paid by Landlord and the amount of all costs, expenses, interest and penalties connected therewith, including attorneys' fees, together with interest at an interest rate equal to the lesser of: (a) ten percent (10%); or (b) the maximum lawful rate of interest accruing from the date of such payment, shall be deemed to be and shall be payable by Tenant as Additional Ground Rent and must be reimbursed to Landlord by Tenant on demand.

3.2 Taxes, Assessments, Licenses, Permit Fees and Liens

(a) 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.

(b) Tenant agrees to pay taxes of any kind, including 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.

(c) 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 pursuant to Article 4, below.

(d) San Francisco Administrative Code Sections 23.38 and 23.39 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 to enable the City to comply with this requirement.

ARTICLE 4 CONTESTS

4.1 Contests. Tenant has the right, after not more than ninety (90) days nor less than ten (10) business days prior written notice to Landlord, to contest the amount or validity of any Imposition, Law or Ordinance, and/or lien by appropriate proceedings promptly initiated and conducted in good faith and with due diligence, at its sole cost and expense; provided, that (i) Landlord shall have determined reasonably that neither the Premises, nor any part thereof or interest therein, will be in danger of being sold, forfeited, terminated, canceled or lost, (ii) Tenant shall have furnished such security as may be required in such proceedings or as may from time to time be reasonably requested by Landlord, and (iii) Landlord shall have determined reasonably that Landlord shall not be in danger of being subjected to fines, penalties or criminal liability as a result of such contest. Tenant shall not be required to pay any Imposition or lien being so contested during the pendency of any such proceedings unless payment is required by the court, quasi-judicial body or administrative agency conducting such proceedings. Before any fine, interest, penalty or cost may be added thereto for nonpayment. Tenant must pay and discharge the amounts involved in or affected by such contest, together with any penalties, fines, interest, costs and expenses that may have accrued thereon or that may result from any such contest by Tenant. After such payment and discharge by Tenant, Landlord will promptly return to Tenant the unused portion of such security as Landlord received in connection with such contest, without interest. If Landlord is a necessary party with respect to any such contest, or if any law now or hereafter in effect requires that such proceedings be brought by and/or in the name of Landlord or any owner of the Premises, Landlord, at the request of Tenant and at Tenant's sole cost and expense and with counsel selected and engaged by Tenant, subject to Landlord's reasonable approval, shall join in or initiate, as the case may be, any such proceeding. Landlord, at its own expense and at its sole option, may elect to join in any such proceeding whether or not any law now or hereafter in effect requires that such proceedings be brought by and/or in the name of Landlord or any owner of the Premises. Neither Landlord nor the Premises may be subjected to any liability for the payment of any fines, penalties, costs, fees, including attorneys' fees, or expenses in connection with any such proceeding, and Tenant covenants to indemnify, defend and hold harmless Landlord and the Premises from any such fines, penalties, costs, fees or expenses.

4.2 Contesting Impositions. At its own cost and after notice to Tenant of its intention to do so, by appropriate proceedings conducted in good faith and with due diligence, Landlord may but in no event shall be obligated to contest the validity, applicability and/or the amount of any Impositions. Landlord in so contesting any Imposition, shall hold all other parties harmless from and against any loss, cost or damage they suffer by reason of such contest. Nothing in this Section requires Landlord to pay any Impositions as long as it contests the validity, applicability or the amount thereof in good faith and so long as it does not allow the portion of the Premises affected thereby to be forfeited to the imposer of such Impositions as a result of its nonpayment. Landlord must give notice to all other parties within a reasonable period of time of the commencement of any such contest and of the final determination of such contest.

ARTICLE 5 INSURANCE

5.1 Insurance Requirements for Tenant. Tenant must procure and maintain, or cause to be procured and maintained, insurance against claims for injuries to persons or damages to property or the Improvements on the Commercial Parcel which may arise from or in connection with Tenant's operation and use of the Commercial Parcel until the termination of the Commercial Ground Lease.

5.2 Minimum Scope. In order to satisfy the foregoing requirements, coverage must be at least as broad as:

(a) Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01) or other form approved by Landlord.

(b) Insurance Services Office Automobile Liability coverage, code 1 (form number CA 00 01) (any auto) or other form approved by Landlord.

(c) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(d) Professional Liability. During the course of any construction within the Premises, Professional Liability Insurance covering all negligent acts, errors and omissions by all architectural and engineering professional consultants. Tenant must provide the City with copies of consultants' insurance certificates showing such coverage.

(e) Property Insurance. Property Insurance against all risks of direct physical loss to the Commercial Parcel and the Improvements, excluding earthquake or flood, during the course of construction. This insurance requirement may be met by obtaining the property insurance required under the REA.

5.3 Minimum Limits. Tenant must maintain limits for the foregoing coverage of no less than:

(a) General Liability: Commercial general liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, fire damage legal liability), personal injury, products and completed operations, and explosion, collapse, and underground (XCU) during any period in which Tenant is conducting any activity on, alteration or improvement to the Commercial Project with risk of explosion, collapse, or underground hazard.

(b) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

(c) Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the State of California and Employer's Liability limits of \$1,000,000 for bodily injury by accident and \$1,000,000 per person and in the annual aggregate for bodily injury by disease.

(d) Professional Liability: \$1,000,000 per claim and in the annual aggregate covering all negligent acts, errors and omissions of all design/engineering consultants, including architects, engineers and surveyors. If the design/engineering consultants' Professional Liability Insurance is "claims made" coverage, these minimum limits shall be maintained by the design/engineering consultants for no less than three (3) years beyond completion of construction.

(e) Property Insurance:

1. Ongoing:

i. Property insurance, excluding earthquake and flood, in the amount no less than One Hundred Percent (100%) of the then-current replacement value of all Improvements and City property in the care, custody, and control of Tenant or its contractor. Tenant must obtain Property Insurance by the Effective Date.

ii. Boiler and machinery insurance, comprehensive form, covering damage to, loss or destruction of machinery and equipment located on the Site 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 then-current replacement value of such machinery and equipment.

2. As applicable, during the course of any Tenant improvements, but expressly excluding any interior improvements or cosmetic improvements to the Premises unless otherwise required by the [Loan Agreement]:

i. Builder's risk insurance, special form coverage, excluding earthquake and flood, for one hundred percent (100%) of the then-current replacement cost of all completed improvements and City property in the care, custody, and control of Tenant or its contractor, including coverage in transit and storage off-site; the cost of debris removal and demolition as may be made reasonably necessary by such covered perils, resulting damage and any applicable Law; start up, testing and machinery breakdown including electrical arcing, copy of the applicable endorsement to the Builder's Risk policy, if the Builder's Risk policy is issued on a declared-project basis; and with a deductible not to exceed Fifty Thousand Dollars (\$50,000) each loss, including the City and all subcontractors as loss payees.

ii. Performance and payment bonds of contractors, each in the amount of One Hundred Percent (100%) of contract amounts, naming the City and Tenant as dual obligees or other completion security approved by the City in its sole discretion

5.4 Insurance of Others. To the extent Tenant requires liability insurance policies to be maintained by Subtenants, contractors, subcontractors or others in connection with their use or occupancy of, or their activities in, on, under, around, or about the Premises, Tenant will require that such policies be endorsed to include the **CITY AND COUNTY OF SAN FRANCISCO AND MOHCD AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS** as additional insureds. Unless City determines that the particular activity presents exposure that warrants increased coverage, notwithstanding the foregoing, Tenant will require all contractors and sub-contractors performing work in, on, under, around, or about the Premises and all operators and Subtenants of any portion of the Premises to carry the following coverages: (i) commercial general liability with limits of no less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual general aggregate, (ii) workers' compensation in amounts required by law, (iii) employer's liability coverage in an amount not less than One Million Dollars (\$1,000,000) per accident, per employee and policy limit for injury by disease, covering all employees employed at the Premises, (iv) automobile insurance in an amount not less than \$1,000,000 combined single limit covering use of owned, non-owned or hired vehicles utilized in the performance of work in, on, under, around, or about the Premises.

5.5 Other Insurance Provisions

(a) Additional Insured Endorsement. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions: the Landlord and its officers, agents, employees and Supervisors are to be covered as additional insureds as respects: liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Tenant; and liability arising out of work or operations performed by or on behalf of Tenant.

(b) Primacy of Tenant's Insurance. For any claims related to the Commercial Parcel during the Term, Tenant's insurance coverage must be primary insurance as respects the Landlord and its, officers, agents, employees and Supervisors. Any insurance or self-insurance maintained by Landlord, and its Supervisors, officers, agents or employees must be in excess of Tenant's insurance and shall not contribute with it.

(c) Insured Not Affected by Failure to Report. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Landlord and its Supervisors, officers, agents or employees.

(d) Written Notice Required to Effect Changes. Each insurance policy required by this Article 5 must be endorsed to state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice has been given to the Landlord (or if such notice provision is not included, Tenant shall provide Landlord with notice prior to suspension, void, or cancellation).

5.6 Acceptability of Insurers. Insurance is to be placed with insurers with a current A. M. Best's rating of no less than A:VII, unless otherwise approved by the City.

5.7 Verification of Coverage. Tenant must furnish City with certificates of insurance and with original endorsements effecting coverage required by this Article 5. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements may be on forms provided by the City. All certificates and endorsements are to be received and approved by City before work commences. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

5.8 Contractors. Tenant must include any and all contractors with which it contracts directly as insureds under its policies or, upon request, must furnish separate certificates and endorsements for each contractor's coverage. All such coverage shall be subject to the requirements stated herein, unless otherwise approved by Landlord.

5.9 Assignment of Policies. Upon the termination or expiration of the Term, Landlord may require Tenant to assign to it all policies of insurance to be maintained by Tenant hereunder; provided, however, that all such policies that are not assignable by their terms and all such policies that would require the consent of any insurer, which consent is not obtained by Tenant in a timely manner, shall be canceled and all refunds of premiums with respect to all of such policies shall immediately be paid to Landlord. In the event of an assignment of any such policy, the premium will be prorated between Landlord and Tenant as of the date of such termination or expiration. In the event that an assignment is not required as to any policy or, in the case of a blanket policy, if coverage is terminated, any premium refund will be payable to Tenant.

5.10 Landlord Entitled to Participate. Except for the rights of Lenders, Landlord shall be entitled to participate in and consent to any settlement, compromise or agreement with respect to any claim for any loss in excess of Five Hundred Thousand Dollars (\$500,000) (as Indexed) covered by the insurance required to be carried hereunder; provided, however, that (i) Landlord's consent shall not be unreasonably withheld, conditioned or delayed and (ii) no consent of Landlord shall be required in connection with any such settlement, compromise or agreement concerning damage to all or any portion of the Premises if Tenant shall have agreed to commence and complete restoration of the Premises in accordance with this Lease.

5.11 Release and Waiver of Subrogation. Each party hereby waives all rights of recovery and causes of action, and releases each of the other parties from any liability, losses and damages occasioned to the property of each such party, which losses and damages are of the type covered under the policies required by this Section to the extent that said loss is reimbursed by an insurer.

ARTICLE 6 LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

6.1 Landlord May Perform in Emergency. Without limiting any other provision in this Lease, and in addition to all other remedies available to Landlord hereunder and/or at law or in equity, and without waiving any alternative rights or remedies, including, without limitation, the right to declare Tenant to be in default of its obligations under this Lease, Tenant covenants and agrees that upon any failure by Tenant to pay any obligation and/or perform any act, covenant,

term, condition or agreement required to be paid or performed by Tenant hereunder within the time provided herein for such payment and/or performance, which failure shall give rise to an emergency, as reasonably determined by Landlord, after using reasonable efforts to notify Tenant of Landlord's intent, Landlord may, but shall not be obligated to, pay any such obligation and/or perform any such act, covenant, term, condition or agreement required to be paid or performed by Tenant hereunder for and on behalf of Tenant.

6.2 Landlord May Perform Following Tenant's Failure to Perform. Without limiting any other provision in this Lease, but subject to the provisions of Article 35, and in addition to all other remedies available to Landlord hereunder and/or at law or in equity, and without waiving any alternative rights or remedies, including, without limitation, the right to declare Tenant to be in default of its obligations under this Lease, Tenant covenants and agrees that if Tenant at any time fails to perform any act, covenant, term, condition or agreement on Tenant's part to be performed under this Lease, which failure to perform, in all cases other than as described in Section 6.1, continues for thirty (30) days after written notice from Landlord; then, Landlord may, but shall not be obligated to, perform any such act, covenant, term, condition or agreement for and on behalf of Tenant. If Landlord believes that Tenant has failed to perform an obligation set forth in this Lease, then before performing such obligation, Landlord shall give Tenant as much notice as reasonably possible.

6.3 Tenant's Obligation to Reimburse Landlord. If, pursuant to the provisions of Sections 6.1 and 6.2, Landlord shall pay and/or perform any obligation required to be paid or performed by Tenant hereunder, Tenant shall reimburse Landlord immediately upon demand for all sums so paid by Landlord, including, without limitation, all costs and expenses and reasonable attorney fees, incurred by Landlord in connection with the performance of any such obligation by Landlord, regardless of which party actually completes the same, together with interest from the date Landlord incurs the cost or expense until paid at a per annum rate equal to the sum of the Prime Rate plus 5%, which rate shall be reduced to the extent that it exceeds the maximum rate permissible by applicable law.

ARTICLE 7 COVENANTS AGAINST WASTE AND TO REPAIR AND MAINTAIN PREMISES

7.1 No Waste. Subject to the applicable provisions of this Lease, Tenant covenants not to do or suffer any waste or damage, disfigurement or injury to the Premises.

7.2 Repair. Under no circumstances shall Landlord be obligated to make repairs or replacements of any kind or to maintain all or any portion of the Commercial Parcel, the Improvements on the Commercial Parcel or any portion thereof, as part of the consideration for rental, and Tenant hereby expressly waives all right to make repairs at Landlord's expense under Sections 1941 and 1942 of the California Civil Code, as either or both may from time to time be amended, replaced, or restated. Tenant covenants, throughout the Term, at Tenant's sole cost and expense, to repair and maintain the Commercial Parcel and all buildings and Improvements now or at any time erected on the Commercial Parcel including all Personal Property within the Commercial Parcel owned by Tenant, in good and clean order, condition and repair, as may be

necessary to maintain the same in first- class condition and in compliance with all applicable laws and governmental regulations, and promptly, at Tenant's own cost and expense, to make or cause others to make all necessary or appropriate capital and operating repairs, renewals and replacements, whether structural or non- structural, interior or exterior, ordinary or extraordinary, foreseen or unforeseen, reasonable wear and tear excepted, to the extent that the same is consistent with maintenance of the Commercial Parcel in a first-class condition, with materials, apparatus and facilities as originally installed , or, if not available, with materials, apparatus and facilities of quality at least equal in quality, appearance and durability of the materials, apparatus and facilities repaired, replaced or maintained. All such repairs and replacements made by Tenant shall be at least equivalent in quality, appearance, and durability to and in all respects consistent with the original work.

7.3 Reserved.

7.4 Other Reserve Requirements. Tenant may, at its discretion, establish and annually fund a segregated interest-bearing depository accounts for (1) a commercial leasing reserve, (2) a tenant improvement reserve, (3) a vacancy reserve, and/or (4) an incident reserve, each subject to review and prior written approval by City. The approved reserve payments will be made only to the extent there is Commercial Income sufficient to make such payments. The City hereby approves the following reserves in the following initial amounts (as well as any replenishment of such reserve accounts): (i) \$0.20 annually per square foot in replacement reserve; (ii) 6% of effective gross income annually in commissions reserve; and (iii) \$2,500 per year in operating reserve, subject to a %2 per year annual increase.

7.5 Return of the Commercial Parcel. The Commercial Parcel, together with all Improvements thereon, repairs, alterations, additions, substitutions and replacements thereto or thereof shall be surrendered to Landlord upon the expiration or earlier termination of the Term subject to reasonable wear and tear.

ARTICLE 8 LEASED PROPERTY CONDITION

8.1 AS-IS Condition. The Premises are being leased, as applicable, “AS IS,” without representation or warranty of any kind, and subject to all applicable Laws governing their use, occupancy and possession, and Tenant agrees to take possession of the Premises in its “AS IS” condition on the Effective Date, subject to the provisions of this Lease. Tenant acknowledges and agrees that Tenant is familiar with the Premises. Tenant represents and warrants to City 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 business and intended use. Tenant acknowledges and agrees that neither City nor any of its agents have made, and City hereby disclaims, any representations or warranties, express or implied, concerning the rentable area of the Premises, the physical or environmental condition of the Premises or the Improvements (including, but not limited to the substructure), 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.

8.2 Accessibility Disclosure. California Civil Code Section 1938 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 have not been inspected by a CASp.

8.3 Presence of Hazardous Substances. California law requires landlords to disclose to tenants the presence of certain Hazardous Substances as identified in the Phase I Environmental Site Assessment performed by ENGE0 and dated February 13, 2017.

ARTICLE 9 UTILITY SERVICES

In no event shall Landlord be obligated to provide any utility, sewer, mechanical or other services with respect to the Premises or any portion thereof. Tenant will pay or cause to be paid as the same become due all charges for all public or private utility services at any time rendered to or in connection with the Premises or any part thereof and will do all other things required for the maintenance and continuance of all such services. Tenant hereby expressly waives any and all claims against Landlord for compensation, damages, payments or offset based upon or with respect to any and all loss or damage now or hereafter sustained by Tenant by reason of any failure by Landlord to furnish, supply or provide any service or utility furnished or supplied to or used by Tenant or any other party in connection with the use, occupancy, maintenance, or operation of the Premises or any part thereof. Such services and utilities shall include, without limitation, the water supply system, drainage, sewer system, wires leading to or inside the Premises, gas, electric or telephone services.

ARTICLE 10 DAMAGE OR DESTRUCTION

10.1 Notice. In case of any damage to or destruction of the Premises or of the Improvements thereon or any part thereof, Tenant will promptly but not more than ten (10) days after the occurrence of any such damage or destruction, give written notice thereof to Landlord describing, with as much specificity as is reasonable, the nature and extent of such damage or destruction.

10.2 Insured Casualty. If the Improvements or any part thereof are damaged or destroyed by any cause covered by any policy of insurance required to be maintained by Tenant hereunder, Tenant shall promptly commence and diligently complete the restoration of the Improvements as nearly as possible to the condition thereof prior to such damage or destruction, subject to written approval of the First Mortgage Lender; provided, however, that if more than fifty percent (50%) of the Improvements are destroyed or are so damaged by fire or other casualty and if the insurance proceeds do not provide at least ninety percent (90%) of the funds necessary to accomplish the restoration, Tenant, with the written consent of the First Mortgage Lender, may terminate this Commercial Ground Lease within thirty (30) days after the later of (i) the date of

such damage or destruction, or (ii) the date on which Tenant is notified of the amount of insurance proceeds available for restoration. In the event Tenant is required or elects to restore the Improvements, all proceeds of any policy of insurance required to be maintained by Tenant under this Commercial Ground Lease shall be used by Tenant for that purpose and Tenant shall make up from its own funds, or obtain additional financing as reasonably approved by the Landlord, any deficiency between the amount of insurance proceeds available for the work of restoration and the actual cost thereof. In the event Tenant elects to terminate this Commercial Ground Lease pursuant to its right to do so under this Section 10.2, or elects not to restore the Improvements, the insurance proceeds shall be disbursed in the order set forth in Section 10.4 below.

10.3 Uninsured Casualty. If (i) more than 50% of the Improvements are damaged or destroyed and five percent (5%) or more of the cost of restoration is not within the scope of the insurance coverage; and (ii) in the reasonable opinion of Tenant, the undamaged portion of the Improvements cannot be completed or operated on an economically feasible basis; and (iii) there is not available to Tenant any feasible source of third party financing for restoration reasonably acceptable to Tenant; then Tenant may, with the written consent of each Lender, terminate this Commercial Ground Lease upon ninety (90) days written notice to the Landlord. If it appears that the provisions of this Section 10.3 may apply to a particular event of damage or destruction, Tenant shall notify the Landlord promptly and not consent to any settlement or adjustment of an insurance award without the Landlord's written approval, which approval shall not be unreasonably withheld or delayed. In the event that Tenant terminates this Commercial Ground Lease pursuant to this Section 10.3, all insurance proceeds and damages payable by reason of the casualty shall be divided among Landlord, Tenant and Lenders in accordance with the provisions of Section 10.4. If Tenant does not have the right, or elects not to exercise the right, to terminate this Commercial Ground Lease as a result of an uninsured casualty, Tenant shall promptly commence and diligently complete the restoration of the Improvements as nearly as possible to their condition prior to such damage or destruction, subject to First Mortgage Lender's written approval, in accordance with the provisions of Section 10.2.

10.4 Distribution of the Insurance Proceeds. In the event of an election by Tenant to terminate and surrender as provided in either Section 10.2 or 10.3, the priority and manner for distribution of the proceeds of any insurance policy required to be maintained by Tenant hereunder shall be as follows:

- (a) First to the Lenders, in order of their priority, to control, disburse or apply to any outstanding loan amounts in accordance with the terms of their respective leasehold mortgages;
- (b) Second, to pay for the cost of removal of all debris from the Commercial Parcel or adjacent and underlying property, and for the cost of any work or service required by any statute, law, ordinance, rule, regulation or order of any federal, state or local government, or any agency or official thereof, for the protection of persons or property from any risk, or for the abatement of any nuisance, created by or arising from the casualty or the damage or destruction caused thereby;
- (c) Third, to compensate Landlord for any diminution in the value (as of the date of

the damage or destruction) of the Commercial Parcel as a raw development site caused by or arising from the damage or destruction; and

(d) The remainder to Tenant.

10.5 Clean Up of Commercial Parcel. In the event Tenant terminates this Commercial Ground Lease pursuant to the provisions of Article 10 and the proceeds of any insurance policy are insufficient to pay the clean-up and other costs described in Section 10.4(b), Tenant shall have the obligation to pay the costs to clean-up the interior of the Commercial Parcel to the extent such costs are not covered by the insurance proceeds.

ARTICLE 11 CONDEMNATION

11.1 Parties' Rights and Obligations to be Governed by Agreement. If, during the term of this Commercial Ground Lease, there is any Condemnation of all or any part of the Commercial Parcel or any interest in the leasehold estate is taken by Condemnation, the rights and obligations of the parties shall be determined pursuant to this Article 11, subject to the rights of the First Mortgage Lender.

11.2 Total Taking. If the Commercial Parcel is totally taken by Condemnation, this Commercial Ground Lease shall terminate on the date the condemnor has the right to possession of the Site.

11.3 Partial Taking. If any portion of the Commercial Parcel is taken by Condemnation, this Commercial Ground Lease shall remain in effect, except that Tenant may, with First Mortgage Lender's written consent, elect to terminate this Commercial Ground Lease if, in Tenant's reasonable judgment, the remaining portion of the Improvements is rendered unsuitable for Tenant's continued use of the Commercial Parcel. If Tenant elects to terminate this Commercial Ground Lease. Tenant must exercise its right to terminate pursuant to this paragraph by giving notice to the Landlord within thirty (30) days after the Landlord notifies Tenant of the nature and the extent of the taking. If Tenant elects to terminate this Commercial Ground Lease as provided in this Section 11.3, Tenant also shall notify the Landlord of the date of termination, which date shall not be earlier than thirty (30) days nor later than six (6) months after Tenant has notified the Landlord of its election to terminate; except that this Commercial Ground Lease shall terminate on the date the condemnor has the right to possession of the Commercial Parcel if such date falls on a date before the date of termination as designated by Tenant. If Tenant does not terminate this Commercial Ground Lease within such thirty (30) day notice period, this Commercial Ground Lease shall continue in full force and effect.

11.4 Effect on Rent. If any portion of the Improvements is taken by Condemnation and this Lease remains in full force and effect, then on the date of taking the rent shall be reduced by an amount that is in the same ratio to the rent as the value of the area of the portion of the Improvements taken bears to the total value of the Improvements immediately before the date of the taking.

11.5 Restoration of Improvements. If there is a partial taking of the Improvements and this Lease remains in full force and effect pursuant to Section 11.3, Tenant may, subject to the terms of the Mortgages, use the proceeds of the taking to accomplish all necessary restoration to the Improvements, upon receipt of First Mortgage Lender's written approval.

11.6 Award and Distribution. Any compensation awarded, paid or received on a total or partial Condemnation of the Commercial Parcel or threat of Condemnation of the Commercial Parcel shall belong to and be distributed in the following order:

- (a) First, to pay the any balance due on any outstanding Mortgages in accordance with applicable loan documents and other outstanding or unpaid obligations and/or liabilities that could result in a lien on the Premises; and
- (b) Second, to Tenant.

11.7 Payment to Lenders. In the event the Improvements are subject to the lien of a Mortgage on the date when any compensation resulting from a Condemnation or threatened Condemnation is to be paid to Tenant, such award shall be disposed of as provided in the Mortgage.

ARTICLE 12 LIENS.

12.1 No Liens. Tenant will not directly or indirectly create or permit the creation of or to remain, and will immediately discharge, any mortgage, deed of trust, lien, security interest, encumbrance or charge on, pledge of or conditional sale or other title retention agreement with respect to the Premises, the Improvements thereon, or any part thereof or all or any portion of Tenant's interest therein, other than (i) this Lease and Space Subleases approved by City, (ii) liens for Impositions not yet payable, or payable without the addition of any fine, penalty, interest or cost for nonpayment, or being contested as permitted by Article 4, (iii) the Permitted Exceptions, and (iv) the Mortgages by the First Mortgage Lender, the City, and the documents securing the Affordable Housing Program (AHP) funding.

12.2 Entry. Tenant shall permit Landlord and the authorized representatives of Landlord to enter the Premises at all reasonable times (and at any time in the event of emergencies) for the purpose of (i) inspecting the same and (ii) pursuant to the provisions of Sections 6.1 and 6.2, performing any work therein that may be performed by Landlord in accordance with such Sections. Nothing herein shall imply any duty upon the part of Landlord to do any such work which under any provision of this Lease Tenant may be required to perform, nor to place upon Landlord any obligation, or liability whatsoever, for the care, supervision or repair of the Premises. During the progress of any work on the Premises pursuant to Sections 6.1 or 6.2, Landlord may keep and store therein all necessary materials, tools and equipment required for such work, which must be stored therein. Landlord shall not in any event be liable for inconvenience, loss of business or other damage to Tenant by reason of the performance of any such work on the Premises, or on account of bringing materials, supplies and equipment into or through the Premises during the course thereof.

12.3 Exhibit for Sale or Lease. Landlord has the right during normal business hours to enter the Premises (a) at any time during the Term, to exhibit the same in a reasonable manner for the purpose of selling, transferring or otherwise conveying all or any portion of its interest in the Premises; and (b) during the last eighteen (18) months of the Term, for the purpose of leasing the Premises.

12.4 Notice. Landlord agrees to give Tenant reasonable prior notice of Landlord's entering on the Premises except in an emergency.

ARTICLE 13 ASSIGNMENT, TRANSFER, SIGNIFICANT CHANGE AND SUBLEASING

13.1 Landlord's Consent Required for Transfer. Tenant, its successors and permitted assigns shall not (i) suffer or permit any Significant Change, except for a Permitted Transfer, to occur, (ii) assign any interest in this Lease either voluntarily or by operation of law, or (iii) except for a Space Sublease which is governed by Section 15.1, sublease all or any part of the Premises, or allow any other person or entity to occupy or use all or any part of the Premises, in each case, without the prior written consent of Landlord, which consent may be withheld in the sole discretion of Landlord.

13.2 Assignment Subject to Assumption of Performance Obligation. No assignment of any interest in this Lease made with Landlord's consent, or as herein otherwise permitted, will be effective until there has been delivered to Landlord, within thirty (30) days after Tenant entered into such assignment, an executed counterpart of such assignment containing an agreement, in recordable form, executed by the assignor and the proposed assignee, wherein and whereby such assignee assumes performance of the obligations on the assignor's part to be performed under this Lease to the end of the Term.

13.3 Tenant and Transferee Obligations. The consent by Landlord to an assignment hereunder is not in any way to be construed to (i) from and after the date of such assignment, relieve Tenant of any liability arising out of or with regard to the performance of any covenants or obligations to be performed by Tenant hereunder or under this Lease prior to the date of such assignment, or (ii) relieve any transferee of Tenant from its obligation to obtain the express consent in writing of Landlord to any further assignment or to any Significant Change, except for a Permitted Transfer or a Space Sublease.

13.4 Tenant Notice to Landlord of Any and All Significant Changes. Tenant must promptly notify Landlord of any and all Significant Changes. At such time or times as Landlord may reasonably request, Tenant must furnish Landlord with a statement, certified as true and correct by an officer of Tenant, setting forth all of the members of the board of directors of Tenant. Such lists, data and information must in any event be furnished to Landlord annually at the end of each Lease Year.

13.5 Landlord's Review of Proposed Transfer. At any time, Tenant may submit a request in writing to Landlord for the approval of the terms of an assignment, transfer, sublease or encumbrance of this Lease or of a Significant Change (all of the foregoing being collectively

referred to herein as a “**proposed transfer**”) or for a decision by Landlord as to whether in its opinion a proposed transfer requires Landlord consent under the provisions of this Article 13. Tenant’s request for a proposed transfer must comply with the following:

(i) any proposed transferee, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of Landlord, must expressly assume all of the obligations of Tenant under this Lease and agree to be subject to all of the conditions and restrictions to which Tenant is subject; provided, however, that the fact that any transferee of this Lease, or any other successor in interest whatsoever to this Lease, whatsoever the reason, does not assume such obligations will not relieve or except such transferee or successor of or from such obligations, conditions, or restrictions, or deprive or limit Landlord of or with respect to any rights or remedies or controls with respect to this Lease, the Premises or the construction of the Improvements unless and only to the extent otherwise specifically provided in this Lease or agreed to in writing by Landlord. It is the intent of this Lease, to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Lease, that no transfer of this Lease, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, may operate, legally or practically, to deprive or limit Landlord of or with respect to any rights or remedies or controls provided in or resulting from this Lease with respect to the Premises that Landlord would have had, had there been no such transfer or change;

(ii) all instruments and other legal documents involved in effecting transfer shall have been submitted to Landlord for review, and Landlord shall have approved such documents which approval shall not be unreasonably withheld or delayed; and Tenant shall have complied with the provisions of this Article 13.

13.6 Reserved.

13.7 Landlord's Sale or Assignment. Landlord has the right to sell and/or assign all or any portion of its interest in all or any portion of the Premises and/or this Lease, without the prior written consent of Tenant, provided, however, that no such transfer of the Premises may be effective until there is delivered to Tenant an agreement of the transferee reasonably satisfactory to Tenant expressly assuming all of Landlord's obligations hereunder with respect to those portions of the Premises so transferred, which obligations arise from and after the date of transfer. Upon delivery of such agreement, Landlord will be relieved of all obligations hereunder arising from and after the date of such transfer with respect to those portions of the Premises so transferred.

ARTICLE 14 INDEMNIFICATION OF LANDLORD

Tenant will protect, indemnify, defend, and hold Landlord and its officers, directors, employees, agents, successors, assigns and Supervisors (each, an “**Indemnified Party**”) harmless from and against any and all loss, liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorney fees and all costs, disbursements and expenses of legal counsel) imposed upon or incurred by or asserted

against any such Indemnified Party or the Premises by reason of the occurrence or existence of any of the following (except to the extent such losses, liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses arise from the gross negligence or willful misconduct of the Indemnified Party): (a) any accident, injury to or death of persons (including workers) or loss of or damage to property occurring in the Premises or any part thereof; (b) any use, possession, occupation, operation, maintenance, management or condition of the Premises or any part thereof; (c) any failure on the part of Tenant to perform or comply with any of the terms of this Lease; (d) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof; (e) any negligence on the part of Tenant or any of its agents, contractors, servants, employees, sublessees, licensees or invitees; (f) the death of or any accident, occurrence, injury, loss or damage whatsoever caused to any natural person or to the property of any persons as shall occur in or on the Premises during the Term hereof; or (g) any Hazardous Material Claims. In case any action, suit or proceeding is brought against any Indemnified Party by reason of any occurrence for which Tenant is obliged to furnish indemnity to such Indemnified Party, such Indemnified Party will notify Tenant of such action, suit or proceeding, and Tenant may, and upon the request of such Indemnified Party will, at Tenant's sole expense, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by counsel designated by Tenant and reasonably approved by such Indemnified Party in writing. Notwithstanding the foregoing, this Article 14 shall not be deemed or construed to and shall not impose any obligation to indemnify and save harmless the Indemnified Parties from any claim, loss, damage, liability or expense of any nature whatsoever, arising from or in any way related to or connected with any willful misconduct or gross negligence by an Indemnified Party.

ARTICLE 15 USE OF PREMISES; CHANGE OF USE; SURRENDER OF PREMISES

15.1 Permitted Uses. The permitted uses of the Commercial Parcel are non-residential uses for public benefit or community-serving purposes, which include a café space. All subleases of the Commercial Improvements must be approved in advance by MOHCD, which approval will not be unreasonably withheld, conditioned or delayed. Tenant may use the Commercial Parcel for other Public Benefit Use with the prior written approval of the City, which shall not be unreasonably withheld or delayed, and that are compatible with the use and operation of the Residential Project, and for no other purposes. Any other commercial uses of the Commercial Parcel are subject to City's prior written approval, in the City's sole and absolute discretion.

15.2 Prohibited Uses. Except as otherwise consented to in writing by Landlord, which consent Landlord may withhold in its sole and absolute discretion, the uses prohibited on the Premises are as follows:

(a) Prohibited Uses. No part of the Premises shall be used or operated for: (i) any use which violates any applicable zoning ordinance, (ii) any unlawful or disreputable purpose or any activity which is inappropriate for a comparable mixed-use residential complex conducted in accordance with good and generally accepted standards of operations, or (iii) any activity that exposes occupants or permittees to health or safety risks. No noxious or offensive activities shall be carried on, upon or within the Premises, nor shall anything be done or placed thereon which

may be or become a nuisance, or cause unreasonable disturbance, or hazard or annoyance to the Residential Project, or its residents.

(b) Other Prohibited Uses. Other uses not permitted under the City Codes, and any use causing excessive noise, odor or Hazardous Material in quantities that could damage the Residential Project or disrupt the residential occupants, including, but not limited to the following:

(i) any activity, or the maintaining of any object, that is not within the Permitted Use;

(ii) any activity, or the maintaining of any object, that will in any way increase the existing rate of, affect or cause a cancellation of, any fire or other insurance policy covering the Premises, any part thereof or any of its contents, or cause a substantial increase in the cost of insurance for City or the Residential Project;

(iii) any activity or object that will overload or cause damage to the Premises;

(iv) any activity that constitutes a public or private nuisance or waste, including, but not limited to, the preparation, manufacture or mixing of anything that might emit any objectionable odors, noises, or lights onto adjacent properties, or the use of loudspeakers or sound or light apparatus that can be heard or seen outside the Premises;

(v) any activity that will in any way injure, obstruct, or interfere with the rights of owners or occupants of adjacent properties, including, but not limited to, rights of ingress and egress;

(vi) any auction, distress, fire, bankruptcy or going out of business sale on the Premises without the prior written consent of the City, which consent may be granted, conditioned, or withheld in the sole and absolute discretion of the City;

(vii) any vehicle and equipment maintenance, including but not limited to, washing, fueling, changing oil, transmission or other automotive fluids;

(viii) the storage of any and all excavated materials, including but not limited to, dirt, concrete, sand, asphalt, and pipes, except to the extent necessary during construction of the Project;

(ix) the storage of any and all aggregate material, or bulk storage, such as wood or of other loose materials, except to the extent necessary during construction of the Project;

(x) the washing of any vehicles or equipment; or

(xi) bars, retail liquor sales, marijuana sales, or any other uses that cater exclusively to adults.

15.3 Compliance with Reciprocal Easement Agreement. Tenant shall at all times comply with the provisions in the REA and shall require in the Space Sublease that all Space Subtenants, if applicable, comply with the REA.

15.4 Reserved.

15.5 Purchase of Personal Property by Landlord. At the termination of this Lease, if no Event of Default exists, Landlord has the right to purchase all Personal Property, including, without limitation, all signs, furniture, furnishings, equipment and supplies, placed in or on the Premises by Tenant, except any logos, trademarks, symbols, designs or Personal Property not owned by Tenant. at a price, determined by Tenant and agreed to by Landlord, not to exceed the fair market value thereof. If at the termination of this Lease, no Event of Default exists and Landlord elects not to purchase such Personal Property, Tenant must remove all such Personal Property within sixty (60) days of the termination of this Lease. If Tenant fails to remove such Personal Property within said period of time, such Personal Property will be deemed abandoned by Tenant and become the property of Landlord.

15.6 Surrender. Tenant must surrender to Landlord the Improvements, all other leased property and renewals and replacements thereof in good order, condition and repair, normal wear and tear excepted, upon termination of this Lease. [Subject to any SNDA?], upon termination of this Lease, Landlord has the right to terminate all Space Subleases (if applicable). At the request of Landlord, Tenant must surrender the Premises to Landlord free of all Personal Property and fixtures belonging to Tenant, and in any event, Tenant must repair any damage to the Premises caused by such removal.

15.7 Temporary Cessation of Business. Temporary cessation of business by Tenant when necessary for the purpose of making alterations, repairs or restoration or by reason of such reasonable interruptions as may be incidental to the conduct of its business or the commercial and retail market will not be deemed a discontinuance of the operation of Tenant . Nothing contained in this Section limits the effect of the Force Majeure provisions herein.

ARTICLE 16 QUIET ENJOYMENT

Subject to the Permitted Exceptions, Landlord covenants and agrees that Tenant, upon observing and keeping all of the covenants, agreements and conditions of this Lease on its part to be kept, shall lawfully and quietly hold, occupy and enjoy said Premises during the Term without hindrance or molestation of anyone claiming by, through or under Landlord.

Notwithstanding the foregoing, Landlord shall have no liability to Tenant in the event of any defect in the title of Landlord whether or not such defect affects Tenant's rights of quiet enjoyment and, except as otherwise expressly provided for under the terms and provisions of this Lease, no such defect shall be grounds for a termination of this Lease by Tenant and Tenant's sole remedy shall be to obtain compensation for such event by pursuing its rights against any title insurance company or companies issuing title insurance policies to Tenant.

ARTICLE 17 EVENTS OF DEFAULT; TERMINATION

17.1 Events of Default.

The occurrence of any one or more of the following events, which event shall not have been cured as provided in this Commercial Ground Lease, shall constitute an “**Event of Default**” under the terms of this Lease (regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceedings, in law, in equity or before any administrative tribunal which has or might have the effect of preventing Tenant from complying with the terms of this Lease). Notwithstanding any provision in this Lease to the contrary, no Event of Default will be deemed to have occurred until the Mortgagees, if any, have been notified as required by Section 35.10 and the applicable period of time in which the Mortgagees may cure the Event of Default pursuant to Section 35.10 has expired without the Event of Default having been cured.

(a) Failure to Pay Ground Rent Within Certain Time Period. Tenant shall fail to pay any Ground Rent, in the manner prescribed in Section 2.1 of the Lease, when due to Landlord within five (5) days after notice thereof from Landlord.

(b) Failure to Terminate Certain Proceedings Within Certain Time Period. Subject to the provisions of Sections 28.2 and 28.3, the filing by or against Tenant of any proceedings under any state or federal insolvency or bankruptcy law, or any comparable law that is now or hereafter may be in effect, whether for liquidation or reorganization, which proceedings if filed against Tenant are not dismissed or stayed within sixty (60) days;

(c) Failure to Stop Certain Order for Relief Under Certain Conditions. Subject to the provisions of Sections 28.2 and 28.3, the entry of an order for relief against Tenant under any bankruptcy or reorganization case which order has not been stayed or dismissed within sixty (60) days;

(d) Final Appointment of a Receiver Under Certain Conditions. Subject to the provisions of Sections 28.2 and 28.3, the appointment of a receiver, trustee or custodian of all or any part of the property of Tenant which appointment with respect to Tenant is not dismissed or stayed within sixty (60) days; provided that Tenant shall have an additional thirty (30) days to achieve such dismissal or stay if Tenant commences to pursue such relief within the first sixty (60) days; and further provided, however, that the appointment of a receiver pursuant to the exercise by a Mortgagee of its rights under a Mortgage shall not be an Event of Default hereunder;

(e) Unauthorized Assignment of Certain Property. Except for a transfer by the First Mortgage Lender through foreclosure or deed in lieu of foreclosure, the assignment of all or any part of the Commercial Parcel, by Tenant without the prior written approval of Landlord;

(f) Tenant's Failure to Notify Landlord Within Certain Time Period in Filing Certain Proceedings. The failure of Tenant to give written notice to Landlord of Tenant's intention to

commence proceedings under any state or federal insolvency, bankruptcy or any comparable law that is now or hereafter may be in effect, whether for liquidation or reorganization, at least thirty (30) days prior to the commencement of such proceedings;

(g) Failure to Release Attachment Within Certain Time Period. A writ of attachment or execution is levied on this Lease which is not released within sixty (60) days;

(h) Abandonment of Premises Under Certain Conditions. Except as permitted by Article 11, the Premises are abandoned are used for purposes prohibited under this Lease, which abandonment or misuse is not cured within thirty (30) days after notice thereof from Landlord;

(i) Unauthorized Assignment of, or Changes to, this Lease Under Certain Conditions. Tenant suffers or permits an assignment of this Lease or any interest therein to occur in violation of this Lease, suffers or permits a Significant Change to occur in violation of this Lease or sublets all or any portion of the Premises in violation of this Lease, which violation is not remedied within thirty (30) days after notice thereof from Landlord;

(j) Failure to Comply With Lease Terms Under Certain Conditions. Tenant shall fail to perform or comply with any other term hereof, and such failure shall continue beyond the applicable cure period, if any, or, if none, for more than thirty (30) days after notice thereof from Landlord, or if such default cannot reasonably be cured within such thirty (30)-day period, Tenant shall not within such period commence with due diligence and dispatch the curing of such default, or having so commenced, shall thereafter cease, fail or neglect to prosecute or complete with diligence and dispatch the curing of such default.

17.2 Special Provisions Concerning Mortgagees and Events of Default. Notwithstanding anything in this Lease to the contrary, however, the exercise by a Mortgagee of any of its remedies under its Mortgage or the exercise by the City of any of its remedies under the Residential Ground Lease shall not, in and of itself, constitute a default under this Lease.

ARTICLE 18 IMPROVEMENTS

18.1 Changes to the Improvements.

(a) Changes. The City has a particular interest in the Commercial Parcel and in the nature and extent of the permitted changes to the Improvements. Accordingly, it desires to and does hereby impose the following particular controls on the Commercial Parcel and on the Improvements: during the term of this Lease, neither Tenant, nor any voluntary or involuntary successor or assign, shall make or permit any change in the Improvements, as change is hereinafter defined, unless the express prior written consent for any change shall have been requested in writing from the City and obtained, and, if obtained, upon such terms and conditions as the City may require. The City agrees not to withhold, condition or delay its response to such a request unreasonably. The City hereby approves the following additional Improvements to the Premises and expenses in connection therewith: (i) interior improvements from base building cold shell scope of work to warm shell; (ii) coordination with base building scope of work and base building architect; (iii) addition of one (1) new bathroom; (iv) addition of a warming

kitchen; (v) interior finishes and basic countertops, and cabinets suitable for a café space; and (vi) installation of electrical, data, and lighting plans as a basis for a design build contractor.

(b) Definition of Change. “Change” as used in this Article means any alteration, modification, addition and/or substitution of or to the Commercial Parcel and the Improvements which differs materially from that which existed upon the first date of this Lease, and shall include without limitation the exterior design, exterior materials and/or exterior color, and/or relocation or removal of either the control room, the transformer room, or both. For purposes of the foregoing, exterior shall mean and include the roof of the Improvements. “Change” does not include any repair, maintenance, cosmetic interior alterations (e.g., paint, carpet, installation of moveable equipment and trade fixtures, and hanging of wall art) in the normal course of operation of the Improvements, any subtenant or additional Tenant improvements to the Commercial Parcel installed for a permitted use of the Commercial Parcel, or as may be required in an emergency to protect the safety and well-being of the employees, guests and invitees of Tenant or a Space Subtenant.

(c) Enforcement. The City shall have any and all remedies in law or equity (including without limitation restraining orders, injunctions and/or specific performance), judicial or administrative, to enforce the provisions of this Article, including without limitation any threatened breach thereof or any actual breach or violation thereof.

18.2 Title to Improvements. Fee title to any Improvements shall be vested in Tenant and shall remain vested in Tenant during the term of this Lease. Subject to the rights of any Mortgagees and as further consideration for the City entering into this Commercial Ground Lease, at the expiration or earlier termination of this Commercial Ground Lease, fee title to all the Improvements shall vest in the City without further action of any party, without any obligation by the City to pay any compensation therefor to Tenant and without the necessity of a deed from Tenant to the City. Upon written request from the City, Tenants shall execute and acknowledge a quitclaim deed, in form and substance acceptable to the City, for the Improvements and deliver such quitclaim deed to the City by no later than ten (10) days of such request.

18.3 Tenant Improvements.

(a) Tenant shall be responsible, at no cost to the City, for performing any work or construction related to the Improvements not already completed, at Tenant’s expense, only by duly licensed and bonded contractors or mechanics, and subject to any conditions that City may reasonably impose. Tenant shall further be responsible, at no cost to the City, for obtaining all permits and licenses required in connection with any tenant improvements. Upon completion of any tenant improvements, Tenant shall furnish City with a copy of the final as-built plans and specifications. No approval by City of the plans, any changes thereto or of any alterations for purposes of this Lease shall be deemed to constitute approval of any federal, state or local regulatory authority with jurisdiction over the Premises or Tenant’s use hereunder, and nothing herein shall limit Tenant’s obligation to obtain all such regulatory approvals at no cost to the City.

(b) Tenant shall comply with the applicable requirements of San Francisco Administrative Code Section 23.61, as further set forth in Sections 36.8 and 36.19 below.

ARTICLE 19 REMEDIES

The provisions of this Section 19 and the exercise of Landlord's remedies are subject to the limitations on recourse set forth in Article 31.

19.1 Landlord's Remedies Generally.

(a) Landlord's Rights and Tenant's Obligations Under an Event of Default.

Upon the occurrence of an Event of Default hereunder that remains uncured, Landlord may continue this Lease in full force and effect, and this Lease shall continue in effect and Landlord shall have the right to collect, Ground Rent, Additional Ground Rent and other sums when and as they become due. If Tenant abandons the Premises in violation of this Lease, Landlord may enter the Premises and relet the Premises, or any part thereof, to third parties for Tenant's account without notice to Tenant, Tenant's rights, if any, to any such notice under any applicable law being hereby waived, and alter or install or modify the Improvements at the Premises, or any portion thereof, and Tenant shall be liable immediately to Landlord for all costs Landlord incurs in enforcing this Lease, whether or not any action or proceeding is commenced, including, without limitation, the reasonable attorney fees and all costs, disbursements and expenses of Landlord's outside counsel, expert witness fees, transcript preparation fees and costs and document copying, exhibit preparation, courier, postage, facsimile expenses, brokers' fees or commissions, the costs of removing and storing the property of Tenant, costs incurred by Landlord in connection with reletting the Premises, or any portion thereof, and altering, installing, modifying and constructing tenant improvements required for a new tenant, and the costs of restoration and of repairing and maintaining the Premises or any portion thereof. Reletting may be for a period equal to, shorter or longer than the remaining Term of this Lease.

(b) Lease May Not Terminate Without Landlord's Consent. No act by Landlord allowed by this Section 19.1 shall terminate the Lease unless Landlord notifies Tenant that Landlord elects to terminate the Lease.

(c) Lease Termination Requires Landlord To Notify Tenant. Landlord may terminate Tenant's right to possession of the Premises or this Lease or both at any time after the occurrence of an uncured Event of a Default by giving written notice of such termination, and such termination shall then occur on the date set forth in such notice. Acts of maintenance and efforts to relet the Premises shall not constitute a termination of Tenant's right to possession. No act by Landlord other than giving notice to Tenant shall terminate this Lease.

(d) Cessation of Tenant's Rights to Sublet or Assign. Upon the occurrence of an Event of Default that remains uncured, Tenant shall have no right to sublet or assign its interest in the Premises and/or this Lease without Landlord's written consent, which may be given or withheld in Landlord's sole and unfettered discretion.

(e) Landlord's Remedies Are Cumulative. The remedies given to Landlord in

this Section shall be in addition and supplemental to all other rights or remedies which Landlord may have at law or in equity.

(f) Personal Property. At the termination of this Lease, if an Event of Default exists, title to all Personal Property, except any logos, trademarks, symbols, designs or Personal Property not owned by Tenant, will vest in Landlord without any further action of any parties

19.2 Continuation of Subleases and Other Agreements.

Except as provided in Article 17, in case of default by Tenant in the performance of any of the terms, covenants or agreements herein contained on the part of Tenant to be done, observed, kept and performed and the continuance thereof for the period hereinbefore provided for, or if Landlord shall for any lawful reason or cause recover or come into possession of the Premises before the date hereinbefore fixed for the expiration of the Term hereof, Landlord shall have the right, at its sole option, to take over any and all Space Subleases of the Premises, if applicable, or any part thereof and all concessions and licenses and agreements by Tenant for the maintenance thereof or supplies thereof, and at Landlord's option to have and succeed to all the risks and privileges of said Space Subleases, or concessions, licenses or agreements, or such of them as it may elect to take over and assume, and Tenant upon any such default by Tenant or recovery of possession by Landlord hereby expressly assigns and transfers to Landlord such of the Space Subleases, or concessions, licenses and agreements as Landlord may elect to take over and assume as may exist and be in force and effect at the time of said default and recovery of possession and all deposits with Landlord pursuant thereto; and Tenant hereby further expressly covenants that, upon request of Landlord, Tenant will execute, acknowledge and deliver to Landlord such further instruments as may be necessary or desirable to vest in Landlord the then existing Space Subleases of said Premises or any part thereof and the licenses, concessions and agreements then in force, as above specified.

ARTICLE 20 LANDLORD'S EQUITABLE RELIEF

No expiration or termination of this Lease pursuant to the terms hereof or by operation of law or otherwise and no repossession of the Premises or any part thereof pursuant to the term hereof or by operation of law or otherwise, shall relieve Tenant of its liabilities and obligations hereunder arising prior to termination of this Lease, all of which shall survive such expiration, termination or repossession, including, without limitation, the rights of Landlord for indemnification for liability, personal injuries or property damage, nor shall anything in this Lease be deemed to affect the right of Landlord to equitable relief where such relief does not impose personal liability on Tenant which is inconsistent with the provisions of Article 32.

ARTICLE 21 NO WAIVER BY LANDLORD OR TENANT

No failure by Landlord or Tenant to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach thereof, and no submission by Tenant or acceptance by Landlord of full or partial Ground Rent during the continuance of any such breach shall constitute a waiver of any such breach or of any such term. No waiver of

any breach shall affect or alter this Lease, which shall continue in full force and effect, or the respective rights of Landlord or Tenant with respect to any other then existing or subsequent breach.

ARTICLE 22 DEFAULT BY LANDLORD; TENANT'S REMEDIES

22.1 Default by Landlord; Tenant's Remedies. Landlord shall be deemed to be in default hereunder if Landlord shall fail to perform or comply with any term hereof and such failure shall continue for more than the time of any cure period provided herein, or, if no cure period is provided herein, for more than thirty (30) days after written notice thereof from Tenant, or, if such default cannot reasonably be cured within such thirty (30)-day period, Landlord shall not within such period commence with due diligence and dispatch the curing of such default, or, having so commenced, shall thereafter fail or neglect to prosecute or complete with diligence and dispatch the curing of such default. Upon such default by Landlord, Tenant may exercise any remedy available at law or at equity. including, but not limited to, specific performance.

22.2 Survival of Certain Obligations. Subject to the provisions of Section 22.1, no expiration, termination or repossession of this Lease pursuant to the term hereof or by operation of law or otherwise, shall relieve Landlord of its liabilities and obligations hereunder arising prior to such expiration, termination or repossession of this Lease, all of which shall survive such expiration, termination or repossession, including, without limitation, the rights of Tenant for indemnification for liability, for personal injuries or property damage.

ARTICLE 23 ACCEPTANCE OF SURRENDER

No modification, termination or surrender of this Lease or surrender of the Premises or any part thereof or of any interest therein by Tenant shall be valid or effective unless agreed to and accepted in writing by Landlord and Mortgagee, and no act by any representative or agent of Landlord, other than such a written agreement and acceptance by Landlord, shall constitute an acceptance thereof.

ARTICLE 24 NO MERGER OF TITLE

There shall be no merger of the leasehold estate created by this Lease with the fee estate in the Premises by reason of the fact that the same person may own or hold (a) the leasehold estate created by this Lease or any interest in such leasehold estate, and (b) any interest in such fee estate; and no such merger shall occur unless and until all persons having any interest in (i) the leasehold estate created by this Lease and (ii) the fee estate in the Premises shall join in and record a written instrument effecting such merger.

ARTICLE 25 END OF LEASE TERM

Upon the expiration or other termination of the Term, Tenant shall quit and surrender to Landlord the Premises in good order, condition and repair, reasonable wear and tear excepted to the extent the same is consistent with maintenance of the Premises in good order, condition and repair. Tenant hereby agrees to execute all documents as Landlord may deem necessary to evidence such termination of this Lease. Any holding over by Tenant after the expiration or termination of this Lease shall not constitute renewal hereof or give Tenant any rights hereunder or in the Premises, except with the prior written consent of Landlord, and Tenant shall be a Tenant at sufferance hereunder. Ground Rent during such periods of holding over shall be at the rate of one hundred and fifty percent (150%) of all Ground Rent, which Ground Rent (shall be computed on an actual basis) shall be computed on the basis of the average monthly amount thereof accruing during the immediately preceding nine-quarter period.

ARTICLE 26 PROVISIONS SUBJECT TO APPLICABLE LAW

All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Lease invalid, unenforceable or not entitled to be recorded under any applicable law.

ARTICLE 27 CUMULATIVE REMEDIES; NO WAIVER

Subject to the provisions of Article 31, the specific remedies to which Landlord may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which they may be lawfully entitled. The failure of Landlord to insist in anyone or more cases upon the strict performance of any of the covenants of this Lease, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenant or option. A receipt by Landlord for Ground Rent with knowledge of the breach of any covenant hereto' shall not be deemed a waiver of such breach, and no waiver, change, modification or discharge by either party hereto of any provision in this Lease shall be deemed to have been made or shall be effective unless expressed in writing and signed by both Landlord and Tenant. Subject to the provisions of Articles 31 and 32, in addition to the other remedies in this Lease provided, Landlord and Tenant shall be entitled to the restraint by injunction of the violation, or threatened violation, of any of the covenants, conditions, or provisions of this Lease, or to a decree compelling performance of any of such covenants, conditions or provisions.

ARTICLE 28 NOTICES

28.1 Notices.

All notices, demands, consents, and requests which may or are to be given by any party to the other shall be in writing. All notices, demands, consents and requests to be provided hereunder shall be deemed to have been properly given on the date sent if served personally on a day that is a business day, or, if mailed, on the date that is three days after the date when sent in

the United States registered or certified mail, return receipt requested, postage prepaid, in either case, addressed as follows:

If to Tenant:

Broadway Davis Retail Associates, LLC
c/o BRIDGE Infill Development, Inc.
350 California Street, Suite 1600
San Francisco, CA 94104

With copy to:

Broadway Davis Retail Associates, LLC
c/o JSCo Broadway Davis Community Associates, LLC
1388 Sutter Street, 11th Floor
San Francisco, CA 94109
Attn: Chairman of the Board

If to Landlord:

City and County of San Francisco
Mayor's Office of Housing and Community Development
1 South Van Ness Avenue, 5th Floor
San Francisco, California 94103
Attention: Executive Director

or at such other place or places in the United States as each such party may from time to time designate by written notice to the other.

28.2 Form and Effect of Notice.

Every notice given to a party or other person under this Section must state (or must be accompanied by a cover letter that states):

- (a) the Section of this Lease pursuant to which the notice is given and the action or response required, if any;
- (b) if applicable, the period of time within which the recipient of the notice must respond thereto; and
- (c) if applicable, that the failure to object to the notice within a stated time period will be deemed to be the equivalent of the recipient's approval of or consent to the subject matter of the notice.

In no event shall a recipient's approval of or consent to the subject matter of a notice be deemed to have been given by its failure to object thereto if such notice (or the accompanying cover letter) did not fully comply with the requirements of Subsection 28.2(a) and (b). The

effectiveness of notices sent by Landlord to Tenant shall not be invalidated or impaired by a failure of Landlord to send copies of notices to any person or entity other than Tenant.

28.3 Time of Performance.

Except as provided herein, all performance (including cure) dates expire at 5:00 p.m. Pacific Standard/Daylight Savings Time on the performance or cure date. Provisions in this Lease relating to number of days will be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action is not a Business Day, then the last day for undertaking the action or giving or replying to the notice will be the next succeeding Business Day. Time is of the essence in the performance of all the terms and conditions in this Lease.

ARTICLE 29 SEVERABILITY

If any term or provision of this Lease or application thereof to any party, parties, person or circumstances is found to be invalid or unenforceable to any extent, the remainder of this Lease and its application to parties, persons or circumstances other than those as to which it is held invalid or unenforceable will not be affected, and each term and provision of this Lease will be valid and enforceable to the fullest extent permitted by law.

ARTICLE 30 SUCCESSORS AND ASSIGNS BOUND; GOVERNING LAW

30.1 Successors and Assigns Bound.

This Lease shall be binding upon and inure to the benefit of the successors and assigns of the City and Tenant and where the term "Tenant" or "City" is used in this Lease, it shall mean and include their respective successors and assigns; provided, however, that the City shall have no obligation under this Lease to, nor shall any benefit of this Lease accrue to, any unapproved successor or assign of Tenant where City approval of a successor or assign is required by this Lease.

30.2 Governing Law.

This Lease shall be construed and enforced in accordance with the laws of the State of California and the City's Charter and Municipal Codes.

ARTICLE 31 LANDLORD'S RECOURSE AGAINST TENANT

Landlord may recover from Tenant, but not from any officer, member, director, employee, representative or attorney, past, present or future of Tenant, and/or any Mortgagee that has acquired Tenant's interest in this Lease and/or the Premises at a foreclosure sale or by deed in lieu of foreclosure of the Mortgage held by such Mortgagee and/or any successor to

Tenant and any such Mortgagee, only those damages that arise out of or in connection with (i) any Impositions not paid by Tenant; (ii) the amount of any insurance premiums paid for by Landlord pursuant to this Lease; (iii) the application of any insurance or Condemnation proceeds in a manner inconsistent with or contrary to the provisions of this Lease, except as applied as required by any Mortgage; (iv) the cost of razing any Improvements Tenant fails to raze in accordance with the terms of this Lease; (v) any damages suffered by Landlord as the result of the breach by Tenant of the covenants contained in this Lease, whether or not any action or proceeding is commenced, including, without limitation, reasonable attorney fees and all costs, disbursements and expenses of Landlord's outside counsel, expert witness fees, transcript preparation fees and costs and document copying, exhibit preparation, courier, postage, and facsimile expenses; (vi) any expenses in enforcing the limited recourse provisions of this Article 31, whether or not any action or proceeding is commenced, including, without limitation, reasonable attorney fees and all costs, disbursements and expenses of Landlord's outside counsel, expert witness fees, transcript preparation fees and costs and document copying, exhibit preparation, courier, postage, and facsimile expenses; (vii) the portion of any amounts paid to Tenant for the period ending on the date of termination of this Lease which Tenant is required to pay Landlord as Ground Rent under this Lease; and (viii) waste committed or permitted by Tenant.

ARTICLE 32 RECOURSE AGAINST LANDLORD

32.1 No Recourse to Other Persons.

Tenant agrees that it will have no recourse with respect to any obligation of Landlord under this Lease, or for any claim based upon this Lease or otherwise, against any officer, director, employee, Supervisors, representative or attorney, past, present or future, of Landlord, or against any person other than Landlord, or against Landlord except to the extent of the value of Landlord's interest in the Premises, whether by virtue of any constitution, statute, rule of law, rule of equity, enforcement of any assessment as penalty, or by reason of any matter prior to the execution and delivery of this Lease, or otherwise. By Tenant's execution and delivery hereof and as part of the consideration for Landlord's obligations hereunder all such liability is expressly waived.

32.2 Limitation on Landlord's Liability.

In the event of any transfer of Landlord's interest in and to the Premises, Landlord, subject to the provisions hereof, (and in case of any subsequent transfers, the then transferor) will automatically be relieved from and after the date of such transfer of all liability with regard to the performance of any covenants or obligations on the part of Landlord (or such transferor, as the case may be) contained in this Lease thereafter to be performed, but not from liability incurred by Landlord (or such transferor, as the case may be) on account of covenants or obligations to be performed by Landlord (or such transferor, as the case may be) hereunder prior to the date of such transfer; provided, however, that (a) any funds in Landlord's possession (or in the possession of the then transferor at the time of such transfer) in which Tenant has an interest must be turned over to the transferee, in trust, for application pursuant to the provisions hereof

and such transferee shall assume all liability for all such funds so received by such transferee from Landlord and (b) any amount then due and payable to Tenant by Landlord or the then transferor under any provisions of this Lease must be paid to Tenant.

ARTICLE 33 TENANT TO FURNISH AND EQUIP THE IMPROVEMENTS

33.1 Tenant to Furnish and Equip the Improvements.

Tenant covenants and agrees to furnish and equip the Improvements with all fixtures, furniture, furnishings, equipment, machinery, supplies and other personalty of a quantity and quality necessary to operate the Premises in accordance with the provisions of this Lease.

33.2 Landlord's Lien.

If Landlord elects such lien, Tenant hereby grants to Landlord a lien in all of its Personal Property, and all products and proceeds thereof, as security for the payment and performance of Tenant's obligations hereunder, and agrees to execute a financing statement evidencing such lien to secure the performance by Tenant of all of its (or their) obligations under this Lease; provided, however, that the foregoing lien shall be subject and subordinate to any lien made in favor of a Mortgagee; upon the request of any such Mortgagee, Landlord shall execute a subordination agreement in form and substance reasonably satisfactory to such Mortgagee and to Landlord. Landlord hereby agrees to subordinate its lien in all Personal Property to any purchase money lien in any Personal Property (such subordination shall be self-operative; however, in confirmation thereof, upon the request of each such lienor in Tenant's Personal Property, Landlord shall execute a subordination agreement in form and substance reasonably satisfactory to such lienor and to Landlord). If any of such Personal Property is leased from third parties, Tenant agrees to collaterally assign its leasehold interest to Landlord upon terms and conditions and pursuant to an assignment acceptable in form and substance to Landlord to secure the performance by Tenant of all of its obligations under this Lease. Tenant shall execute from time to time such additional documents as may be necessary to effectuate and evidence such assignments if requested to do so by Landlord. Upon the occurrence of an Event of Default on the part of Tenant, Landlord shall have the immediate right of possession of all of the Personal Property and the right to assume the leasehold interest of Tenant in such Personal Property, subject to the interest of the lien of any Mortgagee.

ARTICLE 34 NO JOINT VENTURE

Nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between Landlord and Tenant or between Landlord and any other party, or cause Tenant to be responsible in any way for the debts or obligations of Landlord, except as otherwise provided to the contrary herein, or cause Landlord to be responsible in any way for the debts or obligations of Tenant or any other party.

ARTICLE 35 MORTGAGE OF LEASEHOLD

35.1 No Mortgage Except as Set Forth Herein. Except as permitted in this Article 35 or as consented to by Landlord, Tenant shall not:

(a) No Mortgages, Except as Permitted. Engage in any financing or other transaction creating any mortgage or deed of trust upon the Premises or upon Tenant's leasehold estate therein; or

(b) No Liens/Encumbrances Except as Permitted. Place or suffer to be placed upon the Premises or Tenant's leasehold estate therein any lien or other encumbrances (other than as permitted by this Lease). Any such mortgage, encumbrance or lien not permitted by this Article 35 shall be deemed to be a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

35.2 Leasehold Liens.

(a) Tenant Remains Liable to pay Ground Rent. At any time and from time to time during the Term, Tenant may assign or encumber the estate created by this Lease by way of leasehold mortgages or other security instruments of any kind to the extent permitted hereby; provided, however, that notwithstanding any foreclosure thereof, Tenant shall remain liable for the payment of Ground Rent and other sums payable hereunder to the extent provided in this Lease.

(b) No Greater Rights to Mortgagees, Except as Granted. With the exception of the rights expressly granted to Mortgagees in this Lease, the execution and delivery of a Mortgage shall not give or be deemed to give a Mortgagee any greater rights than those granted to Tenant hereunder.

(c) Rights Apply to no More Than two Mortgagees. Notwithstanding anything to the contrary set forth herein, any rights given hereunder to Mortgagees shall not apply to more than three (3) Mortgagees at any one time. Once a Mortgagee is designated by Tenant, Tenant shall not designate different or additional Mortgagees without the written consent of the Mortgagees first designated. In the event that at any time there are more than three (3) Mortgagees, Tenant shall notify Landlord in writing of the Mortgagee to which such rights should apply.

35.3 Notice of Liens. Tenant shall notify Landlord promptly upon becoming aware of any lien or encumbrance of which Tenant has knowledge and which has been recorded against or attached to the Premises or Tenant's leasehold estate hereunder after the date of this Lease whether by act of Tenant or otherwise, other than Mortgages expressly permitted hereunder or consented to by Landlord.

35.4 Purpose of Mortgage.

(a) During Term. During the Term, a Mortgage can be made for any purpose.

(b) Landlord Statement Permitting Security Instruments. Landlord agrees within thirty (30) days after request by Tenant to give to any holder or proposed holder of a mortgage, deed of trust, sale and leaseback or other form of conveyance a statement in recordable form as to whether such mortgage, deed of trust, sale and leaseback or other form of conveyance is permitted hereunder to secure all of the advances and indebtedness stated by the terms of the applicable financing documents. Except as set forth in such statement, such a statement shall estop Landlord from asserting that such mortgage, deed of trust, sale and leaseback or other form of conveyance is not permitted hereunder, but shall create no liability on Landlord, and, if the same states that such conveyance is not permitted, shall set forth the reasons therefor in reasonable detail. In making a request for such statement, Tenant shall furnish Landlord copies of such financing documents as are required to permit Landlord to make the determination whether such conveyance is permitted hereby. In no event, however, shall any failure by Tenant or other party to comply with the terms of any Mortgage, including without limitation the use of any proceeds of any debt, the repayment of which secured by a Mortgage, be deemed to invalidate the lien of a Mortgage.

(c) Mortgagee Not Obligated to Construct. A Mortgagee, including the successors, assigns or designees of the Holder, is not obligated to complete any construction of the Improvements or to guarantee such completion; and no covenant or any other provision of this Lease may be construed to obligate the Mortgagee or its successors, assigns or designees. However, if a Mortgagee undertakes to complete or guarantee the completion of the construction of the Improvements, nothing in this Lease will be deemed or construed to permit or authorize a Mortgagee or its successors, assigns or designees to devote the Commercial Parcel or any portion thereof to any uses, or to construct any Improvements on the Commercial Parcel, other than those uses or Improvements authorized under Section 15.1 and any reasonable modifications in plans proposed by a Mortgagee or its successors in interest proposed for the viability of the Commercial Project approved by the City in its reasonable discretion. To the extent any Mortgagee or its successors in interest wish to change such uses or construct different improvements, Mortgagee or its successors in interest must obtain the advance written consent of the City.

(d) Failure of Mortgagee to Complete Construction. In any case where six (6) months after assumption of obligations under Section 35.4(c) above, a Mortgagee, having first exercised its option to complete the construction, has not proceeded diligently with completion of the construction, the City will have all the rights against the Mortgagee it would otherwise have against Tenant under this Lease for events or failures occurring after

35.5 Interest Covered by Mortgage.

A Mortgage recorded for the Commercial Parcel shall cover no interest in any real property other than (a) Tenant's leasehold interest in the Commercial Parcel and fee interest in the Improvements thereon or some portion thereof, (b) any subleases thereon, if applicable, (c) any Personal Property of Tenant, (d) Tenant's interest, and (e) real property interests of Tenant directly related to Tenant's interest in or use of the foregoing interests described in clauses (a)-(d), unless expressly approved by Landlord.

35.6 Institutional Lender; Other Permitted Mortgagees. A Mortgage may be given only to a lender which shall have been approved in writing by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed.

35.7 Rights Subject to Lease.

(a) Rights Acquired by a Mortgagee. All rights acquired by a Mortgagee under any Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights of Landlord hereunder, none of which covenants, conditions and restrictions is or shall be waived by Landlord by reason of the giving of such Mortgage.

(b) Mortgagee's Rights to Prevent Termination. Subject to the terms and conditions of Section 35.10 below, each Mortgagee has the right, but not the obligation, at any time before termination of this Lease and without payment of any penalty other than the interest on unpaid rent, to pay all of the rents due under this Lease, to effect any insurance, to pay any taxes and assessments, to make any repairs and improvements, to do any other act or thing required of Tenant or necessary and proper to be done in the performance and observance of the agreements, covenants, and conditions of this Lease to prevent a termination of this Lease to the same effect as if the same had been made, done, and performed by Tenant instead of by Mortgagee.

35.8 Required Provisions of any Mortgage. Except for the First Mortgage Lender, Tenant agrees to have any Mortgage provide the following:

(a) That the Mortgagee shall by registered or certified mail give written notice to Landlord of the occurrence of any event of default under the Mortgage;

(b) That Landlord shall be given notice at the time any Mortgagee initiates any foreclosure action. It shall not be deemed a breach of this Lease if Landlord acknowledges compliance with this Section 35.8 in a separate agreement entered into with a Mortgagee.

(c) In the event of a default or breach by Tenant under any Mortgage, and Tenant's failure to timely commence or diligently prosecute cure of such default or breach, Landlord may, at its option, cure such breach or default during the one hundred ten (110) days after the date that the Mortgagee files a notice of default. In such event, Landlord will be entitled to reimbursement from Tenant of all costs and expenses reasonably incurred by the City in curing the default or breach. Landlord will also be entitled to a lien upon the leasehold estate or any portion thereof to the extent such costs and disbursements are not reimbursed by Tenant. Any such lien will be subject to the lien of any then-existing Mortgage authorized by this Lease, including any lien contemplated because of advances yet to be made. After ninety (90) days following the date of Mortgage filing a notice of default and expiration of all applicable cure periods of Tenant under the terms of the applicable Mortgage, the City will also have the right to assign Tenant's interest in the Lease to another entity, subject to all Mortgagees' (if any) written consent, and which consent may be conditioned, among other things, upon the assumption by such other entity of all obligations of Tenant under the Mortgage and the assignee meeting all reasonable underwriting standards of the Mortgage.

35.9 Notices to Mortgagee.

(a) Landlord's Notice to Mortgagee about Tenant's Default. If Tenant shall have granted any Mortgage and if the Mortgagee thereunder shall have given to Landlord written notice substantially in the form provided in Subsection (b), Landlord shall give to Mortgagee a copy of any and all notices of default or of the occurrence of an Event of Default from time to time given to Tenant by Landlord at the same time as and whenever any such notice shall be given by Landlord to Tenant, addressed to such Mortgagee at the address last furnished to Landlord. Landlord shall acknowledge in writing its receipt of the name and address of a Mortgagee so delivered to Landlord. No such notice by Landlord shall be deemed to have been given to Tenant unless and until a copy thereof shall have been so given to Mortgagee. Any such notices to Mortgagee shall be given in the same manner as provided in Section 28.2.

(b) Mortgagee's Notice Requesting Landlord to Notify Mortgagee. The Mortgagee under any Mortgage shall be entitled to receive notices from time to time given to Tenant by Landlord under this Lease in accordance with Subsection (a) above provided such Mortgagee shall have delivered a notice to Landlord in substantially the following form:

The undersigned does hereby certify that it is a Mortgagee, as such term is defined in that certain Lease entered into by and between the City and County of San Francisco, as Landlord, and Broadway Davis Retail Associates, LLC, as Tenant (“**Lease**”), of Tenant's interest in this Lease demising the Commercial Parcel. The undersigned hereby requests that copies of any and all notices from time to time given under this Lease to Tenant by Landlord be sent to the undersigned at the following address:

35.10 Mortgagee's Right to Cure. If Tenant, or Tenant's successors or assigns, shall mortgage this Lease in compliance with the provisions of this Section 35, then, so long as any such Mortgage shall remain unsatisfied of record, the following provisions shall apply, and Landlord may not terminate this Lease or enforce any of its remedies hereunder so long as any Mortgagee has a right to cure the applicable default of Tenant:

(a) Periods for Mortgagee to Cure Tenant's Default. In the case of any notice of default given by Landlord to Tenant and Mortgagee in accordance with this Lease, the Mortgagee shall have the same concurrent cure periods as are given Tenant under this Lease for remedying a default or causing it to be remedied, plus, in each case, an additional period of (30) days after the later to occur of (i) the expiration of such cure period provided Landlord has delivered timely notice to the Mortgagee in accordance with this Lease, or (ii) the date that Landlord has served a notice of default upon Mortgagee provided Mortgagee shall have the entirety of the applicable initial cure period available to it in addition to the stated thirty (30) day period, and Landlord shall accept such performance by or at the instance of the Mortgagee as if the same had been made by Tenant; provided, however, if such default cannot reasonably be cured or remedied within such additional thirty (30) period, such cure period shall be extended (and no Event of Default shall be deemed to have occurred under this Lease) in Landlord's reasonable discretion so long as the Mortgagee commences the cure or remedy within such period, and prosecutes the completion thereof with diligence and dispatch, subject to Force Majeure and delays caused by bankruptcy or insolvency proceedings.

(b) Instances When Landlord Would Forebear From Taking Action on Tenant's Default. Anything herein contained to the contrary notwithstanding, upon the occurrence of an Event of Default, other than an Event of Default due to a default in the payment of money or other default reasonably susceptible of being cured prior to Mortgagee obtaining possession (each of which shall be subject to the cure provision set forth in Section 35.10(a) above), Landlord shall take no action to effect a termination of this Lease if, prior to the expiration of the cure provision set forth in Section 35.10(a), including any extension granted by Landlord, a Mortgagee shall have (x) obtained possession of the Premises (including possession by a receiver), or (y) commenced foreclosure proceedings or otherwise acquire Tenant's interest under this Lease, and thereafter promptly prosecutes and completes such proceedings with diligence and dispatch (subject to Force Majeure and delays caused by bankruptcy or insolvency proceedings). A Mortgagee, upon acquiring Tenant's interest under this Lease, shall be required promptly to cure all other defaults for which the Mortgagee has received notice pursuant to Section 35.10 then reasonably susceptible of being cured by such Mortgagee. The foregoing provisions of this Subsection (b) are subject to the following: (i) no Mortgagee shall be obligated to continue possession or to continue foreclosure proceedings after the defaults or Events of Default hereunder referred to shall have been cured; (ii) nothing herein contained shall preclude Landlord, subject to the provisions of this Section, from exercising any rights or remedies under this Lease (other than a termination of this Lease to the extent otherwise permitted hereunder) with respect to any other Event of Default by Tenant during the pendency of such foreclosure proceedings; and (iii) such Mortgagee shall agree with Landlord in writing to comply during the period Landlord forbears from terminating this Lease with such of the terms, conditions and covenants of this Lease as are reasonably susceptible of being complied with by such Mortgagee prior to obtaining possession of the Premises. Notwithstanding anything to the contrary, including an agreement by Mortgagee given under clause (iii) of the preceding sentence, Mortgagee shall have the right at any time to notify Landlord that it has relinquished possession of the Premises or that it will not institute foreclosure proceedings or, if such foreclosure proceedings have commenced, that it has discontinued them, and, in such event, the Mortgagee shall have no further liability under such agreement from and after the date it delivers such notice to Landlord, and, thereupon, Landlord shall be entitled to seek the termination of this Lease as otherwise herein provided. Upon any such termination, the provisions of Section 35.10(d) shall apply. Notwithstanding anything to the contrary contained herein, in no event shall the First Mortgage Lender be required, as a condition to preventing the termination of this Lease, or obtaining a new ground lease hereunder, to (A) cure any default by Tenant under Section 35.8(c) of this Lease, or (B) the cure any default by Tenant in the payment of any amounts payable by Tenant under any indemnification provisions of this Lease, and upon completion of a foreclosure (or deed in lieu thereof), all such defaults shall automatically be deemed cured and waived.

(c) Court Action Preventing Foreclosure. If a Mortgagee is prohibited by any process or injunction issued by any court or because of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature of foreclosure, the times specified in Sections 35.10(a) and 35.10(b) above for commencing or prosecuting such foreclosure or other proceedings will be extended for the period of such prohibition. If this Lease is terminated or

rejected by Tenant in bankruptcy, then Landlord agrees to enter into a new ground lease with the Lender (or its designee) as set forth in Section 35.10(d) below.

(d) Landlord's Notice to Mortgagee Upon Lease Termination and Mortgagee's Option. In the event of the termination of this Lease prior to the expiration of the Term, except (i) by eminent domain, or (ii) as the result of damage or destruction as provided in Article 10, Landlord shall serve upon the Mortgagee written notice that this Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Landlord. The Mortgagee shall thereupon have the option to obtain a new Lease in accordance with land upon the following terms and conditions:

(i) Upon the written request of the Mortgagee, within thirty (30) days after service of such notice that this Lease has been terminated, Landlord shall enter into a new lease of the Premises with the most senior Mortgagee giving notice within such period;

(ii) If there is more than one Mortgagee, Landlord will offer the new lease to each Mortgagee in the order of priority until accepted; and

(iii) Such new Lease shall be entered into at the reasonable cost of the Mortgagee thereunder, shall be effective as of the date of termination of this Lease, and shall be for the remainder of the Term and at the Ground Rent and upon all the agreements, terms, covenants and conditions hereof, including any applicable rights of renewal or extension. Such new Lease shall require the Mortgagee to perform any unfulfilled obligation of Tenant under this Lease which is reasonably susceptible of being performed by such Mortgagee other than obligations of Tenant with respect to construction of the Improvements, which obligations shall be performed by Mortgagee in accordance with this Lease. Upon the execution of such new Lease, the Mortgagee shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for such termination, and shall pay all expenses, including reasonable counsel fees, court costs and disbursements incurred by Landlord in connection with such defaults and termination, the recovery of possession of the Premises, and the preparation, execution and delivery of such new Lease. Upon the execution of such new Lease, Landlord shall allow the Mortgagee, and such Mortgagee shall be entitled to, an adjustment in Ground Rent in an amount equal to the net income derived by Landlord from the Premises during the period from the date of termination of this Lease to the date of execution of such new Lease.

(e) Exercise of Mortgagee's Rights. Any rights of a Mortgagee under this Section, as amended hereby, may be exercised by or through its nominee or designee other than Tenant; provided, however, that no Mortgagee shall acquire title to this Lease through a nominee or designee which is not a person otherwise permitted to become Tenant hereunder; provided, further that a Mortgagee may acquire title to this Lease through a wholly owned (directly or indirectly) subsidiary of Mortgagee.

(f) Automatic Transfer of Tenant's Rights Under Subleases. If applicable, effective upon the commencement of the term of any new Lease executed pursuant to Section 35.10(d), all subleases then in effect shall be assigned and transferred without recourse by Landlord to

Mortgagee and all monies on deposit with Landlord which Tenant would have been entitled to use but for the termination or expiration of this Lease may be used by Mortgagee for the purposes of and in accordance with the provisions of such new lease. Between the date of termination of this Lease and the later of (1) the expiration of the election period for Mortgagee to elect to execute a new Lease or (2) if so elected by the Mortgagee, the commencement of the term of the new lease, Landlord shall not (i) enter into any new subleases, management agreements or agreements for the maintenance of the Premises or the supplies therefor which would be binding upon Mortgagee if Mortgagee enters into a new lease, (ii) cancel or materially modify any of the existing subleases, management agreements or agreements for the maintenance of the Premises or the supplies therefor, or (iii) accept any cancellation, termination or surrender thereof without the written consent of Mortgagee, which consent shall not be unreasonably withheld or delayed. Effective upon the commencement of the term of the new lease, Landlord shall also transfer to Mortgagee, its designee or nominee (other than Tenant), without recourse, all Personal Property.

(g) Benefits Inure to Mortgagee Holder. Anything herein contained to the contrary notwithstanding, the provisions of this Section shall inure only to the benefit of the holders of the Mortgages which are permitted hereunder.

(h) Mortgagee's Written Consent Required for Material Revisions to this Lease. No agreement between Landlord and Tenant materially amending, terminating or surrendering this Lease, or election by Tenant not to continue this Lease as provided for herein, shall be valid or effective without Mortgagee's written consent.

(i) No Merger of Landlord and Tenant's Interests in this Lease Without Mortgagee's Consent. No union of the interests of Landlord and Tenant herein shall result in a merger of this Lease in the fee interest, so long as any Mortgage shall be unsatisfied, without Mortgagee's written consent.

(j) Mortgagee not Liable without Ownership of Leasehold Interest. Anything herein contained to the contrary notwithstanding, no Mortgagee, or its designee or nominee, shall become liable under the provisions of this Lease unless and until such time as it becomes, and then only for so long as it remains, the owner of this leasehold estate created hereby.

(k) Instances of When Mortgagee is Not Obligated to Cure an Event of Default. Except as provided herein, a Mortgagee, and its designee or nominee (other than Tenant), shall have no obligation to cure any Event of Default by Tenant under this Lease.

35.11 Assignment by Mortgagee. If a Mortgagee or a purchaser at a foreclosure sale shall acquire Tenant's interest in this Lease as a result of a sale under said Mortgage pursuant to a power of sale contained therein, pursuant to a judgment of foreclosure, through any transfer in lieu of foreclosure, or through settlement of or arising out of any pending or contemplated foreclosure, bankruptcy or insolvency action, or in the event a Mortgagee becomes Tenant under this Lease or any new Lease obtained pursuant to the terms hereof, such Mortgagee's or purchaser's right thereafter to assign or transfer this Lease or such new Lease shall be subject to the restrictions of Article 15. In the event Mortgagee subsequently assigns or transfers its interest

under this Lease after acquiring the same by foreclosure or deed in lieu of foreclosure or subsequently assigns or transfers its interest under any new lease obtained pursuant to the terms thereof, and in connection with any such assignment or transfer, Mortgagee takes back a mortgage or deed of trust encumbering such leasehold interest to secure a portion of the purchase price given to Mortgagee for such assignment or transfer, then such mortgage or deed of trust shall be considered a Mortgage, and Mortgagee shall be entitled to receive the benefit and enforce the provisions of this Article and any other provisions of this Lease intended for the benefit of the holder of a Mortgage.

35.12 Preservation of Leasehold Benefits. Until such time as a Mortgagee notifies Landlord in writing that the obligations of Tenant under its Mortgage have been satisfied, the City agrees:

(i) That subject to Section 17.1 the City shall not voluntarily cancel or surrender this Lease, or accept a voluntary cancellation or surrender of this Lease by Tenant, or amend this Lease to materially increase the obligations of Tenant or the rights of Landlord under this Lease, without the prior written consent of the Mortgagee (which may not be unreasonably withheld or delayed);

(ii) That Landlord shall not enforce against a Mortgagee any waiver or election made by Tenant under this Lease that has a material adverse effect on the value of the leasehold estate without the prior written consent of the Mortgagee (which will not be unreasonably withheld or delayed); and

(iii) That Landlord shall provide reasonable prior notice to each Mortgagee of any proceedings for adjustment or adjudication of any insurance or condemnation claim involving the Premises and will permit each Mortgagee to participate in the proceedings as an interested party.

ARTICLE 36 CITY REQUIREMENTS

36.1 Nondiscrimination.

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

(b) Others Bound by the Nondiscrimination Provisions. Any transferee, successor, assign, or holder of any interest in this Lease or the Premises, or any occupant or user thereof, whether by contract, lease, rental, sublease, license, deed or mortgage or otherwise, and whether or not any written instrument or oral agreement contains the foregoing prohibitions against

discrimination, will be bound hereby and shall not violate in whole or part, directly or indirectly, these nondiscrimination requirements. 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) **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 12B.2 of the Administrative Code.

(d) **CMD Form.** As a condition to this Lease, Tenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division, to the extent applicable. Tenant hereby represents that prior to execution of this Lease, (i) Tenant executed and submitted to the CMD Form CMD-12B-101 with supporting documentation, and (ii) the CMD 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 Fifty Dollars (\$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.

36.2 **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.

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

36.4 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 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.

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

If Tenant or Tenant’s contractor will apply pesticides to outdoor areas at the Premises, Tenant must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation (“**CDPR**”) and any such pesticide application shall be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. City’s current Reduced Risk Pesticide List and additional details about pest management

on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

36.6 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.

36.7 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 Section 87100 et seq. and Section 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 provisions, and agrees that if Tenant becomes aware of any such fact during the term of this Lease Tenant shall immediately notify the City. Tenant further certifies that it has made a complete disclosure to the City of all facts bearing on any possible interests, direct or indirect, that Tenant believes any officer or employee of the City presently has or will have in this Commercial Ground Lease or in the performance thereof or in any portion of the profits thereof. Willful failure by Tenant to make such disclosure, if any, will constitute grounds for City's termination and cancellation of this Commercial Ground Lease.

36.8 Prevailing Wage and Working Conditions.

(a) Any undefined, initially-capitalized term used in this Section has the meaning given to that term in San Francisco Administrative Code Section 23.61. To the extent applicable, Tenant will require its Contractors and Subcontractors performing (i) labor in connection with a "public work" as defined under California Labor Code Section 1720 *et seq.* (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction, at the Premises to (A) pay workers performing that work not less than the 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 will cooperate with City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements.

(b) To the extent applicable, Tenant will include, and will require its subtenants, and Contractors and Subcontractors (regardless of tier), to include in any Construction Contract the Prevailing Wage Requirements, with specific reference to San Francisco Administrative Code Section 23.61, and the agreement to cooperate in City enforcement actions. Each Construction Contract will 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 will constitute a material breach of this Lease. A Contractor's or Subcontractor's failure to comply with this Section will enable City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party. For the current Prevailing Rate of Wages, see www.sfgov.org/olse or call City's Office of Labor Standards Enforcement at 415-554-6235.

36.9 Prohibition of Tobacco Sales and Advertising. Tenant acknowledges and agrees that no advertising or sale 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 (a) communicate the health hazards of cigarettes and tobacco products, or (b) encourage people not to smoke or to stop smoking. In addition, Tenant acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as those capitalized terms are defined in Health Code Section 19K.1) is allowed on the Premises and such prohibition must be included in all subleases or other agreements allowing use of the Premises. The prohibition against Sales, Manufacture, or Distribution of Tobacco Products does not apply to persons who are affiliated with an accredited academic institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part of academic research.

36.10 Prohibition of Alcoholic Beverage Advertising. Except for a restaurant use, Tenant acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Premises. For purposes of this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product.

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

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

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

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

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

(e) Tenant shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Tenant's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

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

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

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

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

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

(k) If Tenant is exempt from the HCAO when this Lease is executed because its amount is less than Fifty Thousand Dollars (\$50,000), but Tenant later enters into an agreement or agreements that cause Tenant's aggregate amount of all agreements with City to reach

Seventy-Five Thousand Dollars (\$75,000), all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Tenant and the Contracting Department to be equal to or greater than Seventy-Five Thousand Dollars (\$75,000) in the fiscal year.

36.12 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.

36.13 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. This provision does not preclude Tenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term “saltwater immersion” shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

36.14 Resource Efficient City Buildings. Tenant acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 713 relating to green building requirements for the design, construction, and operation of buildings owned or leased by City. Tenant hereby agrees that it shall comply with all applicable provisions of such code sections.

36.15 Food Service Waste Reduction. Tenant will comply with and is bound by all of the applicable provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated into this Lease by reference and made a part of this Lease as though fully set forth. Accordingly, Tenant acknowledges that City contractors and lessees may not use Food Service Ware for Prepared Food in City Facilities and while performing under a City contract or lease (1) where the Food Service Ware is made, in whole or in part, from Polystyrene Foam, (2) where the Food Service Ware is not Compostable or Recyclable, or (3) where the Food Service Ware is Compostable and not Fluorinated Chemical Free. The capitalized terms (other than Tenant and City) in the previous sentence are defined in San Francisco Environment Code Section 1602.

36.16 San Francisco Packaged Water Ordinance. Tenant will comply with San Francisco Environment Code Chapter 24 (“**Chapter 24**”). Tenant may not sell, provide, or otherwise distribute Packaged Water, as defined in Chapter 24 (including bottled water), in the performance of this Lease or on City property unless Tenant obtains a waiver from City’s Department of the Environment. If Tenant violates this requirement, City may exercise all remedies in this Lease and the Director of City’s Department of the Environment may impose administrative fines as set forth in Chapter 24.

36.17 Criminal History in Hiring and Employment Decisions.

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

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

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

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

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

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

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

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

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

36.18 Reserved

36.19 Local Hiring Policy. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 6.22(G) (the “**Local Hiring Policy**”). To the extent applicable, the Tenant Improvements and any alterations are subject to the Local Hiring Policy unless the cost for such Tenant Improvement Work or alteration is (i) estimated to be less than \$750,000 per building permit or (ii) meets any of the other exemptions in the Local Hiring Policy. Accordingly, as a condition of this Lease, Tenant agrees that it shall comply with the requirements of the Local Hiring Policy applicable to the Tenant Improvements or any Alteration and shall require its subtenants to comply with those requirements to the extent applicable. Before starting any Tenant Improvement Work or any Alteration, Tenant shall contact City’s Office of Economic Workforce and Development

(“OEWD”) to verify if any Local Hiring Ordinance requirements apply to such Tenant Improvement Work or Alteration. Tenant shall comply with all such applicable requirements. Tenant’s failure to comply with its obligations under this Section shall constitute a material breach of this Lease and may subject Tenant and its subtenants to the consequences of noncompliance specified in the Local Hiring Policy, including but not limited to penalties. Without limiting the foregoing:

(a) For a Covered Project estimated to cost more than \$750,000, Tenant and its subtenants shall comply with the applicable mandatory participation levels for Project Work Hours performed by Local Residents, Disadvantaged Workers, and Apprentices as set forth in San Francisco Administrative Code Section 6.22(G)(4).

(b) For a Covered Project estimated to cost more than \$1,000,000, Tenant and its subtenants shall prepare and submit a local hiring plan to OEWD for approval as set forth in San Francisco Administrative Code Section 6.22(G)(6) prior to commencing any of the work subject to the Local Hiring Policy.

(c) Tenant and its subtenants shall comply with the applicable record keeping and reporting requirements and shall cooperate in City inspections and audits for compliance with the Local Hiring Policy, including access to employees of its contractors and subcontractors and other witnesses at the Premises.

(d) Tenant agrees that (i) Tenant shall comply with all applicable requirements of the Local Hiring Policy; (ii) the provisions of the Local Hiring Policy are reasonable and achievable by Tenant and its subtenants; and (iii) Tenant has had, and its subtenants will have prior to signing their subleases for the Premises, a full and fair opportunity to review and understand the terms of the Local Hiring Policy.

36.20 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 Commercial Parcel and encouraging use of such facilities, all at Tenant’s sole expense.

36.21 First Source Hiring. Tenant and City are parties to the First Source Agreement attached to this Lease as Exhibit pursuant to San Francisco Administrative Code, Chapter 83 (the “**First Source Agreement**”). Any default by Tenant under the First Source Agreement shall be a default under this Lease.

36.22 Graffiti Removal. Tenant agrees to remove all graffiti from 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.

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

36.24 Vending Machines; Nutritional Standards. Tenant may not install or permit any vending machine on the Premises without the prior written consent of the Director of Real Estate. Any permitted vending machine will 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 will 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 36.24 will be a material breach of this Lease. Without limiting Landlord’s other rights and remedies under this Lease, Landlord will 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.

36.25 All-Gender Toilet Facilities. If applicable, Tenant will comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of the Building 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 Administrative Code Section 4.1-3. If Tenant has any question about applicability or compliance, Tenant should contact the Director of Property or MOHCD for guidance.

36.26 Tenant’s Compliance with City Business and Tax Regulations Code. Tenant acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment City is required to make to Tenant under this Lease is withheld, then City will not be in breach or default under this Lease, and the Treasurer and Tax Collector will authorize release of any payments withheld under this paragraph to Tenant, without interest, late fees, penalties, or other charges, upon Tenant coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

36.27 Consideration of Salary History. In addition to Tenant's obligations as an employer under San Francisco Police Code Article 33J, Tenant must comply with San Francisco Administrative Code Chapter 12K. For each employment application to Tenant for work of eight (8) or more hours per week at the Premises, Tenant must not consider the applicant's current or past salary (a “**Salary History**”) in deciding whether to hire the applicant or what salary to offer the applicant unless the applicant voluntarily discloses that Salary History without prompting. In addition, Tenant must not (1) ask those applicants about their Salary History, (2) refuse to hire, or otherwise disfavor, injure, or retaliate against applicants that do not disclose

their Salary History, or (3) disclose a current or former employee's Salary History without that employee's authorization unless it is required by law, publicly available, or subject to a collective bargaining agreement. Tenant is subject to the posting, enforcement, and penalty provisions in Chapter 12K. Information about Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>.

36.28 GASB 87 Lease Accounting. The Governmental Accounting Standards Board (GASB), an independent organization that establishes accounting and financial reporting standards for U.S. state and local governments, issued Statement 87 to improve certain reporting and accounting practices. In connection with GASB 87, Tenant agrees to complete a checklist provided by the City within thirty (30) days of the Effective Date in order to facilitate the City's collection and evaluation of information for City's financial reporting purpose.

ARTICLE 37 GENERAL PROVISIONS

37.1 Cooperative Drafting. This Lease has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Lease reviewed and revised by legal counsel. No party shall be considered the drafter of this Lease, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Lease.

37.2 Amendments. Neither this Lease nor any terms or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. No waiver of any breach shall affect or alter this Lease, but each and every term, covenant and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof.

37.3 Authority . If Tenant signs as a 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 Landlord's request, Tenant shall provide Landlord with evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

37.4 Survival of Indemnities . Termination 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, nor shall it affect any provision of this Lease that expressly states it shall survive termination hereof.

ARTICLE 38 RECORDATION OF LEASE

Landlord and Tenant shall record on, or as of, the Effective Date a memorandum of this Lease for the Premises, substantially in the form and substance as set forth in Exhibit 3, in the Official Records. This Commercial Ground Lease shall not be recorded.

ARTICLE 39 ENTRY

39.1 Entry. The City reserves for itself and its authorized representatives the right to enter the Site at all reasonable times during normal business hours upon not less than forty-eight (48) hours' written notice to Tenant (except in the event of an emergency), subject to the rights of the occupants, tenants, and others lawfully permitted on the Site, including subject to the terms of any Space Sublease, for any of the following purposes:

(a) to determine whether the Premises is in good condition and to inspect the Premises (including soil borings or other Hazardous Substance investigations);

(b) to determine whether Tenant is in compliance with its Lease obligations and to cure or attempt to cure any Tenant default;

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

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

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

39.2 Emergency Entry. In the event of any emergency, as reasonably determined by the City, at its sole option and without notice (provided that the City will make good faith and diligent efforts to provide as much reasonable advance notice to Tenant), the City may enter the Premises and alter or remove any Improvements or Tenant's personal property on or about the Premises as reasonably necessary, given the nature of the emergency. The City will have the right to use any and all means the City considers appropriate to gain access to any portion of the Premises in an emergency, in which case, the City will not be responsible for any damage or injury to any property, or for the replacement of any property, and no emergency entry may be deemed to be a forcible or unlawful entry onto or a detainer of the Premises, or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof.

39.3 Liability. The City will not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of the City's entry onto the Premises, except to the extent damage arises out of the active gross negligence or willful misconduct of the City or its agents. The City will be responsible for any losses resulting from its active gross negligence or willful misconduct and will repair any resulting damage promptly.

39.4 No Abatement. Tenant will not be entitled to any abatement in Base Rent if the City exercises any rights reserved in this Article, subject to Section 39.3 above.

39.5 Reasonable Conduct. The City will use its reasonable good faith efforts to conduct any activities on the Premises allowed under this Article in a manner that, to the extent practicable, will minimize any disruption to Tenant's use of the Premises as permitted by this Lease.

ARTICLE 40 LIST OF EXHIBITS

The following Exhibits are attached and by this reference incorporated into this Lease as if fully set forth above:

- Exhibit 1 Legal Description of Site
- Exhibit 2 Commercial Parcel Legal Description
- Exhibit 3 Form of Memorandum of Commercial Ground Lease

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written.

LANDLORD:

CITY AND COUNTY OF SAN FRANCISCO, a
municipal corporation

By: _____
Danial Adams
Director
Mayor's Office of Housing and Community
Development

By: _____
Andrico Q. Penick
Director of Real Estate

APPROVED AS TO FORM:

DAVID CHIU, City Attorney

By: _____
Deputy City Attorney

TENANT:

BROADWAY DAVIS RETAIL ASSOCIATES
LLC,
a California limited liability company

By: BRIDGE Infill Development, Inc., a
California nonprofit public benefit corporation,
its member

By:
Name: Rebecca Hlebasko
Its: Vice President

By: JSCo Broadway Davis Community
Associates, LLC, a California limited liability
company, its member

By: John Stewart Company,
a California corporation,
its sole member manager

By: _____
Name: Jack D, Gardner
Its: Chairman of the Board

EXHIBIT 1

Legal Description of Site

To be provided

EXHIBIT 2

Commercial Parcel Legal Description

To be Provided

Street Addresses:

725 Davis Street
San Francisco, CA 94111

EXHIBIT 3

Free Recording Requested Pursuant to
Government Code Section 27383

When recorded, mail to:
Mayor's Office of Housing and Community Development
of the City and County of San Francisco
1 South Van Ness Avenue, Fifth Floor
San Francisco, California 94103
Attn: Loan Administrator

APN: Block 0140, Lots 011
Address: 725 Davis Street, San Francisco, CA

-----Space Above This Line for Recorder's Use-----

MEMORANDUM OF COMMERCIAL GROUND LEASE

This Memorandum of Commercial Ground Lease ("**Memorandum**") is entered into as of [_____], 2024 by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through its Real Estate Division and the Mayor's Office of Housing and Community Development ("**City**" or "**Landlord**"), and Broadway Davis Retail Associates LLC, a California limited liability company ("**Tenant**"), with respect to that certain Commercial Ground Lease (the "**Lease**") dated as of [_____], 2024 between City and Tenant.

Pursuant to the Lease, City hereby leases to Tenant and Tenant leases from City the real property more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the "**Property**"). The Lease will commence on the date set forth above and will end on May 20, 2094, unless terminated earlier or extended pursuant to the terms of the Lease.

This Memorandum will incorporate herein all of the terms and provisions of the Lease as though fully set forth herein.

This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the Lease, of which this is a memorandum.

This Memorandum may be signed by the parties hereto in counterparts with the same effect as if the signatures to each counterpart were upon a single instrument. All counterparts shall be deemed an original of this Memorandum.

[Signatures Appear on the Following Page]

Memorandum of Commercial Ground Lease

Executed as of _____, 2024 in San Francisco, California.

LANDLORD:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
Daniel Adams
Director
Mayor's Office of Housing and
Community Development

By: _____
Andrico Q. Penick
Director of Real Estate

APPROVED AS TO FORM:

DAVID CHIU,

City Attorney

By: _____
Deputy City Attorney

TENANT:

BROADWAY DAVIS RETAIL ASSOCIATES
LLC,
a California limited liability company

By: BRIDGE Infill Development, Inc., a
California nonprofit public benefit corporation, its
member

By:
Name: Rebecca Hlebasko
Its: Vice President

By: JSCo Broadway Davis Community
Associates, LLC, a California limited liability
company, its member

By: John Stewart Company,
a California corporation,
its sole member manager

By: _____
Name: Jack D, Gardner
Its: Chairman of the Board

[ALL SIGNATURES MUST BE NOTARIZED]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of the document.

State of California)

County of San Francisco)

On _____, _____, before me,
_____, Notary Public, personally appeared _____
_____, who proved to me on the basis of satisfactory
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the
entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

(Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of the document.

State of California)
County of San Francisco)

On _____, _____, before me,
_____, Notary Public, personally appeared _____,
_____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

(Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of the document.

State of California)
County of San Francisco)

On _____, _____, before me,
_____, Notary Public, personally appeared _____
_____, who proved to me on the basis of satisfactory
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the
entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

(Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of the document.

State of California)

County of San Francisco)

On _____, _____, before me,
_____, Notary Public, personally appeared _____,
_____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

(Seal)

EXHIBIT A
Legal Description of the Property

Street Addresses:

725 Davis Street
San Francisco, CA 94111