

SAN FRANCISCO PUBLIC UTILITIES COMMISSION

EDWIN M. LEE, MAYOR

AMENDED AND RESTATED GROUND LEASE

between

CITY AND COUNTY OF SAN FRANCISCO,

as Landlord,

and

POMEROY RECREATION AND REHABILITATION CENTER,

as Tenant,

**For the lease of
207 Skyline Boulevard, San Francisco, CA 94132**

August 1, 2016

SAN FRANCISCO PUBLIC UTILITIES COMMISSION

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Anson B. Moran - Vice President
Ann Moller Caen - Commissioner
Vince Courtney - Commissioner
Ike Kwon - Commissioner**

**Harlan L. Kelly, Jr.
General Manager of San Francisco Public Utilities Commission**

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SAN FRANCISCO PUBLIC UTILITIES COMMISSION

AMENDED AND RESTATED GROUND LEASE

THIS AMENDED AND RESTATED GROUND LEASE (this "**Lease**") dated for reference purposes only as of August 1, 2016, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**" or "**Landlord**"), acting by and through its Public Utilities Commission ("**SFPUC**"), and POMEROY RECREATION AND REHABILITATION CENTER, a California not-for-profit corporation ("**Tenant**").

City and Tenant hereby agree as follows:

1. AMENDED AND RESTATED LEASE; BASIC LEASE INFORMATION

1.1. Amended and Restated Lease.

This Lease amends and restates the Indenture of Lease dated February 9, 1971 by and between City, as landlord, and Tenant's predecessor in interest, Recreation Center For the Handicapped, Inc., a California not-for-profit corporation, (such Indenture of Lease, together with any amendments thereto and extensions thereof, the "**Original Lease**"). The Parties acknowledge that, since on or about February 9, 1971, and continuing through the date on which this Lease becomes effective pursuant to **Section 4.3** [Restated Lease Effective Date] below (the "**Restated Lease Effective Date**"), Tenant has occupied the Premises (defined below) pursuant to the Original Lease. Effective on the Restated Lease Effective Date, this Lease shall immediately supersede and replace the Original Lease and the terms and conditions of the Original Lease shall have no further force or effect. Any plans, approvals, or other matters contained in, attached to, or referred to in the Original Lease that are not expressly incorporated by this Lease shall not be deemed to be contained in, attached to, or referred to in this Lease or approved or permitted by City. Accordingly, as of the Restated Lease Effective Date, this Lease alone shall govern the respective obligations of the Parties with respect to Tenant's occupancy and use of the Premises. If the terms and conditions of the Original Lease conflict with the terms and conditions of this Lease, the terms and conditions of this Lease shall prevail.

1.2. Basic Lease Information

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

Lease Reference Date: August 1, 2016
Landlord: City and County of San Francisco, acting by and through its Public Utilities Commission
Tenant: Pomeroy Recreation and Rehabilitation Center
Premises (**Section 3.1**): That real property located at 207 Skyline Boulevard in San Francisco, California, as more particularly described in the attached **Exhibit A** and depicted in the attached **Exhibit B**, together with any appurtenances.
Term (**Section 4.1**): Commencement Date: February 9, 1971
Expiration Date: Twenty-five (25) years from Restated Lease Effective Date subject to Tenant's right to terminate this Lease earlier upon at least twelve (12) months' written notice to City as stated in **Section 4.1(b)** [Term].

Extension Term (Section 4.4): Subject to the terms and conditions of Section 4.4 [Extension Term], by notice given to City not less than three hundred sixty-five (365) days prior to the Expiration Date, Tenant may exercise one (1) option to extend the Term for an additional twenty-five (25) years.

Base Rent (Section 5.1): None.

Permitted Use (Section 7.1): (1) The operation of a center to provide recreational, vocational, and educational opportunities for people with disabilities through programs and related services to such people that encourage their self-expression, promote personal achievement, and lead to greater independence ("**Tenant's Principal Mission**"); (2) occasional use of Premises by Permitted Occasional Users strictly in accordance with the terms of Section 7.1 [Tenant's Permitted Use]; and (3) the operation, use, maintenance, and repair of the Gas Tank (defined in Section 7.1(c) [Gas Tank Operation] below) solely for use in connection with Tenant's leased or owned vehicles utilized by Tenant in connection with Tenant's Principal Mission . Any material alternative or additional use during the Term is subject to the prior written consent of the SFPUC's Real Estate Director, which consent shall not be unreasonably withheld or delayed.

Security Deposit (Section 24): \$10,000

Pro Rata Share of Property Taxes (Section 6.1): One Hundred Percent (100%).

City's Notice Address (Section 25.1):
Real Estate Services Division
San Francisco Public Utilities Commission
525 Golden Gate Avenue, 10th Floor
San Francisco, California 94102
Attn: Real Estate Director
Re: **Pomeroy Recreation and Rehabilitation
Center Lease # L2946A**

with a copy to:
Office of the City Attorney
City and County of San Francisco
Room 234, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Attn: Real Estate & Finance Team
Re: **Pomeroy Recreation and Rehabilitation
Center Lease # L2946A**

Key Contact for City: SFPUC Real Estate Director

Telephone No.: (415) 487-5210

Tenant's Notice Address (Section 25.1):
207 Skyline Boulevard
San Francisco, CA 94132
Attn: Chief Executive Officer

Key Contact for Tenant: Chief Executive Officer
Telephone No.: (415) 213-8564
Email Address: ceo@prrcsf.org

2. DEFINITIONS

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

"**Additional Charges**" has the meaning given in Section 5.2 [Additional Charges] and includes any and all real and personal property taxes, possessory interest taxes, and other costs, impositions, and expenses described in Section 6 [Taxes and Assessments, and Other Expenses] or otherwise payable by Tenant under this Lease.

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

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

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

"**Assignment**" has the meaning given in Section 16.1 [Assignment and Subletting].

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

"**Basic Lease Information**" means the information with respect to this Lease summarized in Section 1.2 [Basic Lease Information].

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

"**Board of Supervisors**" means the City and County of San Francisco Board of Supervisors.

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

"**Commencement Date**" means the date on which the Term of the Original Lease commenced as described in Section 4.2 [Commencement Date and Expiration Date].

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

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

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

"**Environmental Laws**" means any present or future federal, state, or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling,

transportation, production, disposal, discharge, or storage) or to human health and safety, industrial hygiene, or environmental conditions in, on, under, or about the Premises (including any permitted Improvements) and any other property, including, without limitation, soil, air, and groundwater conditions.

"Event of Default" means any one of the events of default described in Section 17.1 [Events of Default].

"Extension Term" has the meaning given in Section 4.4 [Extension Term].

"Gas Systems" has the meaning given in Section 8.4(c) [Ownership of Gas Tank and Related Appurtenances].

"Gas Tank" has the meaning given in Section 7.1(c) [Gas Tank Operation].

"Gas Termination Date" has the meaning given in Section 7.1(c) [Gas Tank Operation].

"General Manager" means the General Manager of the Public Utilities Commission.

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

"Hazardous Material Claims" means any and all enforcement, Investigation, Remediation, or other governmental or regulatory actions, agreements, or orders threatened, instituted, or completed pursuant to any Environmental Laws, together with any and all Losses made or threatened by any third party against City, the SFPUC, their respective Agents, or the Premises or any Improvements, relating to damage, contribution, cost recovery compensation, loss, or injury resulting from the presence, release, or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Materials Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or any Improvements, the loss or restriction of the use or any amenity of the Premises or any Improvements, attorneys' fees and consultants' fees, and experts' fees and costs.

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

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

"Indemnified Parties" means City, including, but not limited to, all of its boards, commissions, departments, agencies, and other subdivisions, including, without limitation, its SFPUC, and all of its and their respective Agents, and their respective heirs, legal representatives, successors, and assigns, and each of them.

"Investigation" when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under, or about the Premises, any Improvements or any portion thereof or that have been, are being,

or threaten to be Released into the environment. Investigation shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under, or about the Premises or any Improvements.

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

"**Land**" means the real property described in the attached Exhibit A.

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

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

"**Lease**" means this Amended and Restated Lease as it may be amended in accordance with its terms.

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

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

"**Original Lease**" means the Indenture of Lease dated February 9, 1971 by and between City, as landlord, and Tenant's predecessor in interest Recreation Center For the Handicapped, Inc., a California not-for-profit corporation, together with any amendments and extensions of that Indenture of Lease prior to the Restated Lease Effective Date.

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

"**Permitted Occasional User**" has the meaning given in Section 7.1 [Tenant's Permitted Use].

"**Permitted Use**" means the use specified in the Basic Lease Information and Section 7.1 [Tenant's Permitted Use].

"**Premises**" has the meaning given in Section 3.1 [Premises]. The Premises shall include any existing and permitted future Improvements, together with any additions, modifications, or other Alterations thereto permitted under this Lease. Notwithstanding anything to the contrary in this Lease, the Premises do not include the SFPUC Facilities, nor any water, water rights, riparian rights, water stock, mineral rights, or timber rights relating to the Premises.

"**Release**" when used with respect to Hazardous Material means any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any Improvements constructed pursuant to this Lease by or on behalf of Tenant, or in, on, under, or about the Premises or any portion of the SFPUC Facilities.

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

"**Rent**" means any amounts payable by Tenant as consideration for its occupancy of the Premises under this Lease, including any and all Additional Charges.

"**Restated Lease Effective Date**" means the date on which this Lease becomes effective pursuant to Section 4.3 [Restated Lease Effective Date]; whereupon the Original Lease will be

deemed to be replaced, superseded, and revoked by this Lease.

"**SFPUC**" means the Public Utilities Commission of the City and County of San Francisco.

"**SFPUC Facilities**" means any and all water pipelines, drainage pipelines, hatch covers, wells, and other surface and subsurface facilities owned by City or the SFPUC and now or later located in, under, on, or about the Premises for the storage, transportation, or distribution of water for municipal purposes, together with all related appurtenances and monuments.

"**Sublease**" has the meaning given in Section 16.1 [Restrictions on Assignment and Subletting].

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

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

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

"**Tenant's Principal Mission**" means the operation of a center to provide recreational, vocational, and educational opportunities for people with disabilities through programs and related services that encourage self-expression, promote personal achievement, and lead to greater independence.

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

"**Transfer**" means any Assignment or Sublease.

"**Transferee**" means any recognized assignee of any part of Tenant's leasehold interest under this Lease or any recognized subtenant of any portion of the Premises, pursuant to a Transfer that complies with Section 16 [Assignment and Subletting].

"**Unmatured Event of Default**" means any failure by Tenant to perform its obligations pursuant to this Lease that (a) has been the subject of a written notice of default given by City pursuant to the provisions of Section 17.1 [Events of Default] below and (b) that does not yet constitute an Event of Default because such failure to perform has not yet been remedied by Tenant and the time to remedy or cure such default specified in Section 17.1 [Events of Default] has not yet elapsed.

3. PREMISES

3.1. Premises

Subject to the terms, covenants, and conditions of this Lease, City leases to Tenant and Tenant leases from City, the real property described in the attached Exhibit A (the "**Premises**"), together with any and all improvements existing on such real property as of the Commencement Date or existing on the Restated Lease Effective Date, including those Improvements identified on the attached Exhibit D, but excluding therefrom and reserving during the Term unto City, its successors, and assigns the rights described in Section 3.2 [Rights Reserved to City]. The Premises are shown generally on the attached Exhibit B. Any acreage stated in this Lease with respect to the Premises is an estimate only, and City does not warrant it to be correct. The Parties agree, however, that for all purposes of this Lease, any such acreage shall be deemed to be correct. Nothing in this Lease is intended to grant Tenant any right whatsoever to possess, use, or operate

the any portion of the SFPUC Facilities.

3.2. Rights Reserved to City

Notwithstanding anything to the contrary in this Lease, City reserves and retains all of the following rights relating to the Premises:

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

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

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

(d) All rights to use, operate, maintain, repair, enlarge, modify, expand, replace, and reconstruct the SFPUC Facilities;

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

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

(g) All rights of access provided for in Section 20 [Access by City].

3.3. Subject to Municipal Uses

Tenant's rights under this Lease shall be subject to City's use of the Premises for municipal purposes and for other City uses. So long as there is no Event of Default or Unmatured Event of Default on the part of Tenant outstanding, however, and subject to the terms and conditions of this Lease, City shall use reasonable efforts to avoid interfering with Tenant's quiet use and enjoyment of the Premises pursuant to this Lease. The use of the term "right-of-way" or similar terms in this document or in any communications relating to this Lease or the Premises shall not be deemed to imply that City holds less than fee title to the Premises or otherwise call into question the nature

of City's title to any of its property. City shall in no way be liable for any damage or destruction to Tenant's property and/or any Improvements resulting from any pipeline break or from any pipeline repair or maintenance activities. At City's request Tenant shall immediately remove any property or Improvements on the Premises to allow City access to the pipelines. If City deems it necessary, at its sole discretion, City shall have the right to remove any such property or Improvements on or about the Premises and City shall not be responsible for restoring or returning same to its prior condition.

3.4. As Is Condition of Premises

(a) Inspection of Premises

Tenant represents and warrants that, as of the Restated Lease Effective Date, Tenant has conducted a thorough and diligent inspection and investigation, either independently or through Agents of Tenant's own choosing, of the Premises and the suitability of the Premises for Tenant's intended use. Tenant is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses.

(b) As Is; Disclaimer of Representations

Tenant acknowledges and agrees that, as of the Commencement Date and the Restated Lease Effective Date, the Premises were and are being leased and accepted strictly in their "**AS IS, WITH ALL FAULTS**" condition on such dates, without representation or warranty of any kind, and subject to all applicable Laws governing the use, occupancy, management, operation, and possession of the Premises. Without limiting the foregoing, this Lease is made subject to any and all covenants, conditions, restrictions, easements, and other title matters affecting any portion of the Premises whether or not of record. Tenant acknowledges and agrees that neither City, the SFPUC, nor any of their respective Agents have made, and City hereby disclaims, any representations or warranties, express or implied, concerning: (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological, or environmental condition of the Premises, (iii) the quality, nature, or adequacy of any utilities serving the Premises, (iv) the present or future suitability of the Premises for Tenant's business and intended uses, (v) the feasibility, cost, or legality of constructing any Improvements on the Premises if required for Tenant's Permitted Use and otherwise permitted under this Lease, or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

3.5. Accessibility Disclosures

(a) 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.

(b) Tenant acknowledges that prior to the Restated Lease Effective Date, City provided Tenant with, and Tenant signed, the Disability Access Obligations Notice described in Section 38.3 of the San Francisco Administrative Code. Tenant and City each agree to use reasonable efforts to notify the other Party if making any Improvements or Alterations that might impact accessibility to the Premises under any disability access laws.

4. TERM

4.1. Term

(a) The Premises are leased for a term (the "**Term**") that commenced on the date specified in the Basic Lease Information as the commencement date (the "**Commencement Date**"). Subject to this Lease becoming effective pursuant to **Section 4.3** [Restated Lease Effective Date], the Term of this Lease shall end on the expiration date specified in the Basic Lease Information, unless sooner terminated pursuant to the provisions of this Lease.

(b) At any time during the Term, Tenant may terminate this Lease prior to the expiration of the then-current Term by delivery to City of at least twelve (12) months' prior written notice of such termination.

4.2. Commencement Date and Expiration Date

The dates on which the Term commenced and terminates pursuant to this Lease are referred to respectively as the "**Commencement Date**" and the "**Expiration Date**."

4.3. Restated Lease Effective Date

This Lease shall become effective on the date (the "**Restated Lease Effective Date**") that is the later of (a) the date the Parties complete the mutual execution and delivery of this Lease and (b) the date the SFPUC and City's Board of Supervisors and Mayor have each adopted or approved, at their sole and absolute discretion, an appropriate resolution or ordinance approving this Lease as required by applicable Law.

4.4. Extension Term

Tenant shall have the right to extend the Initial Term of this Lease (the "**Extension Option**") for one (1) additional term as specified in the Basic Lease Information (the "**Extended Term**"). Such Extension Option shall be on all of the terms and conditions contained in this Lease. Tenant may exercise the Extension Option, if at all, by giving written notice to City no earlier than five hundred forty-five days, and no later than three hundred sixty-five (365) days, prior to expiration of the Term to be extended; provided, however, if Tenant is in material default under this Lease on the date of giving such notice and fails to cure such default as provided in this Lease, City may reject such exercise by delivering written notice of such rejection to Tenant promptly after such failure to cure.

5. RENT

5.1. Base Rent

Tenant is a non-profit organization which depends, in great part, upon State of California and City funding and charitable donations to finance its operational costs. Tenant represents that it also earns revenue from its Respite Care Program, recreational hall event rentals, and certain other programs, which such revenue solely defrays its operational costs and no part of Tenant's revenue results in a profit to Tenant or benefits any private party. Tenant acknowledges and agrees that Landlord has agreed not to charge any "Base Rent" based upon Tenant's non-profit organizational status and Tenant's representation that it receives the majority of its operating revenue from government and non-profit agencies. Tenant further acknowledges and agrees that in the event Tenant generates "net revenue" (as defined below), City is entitled to fifty percent (50%) of such "net revenue." For the purposes of this Lease, the term "**net revenue**" means, with respect to any calendar year, any income or monies, or their equivalent, that Tenant receives in such year in excess of Tenant's operational costs at the Premises; provided that any such income or monies shall not include any of the following: any and all bequests, charitable donations,

unrealized or realized capital gains, grants, or any revenues placed into a capital expenditure fund, endowment, program development reserve, maintenance and repair reserve, job training program, or any other program or fund intended to be used in furtherance of Tenant's Principal Mission. On March 1 during each calendar year of the Term, Tenant shall submit its then-current financial statement for the immediately preceding calendar year, together with an affidavit or certificate in a form acceptable to City executed and attested to by its Chief Financial Officer, stating the sum of Tenant's operational costs and revenue for such prior calendar year and any sums received by Tenant during such year. If Tenant earns net revenue for such prior calendar year, Tenant shall submit to City concurrently with such financial statement and affidavit a check in the sum of fifty percent (50%) of such net revenue to City. Any such amounts so payable by Tenant shall be considered as "**Rent**" under this Lease

5.2. Additional Charges

Tenant shall pay to City any and all charges and other amounts required under this Lease as additional rent (collectively, "**Additional Charges**"). All such Additional Charges shall be payable to City at the same place and the same manner as the Rent is payable. City shall have the same remedies for a default in the payment of any Additional Charges as for a default in the payment of Rent. As used in this Lease, the term "**Rent**" shall include the Additional Charges and any other amounts or costs that Tenant is obligated to pay pursuant to this Lease, whether or not any such amounts are specifically characterized as rent.

5.3. Net Lease

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

6. TAXES, ASSESSMENTS, AND OTHER EXPENSES

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

(a) Payment Responsibility

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

Tenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days before delinquency, subject to Tenant's right to contest the validity of such charge pursuant to **Section 6.1(c)** [No Liens]. With respect to real property taxes and assessments levied on or assessed against the Premises for which City receives the tax bill directly from the taxing authority, however, Tenant shall reimburse City for payment of such sums immediately upon demand.

(b) Taxability of Possessory Interest

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

(c) No Liens

Tenant shall not allow or suffer a lien for any taxes payable by Tenant pursuant to this Lease to be imposed upon the Premises or upon any equipment or other property located on or about the Premises without promptly discharging the same. Tenant may have a reasonable opportunity to contest the validity of any such taxes provided Tenant, before commencement of any proceeding or contest, furnishes to City a surety bond issued by a surety company qualified to do business in California and acceptable to City's Controller. The amount of such bond shall be equal to one hundred twenty-five percent (125%) of the amount of taxes in dispute and shall be in such form as approved by City's Office of the City Attorney. The bond shall insure payment of any judgment that may be rendered should Tenant be unsuccessful in any such contest. Tenant shall Indemnify City, the other Indemnified Parties, and the Premises from and against any Losses arising out of any proceeding or contest provided for under this Lease. The foregoing Indemnity shall not be limited by the amount of the bond.

(d) Reporting Requirement

Tenant shall provide such information as City may request to enable City to comply with any tax reporting requirements applicable to this Lease.

6.2. Other Expenses

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

6.3. Evidence of Payment

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

7. USE; COVENANTS TO PROTECT PREMISES AND THE SFPUC FACILITIES

7.1. Tenant's Permitted Use

(a) Primary Permitted Use

Tenant may use the Premises and any Improvements allowed by this Lease only for the use (the "Permitted Use") specified in the Basic Lease Information, and for no other purpose. Any material alternative or additional use during the Term is subject to the prior written consent of the SFPUC's Real Estate Director, which consent shall not be unreasonably withheld or delayed.

(b) Permitted Occasional Users

Notwithstanding anything to the contrary in this Lease, however, from time to time, one or more users (each, a "**Permitted Occasional User**") may enter upon the Premises to use the Premises for the Permitted Use for a period of up to fourteen (14) consecutive days or for longer periods of time as may be approved in writing by the SFPUC. Any use of the Premises by a Permitted Occasional User in excess of fourteen (14) consecutive days shall require (a) the SFPUC's prior written consent, at its sole discretion, requested a minimum of seven (7) days before the commencement of the use; and (b) require the Permitted Occasional User to sign and deliver to the SFPUC and Tenant a license agreement (a "**POU License**") on a form approved by the SFPUC and the City Attorney. The SFPUC shall approve or deny any request for a POU License so submitted within thirty (30) days of Tenant's request. Any POU License issued to an authorized Permitted Occasional User pursuant to this Section, and any related consideration paid by any such Permitted Occasional User, shall not be subject to any prohibition against assignment or subleasing as set forth in **Section 16** [Assignment and Subletting], or the recapture provisions of **Section 16** [Assignment and Subletting] with respect to such authorized Permitted Occasional User. Notwithstanding any consent by City to a POU License issued by Tenant to any Permitted Occasional User, neither Tenant nor any guarantor shall be released from any obligation to be performed by Tenant under this Lease. Any POU License issued to a Permitted Occasional User that is not in compliance with this Section shall, at the option of City at its sole and absolute discretion, be void and, at City's option, shall constitute a material Event of Default by Tenant under this Lease. No Permitted Occasional User shall have any right, title, or interest in or to any of the Premises other than the limited right to use the Premises as provided in this Section and in any related POU License, and no use of the Premises by any Permitted Occasional User or any POU License granted to a Permitted Occasional User pursuant to this Section shall be deemed to constitute a grant by City or Tenant of any estate or any interest in the Premises to such Permitted Occasional User. In addition, Tenant shall not perform any Alterations or in any way separately demise space for any Permitted Occasional User. Tenant will ensure that any Permitted Occasional User accessing or occupying the Premises complies with all terms and conditions of the applicable POU License, if any, and with all applicable laws at all times while on the Premises, as further defined in the POU License.

(c) Gas Tank Operation

For so long as Tenant provides transportation to its clients and patrons by gasoline powered vehicles leased or owned by Tenant ("**Gas Cars**") and used in connection with the fulfillment of Tenant's Principal Mission, Tenant may operate, use, maintain, and repair the existing single six thousand (6,000) gallon gas tank and gas dispensing system (the "**Gas Tank**") for such Gas Cars used to provide transportation to Tenant's clients and patrons; provided that, at all times during the Term that the Gas Tank is used or placed within the Premises, Tenant (i) obtains and keeps in force all necessary permits, approvals, consents, and licenses with respect to the operation, use, maintenance, repair, and/or presence of the Gas Tank on the Premises that are required by any applicable Laws or any local, state, federal or other governmental agency or entity with jurisdiction; (ii) causes the Gas Tank to be used and operated in compliance with all applicable Laws, (iii) maintains the environmental pollution liability insurance coverage required by **Section 19.1(g)** [Environmental Pollution Liability] below, and (iv) complies with the reasonable requirements of City intended to minimize risks and liabilities with respect to the use, operation, maintenance, and repair of the Gas Tank. Commencing on the Restated Lease Effective Date, Tenant shall use commercially reasonable efforts to replace all Gas Cars owned or leased by Tenant with electric-powered vehicles or other vehicles that use clean fuel. On the date (the "**Gas Termination Date**") that (A) Tenant fully accomplishes such replacement or (B) otherwise ceases to use Gas Cars for the provision of transportation to its clients and patrons as allowed by this Section, Tenant shall give City notice of the occurrence of the Gas Termination Date, promptly cease use of the Gas Tank, and, within ninety (90) days of the Gas Termination Date, shall cause the Gas Tank to be removed pursuant to the provisions of **Section 22.1 (b)** [Removal of Gas Tank and Gas Systems].

7.2. Covenants Regarding Use

As a material inducement to City to enter into this Lease, Tenant covenants with City as follows:

(a) No Unlawful Uses or Nuisances

Tenant shall not use or occupy any of the Premises or any Improvements, or permit the use or occupancy of the Premises or any Improvements, in any unlawful manner or for any illegal purpose, or permit to be carried on any offensive, immoral, noisy or hazardous use, or any use in violation of the conditions of any certificate of occupancy. Tenant shall take all precautions to eliminate immediately any nuisances or hazards relating to its activities on or about the Premises or any Improvements permitted under this Lease.

(b) Covenant Against Waste

Tenant shall not cause or permit any waste, damage, or injury to the Premises.

(c) Covenant to Protect the SFPUC Facilities

At all times during the Term of this Lease, Tenant shall protect the SFPUC Facilities from any damage, injury, or disturbance. Tenant shall immediately notify City if Tenant or any of its Agents or Invitees damages, injures, or disturbs any of the SFPUC Facilities (including monuments). Without limiting any of its other rights under this Lease, City may take all actions it deems proper (including relocation of monuments) to repair at Tenant's sole expense any of the SFPUC Facilities damaged, injured, or disturbed by Tenant or any of its Agents or Invitees. Upon City's request, Tenant shall promptly remove or alter, to City's satisfaction and at Tenant's sole cost, any Improvements, Alterations, or Tenant's Personal Property placed on the Premises by or on behalf of Tenant as necessary to avoid interference with City's use of the Premises or any of the SFPUC Facilities for municipal utility purposes. Alternatively, subject to the SFPUC General Manager's approval at his or her sole discretion, Tenant may pay City for the costs determined by the SFPUC General Manager that City will incur as a result of such interference. City may adopt from time to time such rules and regulations with regard to Tenant's facilities and operations pursuant to this Lease as City may determine are necessary or appropriate to safeguard against corrosion of City's pipelines and any related SFPUC Facilities. Upon receipt of a copy of such rules and regulations, Tenant shall comply with all such rules and regulations.

(d) Covenant to Protect Water Courses

Tenant shall not cause any ponding on the Premises or any flooding on adjacent land. Tenant shall not engage in any activity that causes any change, disturbance, fill, alteration, or impairment to the bed, bank, or channel of any natural water course, wetland, or other body of water on, in, under, or about the Premises, nor shall Tenant engage in any activity that would pollute or degrade any surface or subsurface waters or result in the diminution or drainage of such waters.

(e) Covenant Against Dumping

Tenant shall not cause or permit the dumping or other disposal on, under, or about the Premises of landfill, refuse, Hazardous Material, or other materials that are unsightly or could pose a hazard to the human health or safety, native vegetation or wildlife, or the environment.

(f) Covenant to Protect Trees or Other Native Vegetation

Tenant shall not engage in or permit the cutting, removal, or destruction of trees or any other native vegetation on the Premises, without the SFPUC's prior written approval.

(g) No Tree Planting

Without City's prior, written consent, Tenant shall not plant any trees on the Premises, nor shall Tenant plant any other vegetation on the Premises except as otherwise expressly provided in this Lease.

(h) Covenant Against Hunting or Fishing

Tenant shall not engage in or permit any hunting, trapping, or fishing on or about the Premises, except for hunting or trapping for the purpose of controlling predators or problem animals by the appropriate use of selective control techniques approved in advance by City; provided such hunting and trapping is done in strict accordance with all applicable Laws. Whenever possible, all measures used for such control shall be limited in their application to the specific problem animals. Tenant shall not use poison bait, cyanide guns, traps, or other similar non-selective control techniques. In no event may Tenant use any prophylactic predator control measures. The restrictions of this Section applicable to the identification and control of predators and problem animals shall not apply to commensal rodents.

(i) Pesticides Prohibition

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

(j) Weed Control

Tenant shall not introduce any noxious weeds on or about the Premises. Tenant shall control noxious weeds, provided that Tenant may use chemical herbicides only if such use complies with the requirements of Section 7.2(i) [Pesticides Prohibition].

(k) Maintenance of Paved Areas

Tenant shall keep all paved areas on the Premises open and in good repair and condition, ordinary wear and tear excepted.

(l) Covenant Against Burning

Tenant shall not burn any weeds, debris, or other substances on or about the Premises.

(m) No Off-Road Vehicles

Tenant shall not use or permit the use of off-road vehicles on any portion of the Premises except on existing roads and in the manner for which such roads are intended.

(n) Restrictions on Heavy Equipment and Vehicles

If at any time during the Term, City places pipelines or any other SFPUC Facilities

on or under any portion of the Premises, Tenant shall strictly adhere to the following restrictions when using vehicles and equipment within twenty feet (20') of such SFPUC Facilities:

(i) The depth of soil cover over the tops of City's pipelines or other subterranean SFPUC Facilities must be at least three feet (3') for steel cylinder pipe and four feet (4') for reinforced pre-stressed concrete cylinder pipe to accommodate the loading as defined below in item (ii). If any equipment with axle loading exceeds the weight stated in item (ii) below or if the depth of soil cover is less than stated above, Tenant shall submit to the SFPUC for review and approval, engineering calculations prepared by a registered civil engineer to provide adequate protection of the SFPUC Facilities showing that the SFPUC Facilities will not be adversely affected.

(ii) The effects of vehicle and equipment loads to the pipe must not exceed the effects of the "AASHO Standard H-10 Loading." H-10 loading is defined as loading caused by a two-axle truck with a gross weight of ten tons (20,000 lbs.), axles fourteen feet (14') apart, and rear axle carrying eight tons (16,000 lbs.). Tenant shall be responsible to provide the SFPUC adequate evidence that Tenant's equipment and vehicles meet the foregoing requirements.

(iii) Tenant shall not use vibrating compaction equipment unless it first obtains City's written approval.

(iv) If the depth of the soil cover over any portion of the subterranean SFPUC Facilities (determined by potholing or other proof procedure) is less than the minimum stated in (i) above, unless an alternate method is approved by City all excavation and grading over the pipeline shall be performed manually. For any machinery equipment excavation and grading over and within twenty feet (20') on each side of the centerline of any of City's pipelines or other of the SFPUC Facilities (measured on the surface), Tenant shall submit a written proposal together with all supporting calculations and data to the SFPUC for its review and approval. In any case, the two feet (2') of soil around any City pipeline or other SFPUC Facilities shall be removed manually or by other methods approved by the SFPUC with due care as provided above.

(o) Watershed Management Plan

Tenant shall comply with any and all other regulations or requirements resulting from City's development of a watershed management plan, and any modifications or additions to such plan, provided that such regulations or requirements do not unreasonably interfere with Tenant's Permitted Use of the Premises under this Lease.

8. IMPROVEMENTS

8.1. Construction of Improvements

(a) Requirements for Improvements

Tenant shall not construct or install any Improvements nor make or permit any Alterations in, to or about the Premises, the cost of any project that exceeds One Hundred Thousand Dollars (\$100,000) without City's prior written consent in each instance, which City may give or withhold at its sole and absolute discretion. Subject to City's consent as provided above, any permitted Improvements or Alterations shall be done at Tenant's sole expense (a) in strict accordance with plans and specifications approved in advance by City in writing, (b) by duly licensed and bonded contractors or mechanics approved by City prior to the commencement of construction, (c) in a good and professional manner, (d) in strict compliance with all Laws, and (e) subject to all other conditions that City may reasonably impose, including, without limitation, provision of such completion security as City deems necessary. In no event shall the construction or installation of any such Improvements or the making of any Alterations impair City's access to,

or use or operation of, any portion of the SFPUC Facilities. Before the commencement of any work on the Premises to construct any permitted Improvements or make any permitted Alterations, at its sole expense, Tenant shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to City. No material change from the plans and specifications approved by City may be made without City's prior consent. City and its Agents shall have the right to inspect the course of such construction at all times. Upon completion of such Improvements or Alterations, Tenant shall furnish City with a complete set of final as-built plans and specifications. Tenant shall require from each contractor and subcontractor performing any work on or about the Premises a policy of general public liability insurance, with such limits as may reasonably be required by City from time to time, but in any event not less than Two Million Dollars (\$2,000,000) combined single limit. Such insurance shall also be in compliance with the requirements set forth in **Section 19.2(c)** [General Requirements].

(b) Tenant's Alterations that Disturb or Remove Lead Based Paint

Tenant, on behalf of itself and its Agents or Invitees, shall comply with all requirements of the San Francisco Building Code, Section 3407, and all other applicable present or future Laws (including the requirements of any board of fire underwriters or other similar body, any directive or occupancy certificate issued pursuant to any Law by any public officer or officers acting in their regulatory capacity, and the California and United States Occupational Health and Safety Acts and their implementing regulations) when the work of improvement or alteration disturbs or removes exterior lead-based or "presumed" lead-based paint (as defined below). Tenant and its Agents or Invitees shall give City three (3) business days' prior, written notice of any disturbance or removal of exterior lead-based or presumed lead-based paint. Further, Tenant and its Agents or Invitees, when disturbing or removing exterior lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: **(i)** acetylene or propane burning and torching; **(ii)** scraping, sanding, or grinding without containment barriers or a High Efficiency Particulate Air filter ("HEPA") local vacuum exhaust tool; **(iii)** hydroblasting or high-pressure wash without containment barriers; **(iv)** abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool; and **(v)** heat guns operating above 1,100 degrees Fahrenheit. Paint on the exterior of buildings built before December 31, 1978, is presumed to be lead-based paint unless lead-based paint testing, as defined in Section 3407 of the San Francisco Building Code, demonstrates an absence of lead-based paint on the exterior surfaces of such buildings. Under this Section, lead-based paint is "disturbed or removed" if the work of improvement or alteration involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on an exterior surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface. Notice to City under this Lease shall not constitute notice to the City's Department of Building Inspection required under Section 3407 of the San Francisco Building Code.

8.2. Ownership of Improvements

Except for Tenant's Personal Property (as described in the next section) or as otherwise provided in this Section, all Improvements or Alterations constructed on or affixed to the Premises by or on behalf of Tenant prior to the Restated Lease Effective Date, or thereafter pursuant to the terms and limitations of **Section 8.1** [Construction of Improvements], shall be and remain City's property. Tenant may not remove any such property at any time during or after the Term unless City, at its sole option and without limiting any of the provisions of **Section 8.1** [Construction of Improvements], requires as a condition to approval of any such Improvements or Alterations that Tenant to remove such Alterations or Improvements at the expiration or termination of this Lease pursuant to the provisions of **Section 22.1** [Surrender of the Premises].

8.3. Tenant's Personal Property

All furniture, furnishings, and articles of movable personal property and equipment installed in the Premises by or for the account of Tenant that can be removed without structural or other material damage to the Premises (collectively, "Tenant's Personal Property") shall be and

remain the property of Tenant and may be removed by it subject to. At least ten (10) days before delinquency, Tenant shall pay all taxes levied or assessed upon Tenant's Personal Property and shall deliver satisfactory evidence of such payment to City.

8.4. Ownership of Gas Tank and Related Appurtenances.

Notwithstanding any other provision in this Lease to the contrary, the Gas Tank and any underground gasoline storage tanks, underground gas lines, and gasoline dispensers located within the Premises (collectively the "Gas Systems") constitute Tenant's Personal Property, and City has no ownership or operational interest in any part of the Gas Tank or any Gas Systems. Tenant hereby acknowledges and agrees that Tenant is the "owner and operator" of the Gas Tank and all Gas Systems for the purpose of applicable Laws. Upon City's request, Tenant shall provide City with a photocopy of the evidence maintained by Tenant to obtain certification of financial responsibility as required by any local or state agency or governmental authority having jurisdiction over the Gas Tank or Gas Systems, and upon request, Tenant shall provide City with any required updates to such evidence and certification of financial responsibility upon any change in the mechanism used to obtain such certification.

9. REPAIRS AND MAINTENANCE

9.1. Tenant Responsible for Maintenance and Repair

Tenant assumes full and sole responsibility for the condition, operation, repair, and maintenance and management of the Premises and any permitted Improvements from and after the Commencement Date. City shall not under any circumstances be responsible for the performance of any repairs, changes, or alterations to the Premises or any adjoining property (including, without limitation, access roads, utilities, and other infrastructure serving the Premises), nor shall City be liable for any portion of the cost thereof. Tenant shall make all repairs and replacements, interior and exterior, structural as well as non-structural, ordinary as well as extraordinary, foreseen and unforeseen, that may be necessary to maintain the Premises, including the existing buildings and any permitted Improvements, at all times in clean, safe, attractive, and sanitary condition and in good order and repair, to City's reasonable satisfaction and so that the Premises, including the existing buildings, shall be at least equal in quality, value, and utility to the Premises as it exist on the Commencement Date. If any portion of the Premises or any of City's property located on or about the Premises is damaged by any of the activities conducted by Tenant or its Agents or Invitees under this Lease, at its sole cost, Tenant shall immediately repair any and all such damage and restore the Premises or City's property to its previous condition.

9.2. Utilities

City has no responsibility or liability of any kind with respect to any utilities that may be on or about the Premises. Tenant has the sole responsibility to locate such utilities and protect them from damage. Tenant shall make all arrangements directly with the utility companies for, and shall pay for, any and all utilities and services furnished to or used by it, including, without limitation, gas, electricity, water, sewage, telephone service, trash collection, and janitorial service, and for all deposits, and connection and installation charges. Tenant shall be responsible for installation and maintenance of all facilities required in connection with such utility services. Any and all utility improvements shall be subject to the provisions of **Section 8.1** [Construction of Improvements] and such improvements shall be deemed part of City's real property, and not personal property or trade fixtures of Tenant. During the Term, Tenant shall be obligated to repair and maintain any and all utility systems and improvements located on or within the Premises (except for the SFPUC Facilities) in good operating condition. City shall not be liable for any failure or interruption of any utility service furnished to the Premises, and no such failure or interruption shall entitle Tenant to any abatement in Rent or to terminate this Lease.

9.3. Maintenance of Fences

Tenant shall maintain in good condition and repair and its expense the existing fence along or about the property line of the Premises.

9.4. No Right to Repair and Deduct

Tenant expressly waives the benefit of any existing or future Law or judicial or administrative decision that would otherwise permit Tenant to make repairs or replacements at City's expense, or to terminate this Lease because of City's failure to keep the Premises or any adjoining property (including, without limitation, access roads, utilities, and other infrastructure serving the Premises) or any part thereof in good order, condition, or repair, or to abate or reduce any of Tenant's obligations under this Lease on account of the Premises or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises) or any part thereof being in need of repair or replacement. Without limiting the foregoing, Tenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Tenant to terminate this Lease and with respect to any obligations of City for tenantability of the Premises and any right of Tenant to make repairs or replacements and deduct the cost thereof from Rent.

10. LIENS

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

11. COMPLIANCE WITH LAWS

11.1. Compliance with Laws

At no cost to City, Tenant shall promptly maintain the Premises, including any Improvements and Tenant's use of the Premises and operations thereon in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary. Such Laws shall include, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C. Sections 12101 et seq. and Title 24 of the California Code of Regulations, all present and future Environmental Laws (as defined in this Lease below), and all present and future life safety, fire sprinkler, seismic retrofit, and other building code requirements. The Parties acknowledge and agree that Tenant's obligation to comply with all laws as provided herein is a material part of the bargained-for consideration under this Lease. Tenant's obligation under this Section shall include, without limitation, Tenant's responsibility to make substantial or structural repairs and

alterations to the Premises (including any Improvements), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term, the relative benefit of the repairs to Tenant or City, the degree to which the curative action may interfere with Tenant's Permitted Use of the Premises, the likelihood that the parties contemplated the particular Law involved, and whether the Law involved is related to Tenant's particular use of the Premises. Without limiting **Section 5.2** [Net Lease], no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its obligations under this Lease, or shall give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against City. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction, or suspension of payment of Rent, or to compel City to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

11.2. Regulatory Approvals

(a) Responsible Party

Tenant shall be solely responsible for obtaining any and all authorizations, approvals, or permits from governmental regulatory agencies with jurisdiction over the Premises necessary or desirable in connection with Tenant's use and occupancy of the Premises pursuant to this Lease, including Tenant's use, operation, maintenance, and repairs of the Gas Tank. Tenant shall not seek any regulatory approval without first obtaining City's written consent. Tenant shall bear all costs associated with applying for, obtaining, and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Tenant, and City shall have no liability, monetary or otherwise, for any such fines or penalties. Tenant shall Indemnify City and the other Indemnified Parties against all Losses arising in connection with Tenant's failure to obtain or comply with the terms and conditions of any regulatory approval.

(b) City Acting as Owner of Real Property

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

11.3. Compliance with City's Risk Management Requirements

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

11.4. Reports

Tenant shall submit a report and provide such documentation to City as City may from time to time request regarding Tenant's operations and evidencing compliance with this Lease and

all Laws.

12. FINANCING; ENCUMBRANCES; SUBORDINATION

12.1. Encumbrance of City's Fee Interest

The following provisions shall apply notwithstanding anything to the contrary contained in this Lease.

(a) Encumbrance by City

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

(b) Encumbrance By Tenant

Tenant shall not under any circumstances whatsoever Encumber in any manner any portion of (i) the Premises, (ii) the SFPUC Facilities, (iii) City's estate in the Premises or any adjoining property, or (iv) City's interest under this Lease.

12.2. Leasehold Encumbrances

Without limiting any provision of Section 16 [Assignment and Subletting], Tenant shall not Encumber this Lease, or assign or pledge assignment of the same as security for any debt, without first obtaining the written consent of City, which City may give or withhold at its sole discretion.

13. DAMAGE OR DESTRUCTION

13.1. Damage or Destruction to the Improvements

In the case of damage to or destruction of the Premises by fire or any other casualty, whether insured or uninsured, at its sole cost and with reasonable promptness and diligence, Tenant shall restore, repair, replace, or rebuild the Premises as nearly as possible to the same condition, quality, and class the Premises were in immediately before such damage or destruction, unless such damage or destruction was caused solely and directly by the negligence or willful misconduct of City or its Agents. With respect to any damage to or destruction by fire or any other casualty to any Improvements permitted by this Lease made by or on behalf of Tenant during the Term, at its option and at its sole cost, Tenant may, restore, repair, replace, or rebuild such Improvements to the condition such Improvements were in before such damage or destruction, subject to any changes made in strict accordance with the requirements of Section 8.1 [Construction of Improvements]. If Tenant does not notify City in writing within ninety (90) days after the date of such damage or destruction of Tenant's election to restore, repair, replace, or rebuild any such damaged or destroyed Improvements as provided above, then (a) either Party may elect to terminate this Lease by written notice to the other Party as of a date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after such notice is given and (b) promptly after such notice is given, Tenant shall demolish such Improvements and remove them (including all debris) from the Premises in compliance with the provisions of Section 22.1 [Surrender of the Premises].

13.2. Abatement in Rent

In the event of any damage or destruction to the Premises or any permitted Improvements, there shall be no abatement in the Base Rent or Additional Charges payable pursuant to this Lease.

13.3. Waiver

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

_____ Tenant's Initials

14. INTENTIONALLY OMITTED.

15. EMINENT DOMAIN

15.1. General

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

15.2. Total Taking; Automatic Termination

If a total Taking of the Premises occurs, then this Lease shall terminate as of the Date of Taking.

15.3. Partial Taking; Election to Terminate

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

(b) If a partial Taking of a substantial portion of the SFPUC Facilities or any of City's adjoining real property, but not the Premises, occurs, City shall have the right to terminate this Lease in its entirety.

(c) Either Party electing to terminate under the provisions of this Article 15 shall do so by giving written notice to the other Party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth day after such written notice is given or the Date of Taking.

15.4. Termination of Lease; Rent and Award

Upon termination of this Lease in its entirety pursuant to **Section 15.2** [Total Taking; Automatic Termination], or pursuant to an election under **Section 15.3** [Partial Taking; Election to Terminate], then: (a) Tenant's obligation to pay Rent shall continue up until the date of termination and thereafter shall cease, and (b) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease), and Tenant shall have no claim against City for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for (i) Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property and (ii) the value of the Improvements at the time of the Taking in accordance with the following criteria: (A) if the Taking occurs during the period prior to the fifth (5th) anniversary of the Restated Lease Effective Date, Tenant may claim one hundred percent (100%) of the value of the Improvements at the time of the Taking in any Award made specifically to Tenant; (B) if the Taking occurs during the period after the fifth (5th) anniversary of the Restated Lease Effective Date and prior to the tenth (10th) anniversary of the Restated Lease Effective Date, Tenant may claim seventy-five percent (75%) of the value of the Improvements at the time of the Taking in any Award made specifically to Tenant; (C) if the Taking occurs during the period after the tenth (10th) anniversary of the Restated Lease Effective Date and prior to the fifteenth (15th) anniversary of the Restated Lease Effective Date, Tenant may claim fifty (50%) percent of the value of the Improvements at the time of the Taking in any Award made specifically to Tenant; (D) if the Taking occurs during the period after the fifteenth (15th) anniversary of the Restated Lease Effective Date and prior to the twenty-fifth (25th) anniversary of the Restated Lease Effective Date, Tenant may claim twenty-five (25%) percent of the value of the Improvements at the time of the Taking in any Award made specifically to Tenant; and (E) if the Taking occurs at any time during the Extension Term, Tenant shall not claim, and will not be entitled to claim any amount with respect to the value of the Improvements at the time of the Taking. City may make any claim with respect to the value of the Improvements at the time of any Taking that will not diminish or reduce the amount to be awarded to Tenant pursuant to the criteria set forth in the preceding sentence.

15.5. Partial Taking; Continuation of Lease

If a partial Taking of the Premises occurs and this Lease is not terminated in its entirety under **Section 15.3** [Partial Taking; Election to Terminate], then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the Parties shall be as follows: (a) Base Rent shall be reduced by an amount that is in the same ratio to the Base Rent as the area of the Premises taken bears to the area of the Premises before the Date of Taking, and (b) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease). Tenant shall have no claim against City for the value of any unexpired Term of this Lease, provided that Tenant may make a separate claim for compensation. Tenant shall retain any Award made specifically to Tenant for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property.

15.6. Temporary Takings

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

owing by Tenant for the period of the Taking, and City shall be entitled to receive the balance of any Award. If, however, Tenant is not required to pay any Base Rent pursuant to this Lease during the period of such temporary Taking, then City shall be entitled to receive the entirety of any Award.

16. ASSIGNMENT AND SUBLETTING

16.1. Restriction on Assignment and Subletting

Tenant shall not directly or indirectly (including, without limitation, by merger, acquisition, sale, or other transfer of any controlling interest in Tenant), voluntarily or by operation of Law, sell, assign, encumber, pledge, or otherwise transfer any part of its interest in or rights with respect to the Premises, the business, any Improvements, or its leasehold estate under this Lease (collectively, "Assignment"), or except as allowed pursuant to **Section 7.1** [Tenant's Permitted Use], permit any portion of the Premises or any Improvements to be occupied by anyone other than itself, or sublet any portion of the Premises or any permitted Improvements thereon (collectively, "Sublease"), without the City's prior written consent in each instance, which City may withhold at its sole discretion. Any Assignment or Sublease, without City's prior consent, shall be voidable at the option of the City at its sole and absolute discretion; and City may terminate this Lease immediately by sending written notice to Tenant.

Tenant further agrees and understands that the intent and purpose of this Lease is to allow for the Permitted Use, and not for the purpose of creating an investment in property. Therefore, while Tenant may charge to an assignee, sublessee, or Permitted Occasional User an amount in excess of that Rent that is at the time being charged by City to Tenant, except for use fees or their equivalent paid by POU's pursuant to **Section 7.1** [Tenant's Permitted Use], all rental income or other consideration received by Tenant that is attributable to the value of the leasehold estate created by this Lease over and above that Rent charged to Tenant by City shall be paid directly to City with no profit, direct or indirect, to Tenant attributable to the value of the leasehold estate created by this Lease.

16.2. Notice of Proposed Transfer

If Tenant desires to enter into an Assignment or a Sublease (other than the temporary use of the Premises by a Permitted Occasional User pursuant to the provisions of **Section 7.1** [Tenant's Permitted Use]), then it shall give written notice (a "Notice of Proposed Transfer") to City of its intention to do so. The Notice of Proposed Transfer shall include a copy of the proposed Assignment or Sublease, identify the Transferee and state the terms and conditions under which Tenant is willing to enter into such proposed Assignment or Sublease, including a copy of the proposed Assignment or Sublease agreement. Tenant shall provide City with financial statements for the proposed Transferee and such additional information regarding the proposed Transfer as City may reasonably request.

16.3. City's Response

Within twenty (20) business days after City's receipt of the Notice of Proposed Transfer and any such additional information requested by City (the "Response Period"), by written notice to Tenant, City may elect to: (a) sublease the portion of the Premises specified in the Notice of Proposed Transfer on the terms and conditions set forth in such notice, except as otherwise provided in **Section 16.4** [Sublease or Recapture Premises], or (b) terminate this Lease as to the portion (including all) of the Premises that is specified in the Notice of Proposed Transfer, with a proportionate reduction in Base Rent (a "Recapture").

If City declines to exercise either of the options provided in clauses (a) and (b) above, then Tenant shall be entitled for a period of ninety (90) days following the earlier of City's notice that it will not elect either such option or the expiration of the Response Period, to enter into such Assignment or Sublease, subject to the City's prior written approval of the proposed Transferee

and the terms and conditions of the proposed Transfer. The parties recognize and agree that the purpose of this Lease is to allow for the Permitted Use and not to create an investment in property, and therefore City may condition its consent to any Assignment or Sublease on the receipt of some or all of the consideration realized by Tenant under any such Assignment or Sublease (or the amount thereof attributable to the Premises if the transaction includes other properties) in excess of the Base Rent and Additional Charges payable pursuant to this Lease, after deducting the proportionate share of any reasonable broker's commissions or transaction costs incurred by Tenant. Tenant shall provide City with such information regarding the proposed Transferee and the proposed Assignment or Sublease as City may reasonably request.

Notwithstanding the foregoing, if following City's decline to exercise the foregoing options Tenant desires to enter into such Assignment or Sublease on terms and conditions materially more favorable to Tenant than those contained in the Notice of Proposed Transfer, then Tenant shall give City a new Notice of Proposed Transfer, which notice shall state the terms and conditions of such Assignment or Sublease and identify the proposed Transferee, and City shall again be entitled to elect one of the options provided in clauses (a) and (b) above at any time within fifteen (15) business days after City's receipt of such new Notice of Proposed Transfer.

If City elects either of the options provided in clauses (a) or (b) above, at its sole option, City shall be entitled to enter into a lease, sublease, or assignment agreement with respect to all or any portion of the Premises specified in such new Notice of Proposed Transfer with the proposed Transferee identified in Tenant's notice.

Notwithstanding the foregoing, if any Event of Default or Unmatured Event of Default by Tenant is outstanding under this Lease at the time of Tenant's Notice of Proposed Transfer, then City may elect by notice to Tenant to refuse to consent to Tenant's proposed Transfer and pursue any of its rights or remedies under this Lease or at Law or in equity.

16.4. Sublease or Recapture Premises

If City elects to Sublease or Recapture from Tenant as provided in **Section 16.3** [City's Response], the following shall apply:

(a) Sublease

In the case of a Sublease, (i) City shall have the right to use the portion of the Premises covered by the Notice of Proposed Transfer (the "**Sublease Premises**") for any legal purpose, (ii) the rent payable by City to Tenant shall be the lesser of that set forth in the Notice of Proposed Transfer or the Rent payable by Tenant under this Lease at the time of the Sublease (or the amount thereof proportionate to the Sublease Premises if for less than the entire Premises), (iii) City may make alterations and improvements to the Sublease Premises as it may elect, and City may remove any such alterations or improvements, in whole or in part, before or upon the expiration of the Sublease, provided that City shall repair any damage or injury to the Sublease Premises caused by such removal, (iv) City shall have the right to further sublease or assign the Sublease Premises to any party, without the consent of Tenant, and (v) Tenant shall pay to City on demand any costs incurred by City in physically separating the Sublease Premises (if less than the entire Premises) from the balance of the Premises and in complying with any applicable Laws relating to such separation.

(b) Recapture

In the case of Recapture, (i) the portion of the Premises subject to the Recapture (the "**Recapture Premises**") shall be deleted from the Premises for all purposes under this Lease, and Tenant and City shall be relieved of all of their rights and obligations under this Lease with respect to the Recapture Premises except to the extent the same would survive the Expiration Date or other termination of this Lease pursuant to the provisions hereof, and (ii) City shall pay any cost incurred in physically separating the Recapture Premises (if less than the entire Premises) from the balance of the Premises and in complying with any applicable governmental Laws relating to such

separation.

16.5. Effect of Transfer

No (a) Sublease or Assignment by Tenant, (b) use by any Permitted Occasional User pursuant to **Section 7.1** [Tenant's Permitted Use] above, nor (c) any consent by City to any such uses shall relieve Tenant, or any guarantor, of any obligation to be performed by Tenant under this Lease. Any Sublease or Assignment or use by any Permitted Occasional User that is not in compliance with this Lease shall, at City's option at its sole and absolute discretion, be void and, at City's option, shall constitute a material Event of Default by Tenant under this Lease. The acceptance of any Rent or other payments by City from a proposed Transferee or any Permitted Occasional User shall not constitute consent by City to any such Sublease, Assignment, or use or a recognition of any Transferee, or a waiver by City of any failure of Tenant or other transferor to comply with this Section.

16.6. Assumption by Transferee

Each Transferee shall assume all obligations of Tenant under this Lease and shall be and remain liable jointly and severally the assignor or sublessor for the payment of Rent, and for the performance of all of the terms, covenants and conditions to be performed by Tenant under this Lease. No Assignment shall be binding on City unless Tenant or Transferee shall deliver to City a counterpart of the Assignment and an instrument that contains a covenant of assumption by such Transferee satisfactory in substance and form to City, and consistent with the requirements of this Section. The failure or refusal of such Transferee to execute such instrument of assumption, however, shall not release such Transferee from its liability as set forth above. Tenant shall reimburse City on demand for any reasonable costs that may be incurred by City in connection with any proposed Transfer, including, without limitation, the costs of making investigations as to the acceptability of the proposed Transferee and legal costs incurred in connection with the granting of any requested consent.

16.7. Indemnity for Relocation Benefits

Without limiting the provisions of **Section 16.6** [Assumption by Transferee], Tenant shall cause any Transferee to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease. Tenant shall Indemnify City and the other Indemnified Parties for any and all Losses arising out of any relocation assistance or benefits payable to any Transferee.

16.8. IPM Plan and Form CMD-12B-101

As a condition to any Assignment or Sublease, the Transferee shall execute Form CMD 12B-101 (as such term is defined in **Section 25.22** [Non Discrimination in City Contracts and Benefits Ordinance]) with supporting documentation and secure the CMD's approval of such form. As a condition to any Assignment or Sublease, the Transferee shall assume the IPM plan of Tenant or submit a new IPM plan in accordance with the requirements of **Section 7.2(i)** [Pesticides Prohibition] or obtain an exemption, through the SFPUC. Any transferee must also comply with all other provisions of this Lease, including but not limited to the insurance provisions.

17. DEFAULT; REMEDIES

17.1. Events of Default

Any of the following shall constitute an event of default ("**Event of Default**") by Tenant under this Lease:

(a) Rent

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

(b) Covenants, Conditions, and Representations

Any failure to perform or comply with any other covenant, condition, or representation made under this Lease, provided Tenant shall have a period of fifteen (15) days from the date of City's written notice of such failure within which to cure such default under this Lease, or, if such default is not capable of cure within such 15-day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such 15-day period and thereafter diligently prosecutes the same to completion and Tenant uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from City; provided, however, that upon the occurrence during the Term of two defaults of the same obligation City shall not be required to provide any notice regarding Tenant's failure to perform such obligation, and any subsequent failure by Tenant after Tenant has received two such notices shall constitute a default by Tenant under this Lease without any requirement on the part of City to give Tenant notice of such failure or an opportunity to cure;

(c) Vacation or Abandonment

Any vacation or abandonment of the Premises for more than fourteen (14) consecutive days; and

(d) Bankruptcy

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

17.2. Remedies

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

(a) Terminate Lease and Recover Damages

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

(b) Continue Lease and Enforce Rights

The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows City to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as City does not terminate Tenant's right to possession, if Tenant has the right to sublet or assign, subject only to reasonable limitations. For purposes hereof, none of the following shall constitute a termination of Tenant's right of possession: acts of maintenance or preservation; efforts to relet the Premises or the appointment of a receiver upon City's initiative to protect its interest under this Lease; or withholding consent to an Assignment or Sublease, or terminating an Assignment or Sublease, if the withholding or termination does not violate the rights of Tenant specified in subdivision (b) of California Civil Code Section 1951.4. If City exercises its remedy under California Civil Code Section 1951.4, City may from time to time sublet the Premises or any part thereof for such term or terms (which may extend beyond the Term) and at such rent and upon such other terms as City at its sole discretion may deem advisable, with the right to make alterations and repairs to the Premises. Upon each such subletting, Tenant shall be immediately liable for payment to City of, in addition to Base Rent and Additional Charges due under this Lease, the cost of such subletting and such alterations and repairs incurred by City and the amount, if any, by which the Base Rent and Additional Charges owing under this Lease for the period of such subletting (to the extent such period does not exceed the Term) exceeds the amount to be paid as Base Rent and Additional Charges for the Premises for such period pursuant to such subletting. No action taken by City pursuant to this **Section 17.2(b)** shall be deemed a waiver of any default by Tenant and, notwithstanding any such subletting without termination, City may at any time thereafter elect to terminate this Lease for such previous default.

(c) Appointment of Receiver

The right to have a receiver appointed for Tenant upon application by City to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to City pursuant to this Lease.

17.3. City's Right to Cure Tenant's Defaults

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

17.4. Special Administrative Charges.

Without limiting City's other rights and remedies set forth in this Lease, at law or in equity, if Tenant (a) constructs or installs any Alteration or Improvement without the written approval of City as required by **Section 8** [Improvements] of this Lease, or (b) fails to make a repair required by **Section 9** [Repairs and Maintenance] on a timely basis, or (c) fails to provide evidence of the required insurance coverage described in **Section 19** [Insurance] below on a timely basis, then upon written notice from City of such failure or unauthorized action, Tenant shall pay, as an additional charge, the respective amount specified in the table below in consideration of City's administrative cost and expense in providing notice or performing inspections or such adjusted amounts as City, at its sole discretion, establishes from time to time during the course of the Term.

If Tenant fails to remove the unauthorized Alteration or Improvement and restore the Premises or perform the necessary repair or provide the necessary document, as applicable, within the time period set forth in such notice and City delivers to Tenant additional written notice requesting such document or evidence of such repair, or performs additional inspections to verify compliance, then Tenant shall pay to City, as an additional charge, the respective amount specified in the table below for each additional written notice City delivers to Tenant requesting such corrective action.

<u>Violation</u>	<u>Lease Section</u>	<u>Initial inspection and/or notice</u>	<u>Follow up inspection and/or notice</u>
Construction of Improvements or Alterations that are not approved by City	8	\$400.00	\$500.00
Failure to make required repairs	9	\$400.00	\$500.00
Failure to obtain/maintain insurance	19	\$400.00	\$500.00

Such administrative fees shall be due and payable as Additional Rent. The Parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the administrative cost and expense that City will incur in connection with providing notices or performing inspections as set forth above and that City's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this Lease, at law or in equity. City may increase such administrative fees from time to time, but in no event more than once in any calendar year.

18. WAIVER OF CLAIMS; INDEMNIFICATION

18.1. Waiver of Claims

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

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

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

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

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

18.2. Tenant's Indemnity

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

19. INSURANCE

19.1. Tenant's Insurance

Tenant shall procure and maintain throughout the Term of this Lease and pay the cost thereof, insurance in the following amounts and coverages:

(a) Property Insurance

Property insurance, on a special form, excluding earthquake and flood, for one hundred percent (100%) of the full insurable value of the Premises and the permitted Improvements, with any deductible not to exceed Ten Thousand Dollars (\$10,000) each

occurrence. Such insurance shall include City as loss payees as their respective interests may appear. With respect to the City's interest, such insurance shall, include rental interruption coverage in an amount equal to twelve months Base Rent. "**Full insurable value**" shall mean the actual replacement cost of the Improvements and the existing improvements; which are included in the Premises (excluding foundation and excavation costs but without deduction for physical depreciation). It shall be determined at inception and each renewal by Insurer selected and paid by Tenant and reasonably acceptable to City; provided, however, that City shall have the right, at any time, to ascertain the full insurable value at its own expense, except that in the event such full insurance value exceeds the value of the then existing amount of insurance coverage procured by Tenant, Tenant shall pay the expense of determining the full insurable value.

(b) Boiler and Machinery Insurance

Boiler and Machinery insurance, commercial form, covering damage to pressure vessels, heating and air conditioning systems, electrical apparatus and similar property in an amount not less than One Million Dollars (\$1,000,000) each accident, including City as loss payee as their respective interests may appear, with any deductible not to exceed Ten Thousand Dollars (\$10,000) each accident.

(c) Commercial General Liability Insurance

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, broad-form property damage, independent contractors, liquor liability, personal injury, products, and completed operations.

(d) Builder's Risk Insurance

Builder's Risk Insurance, on an all-risk form, including earthquake and flood, for one hundred percent (100%) of the completed value of any Improvements, Alterations, or other new construction, including materials in transit and storage off-site, in the event that such construction is beyond the scope of coverage in the property policy for remodeling or renovation. Such policy shall include as named insureds Tenant, City, any contractor in connection with such construction and subcontractors of all tiers, with any deductible not to exceed Ten Thousand Dollars (\$10,000) each occurrence.

(e) Worker's Compensation Insurance

Worker's Compensation Insurance in statutory amounts, with employer's liability coverage not less than One Million Dollars (\$1,000,000) each accident.

(f) Business Automobile Liability

Business Automobile liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles as applicable, if Tenant uses or causes to be used any vehicles in connection with its use of the Premises.

(g) Environmental Pollution Liability

So long as the Gas Tank is located on the Premises, Tenant shall maintain in force environmental pollution liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit (true occurrence form), including coverages for on-site or off-site third party claims for bodily injury and property damage, or such higher limits as may be reasonably required by City's Risk Manager. In addition, if Tenant intends to or

is required to perform any Hazardous Material Remediation on or about the Premises, then Tenant shall first notify City of the proposed work and following City's approval, Tenant or its contractor shall maintain in force, throughout the performance and completion of the Remediation, environmental pollution liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit (true occurrence form), including coverages for on-site or off-site third party claims for bodily injury and property damage, or such higher limits as may be reasonably required by City's Risk Manager based upon the scope of work.

(h) Other Insurance

City reserves the right to change amounts and types of insurance as Permitted Use of the Premises may change from time to time.

19.2. General Requirements

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

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

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

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

(i) Name the City and County of San Francisco, its officers, agents, and employees, as additional insureds, as their respective interests may appear in connection with this Lease.

(ii) That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Lease, and that insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limit of liability.

(iii) All insurance policies required to be maintained by Tenant under this Lease shall be endorsed to provide thirty (30) days' (10 days' in the case of cancellation for nonpayment of premium) prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to both Tenant and City. Notice to City shall be mailed to the address(es) for City set forth in the Basic Lease Information.

19.3. Proof of Insurance

Tenant shall deliver to City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to City, evidencing the coverages required pursuant to this Lease, on or before the Commencement Date, together with complete copies of the policies promptly upon City's request, and Tenant shall provide City with certificates or policies thereafter at least ten (10) days before the expiration dates of expiring policies. In the event Tenant shall fail to procure such insurance, or to deliver such policies or certificates, City may, at its option, procure the same for the account of Tenant, and the cost thereof shall be paid to City within five (5) days after delivery to Tenant of bills therefor.

19.4. Review of Insurance Requirements

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

19.5. No Limitation on Indemnities

Tenant's compliance with the provisions of this Section shall in no way relieve or decrease Tenant's indemnification obligations under Section 18.2 [Tenant's Indemnity] and Section 23.2 [Tenant's Environmental Indemnity], or any of Tenant's other obligations or liabilities under this Lease.

19.6. Lapse of Insurance

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

19.7. Tenant's Personal Property

Tenant may, at its expense, insure Tenant's Personal Property.

19.8. Waiver of Subrogation

Notwithstanding anything to the contrary contained in this Lease, City and Tenant (each a "**Waiving Party**") each waives any right of recovery against the other party for any loss or damage sustained by such other party with respect to the Premises or the contents of the same or any operation on or about the Premises, whether or not such loss is caused by the fault or negligence of such other party, to the extent such loss or damage is covered by insurance that is required to be purchased by the Waiving Party under this Lease or is actually covered by insurance obtained by the Waiving Party. Each Waiving Party shall cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Property or the Premises; provided, the failure to obtain any such endorsement shall not affect the above waiver.

20. ACCESS BY CITY

20.1. Access to Premises by City

(a) General Access

City reserves for itself and its designated Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than forty-eight (48) hours' oral or written notice to Tenant (except in the event of an emergency) for any purpose.

(b) Emergency Access

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

an eviction, actual or constructive, of Tenant from the Premises or any portion thereof.

(c) No Liability

City shall not be liable in any manner, and Tenant hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of City's entry onto the Premises, except to the extent damage results directly from the gross negligence or willful misconduct of City or its Agents.

(d) No Abatement

Tenant shall not be entitled to any abatement in Rent if City exercises any rights reserved in this Section.

(e) Minimize Disruption

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

20.2. Pipeline and Utility Installations

Without limiting **Section 20.1** [Access to Premises by City], at all times, City shall have the right to enter upon the Premises upon forty-eight (48) hours' advance written or oral notice (except in cases where emergency access is required pursuant to **Section 20.1(b)** [Emergency Access] above), to use, install, construct, repair, maintain, operate, replace, inspect, and remove the SFPUC Facilities or any other public utility facilities. City shall bear the expense of any such activities, unless the need is occasioned by the acts, omissions, or negligence of Tenant, its Agents or Invitees. City shall not be responsible for any temporary loss or disruption of Tenant's use of the Premises occasioned by any such facility installations or other activities but City shall use reasonable good faith efforts to minimize any damage to the Improvements and any disruption or interference with Tenant's use of the Premises as contemplated by this Lease.

20.3. Roadways

City and its Agents shall have the right to enter upon and pass through and across the Premises on any existing or future roadways and as City otherwise determines necessary or appropriate for purposes of the SFPUC Facilities.

21. ESTOPPEL CERTIFICATES

Either Party shall, from time to time during the Term upon not less than twenty (20) days' prior written notice from the other Party, execute, acknowledge and deliver to the other Party, or such persons or entities designated by such other Party, a statement in writing certifying: (a) the Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (c) that there are no known defaults under this Lease (or if so, specifying the same), and (d) the dates, if any, to which the Rent has been paid. Any such certificate shall be in the form attached as **Exhibit C**, and may be relied upon by the other Party or any prospective purchaser or Encumbrancer of its estate. The General Manager shall be authorized to execute, acknowledge, and deliver any such certificates of City.

22. SURRENDER

22.1. Surrender of the Premises

(a) Surrender Obligations

Upon the Expiration Date or upon the effective date of any earlier termination of this Lease, at its sole cost, Tenant shall surrender to City the Premises in a broom-clean condition and free of all Tenant's Personal Property, equipment, lumber, building materials, debris, or hazards (except for any Tenant's Personal Property, equipment, lumber, or building materials that the General Manager agrees are to remain part of the Premises). At its sole expense, Tenant shall repair any damage to the Premises resulting from the removal of any such items... In addition, in the event that, during the Term, City conditions its approvals of any Alterations or the installation of further Improvements on Tenant's agreement to remove some or all of the Improvements at the time of the expiration or earlier termination of this Lease, then Tenant shall also remove any such Improvements subject to such agreement. Tenant shall obtain any and all necessary permits and approvals in connection with any such repairs or removals required under this Lease, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal, or restoration work required by this Lease, if any. Tenant's obligations under this Section shall survive the Expiration Date or other termination of this Lease. Any items of Tenant's Personal Property remaining on or about the Premises after the Expiration Date of this Lease or other termination of this Lease may, at City's option, be deemed abandoned and in such case City may dispose of such property in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by Law. If Tenant fails to surrender the Premises to City on the Expiration Date or earlier termination of the Term as required by this Section, Tenant shall Indemnify City against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding tenant resulting from Tenant's failure to surrender the Premises.

(b) Removal of Gas Tank and Gas Systems

Unless waived in writing by City, upon the earlier of the (i) date that is ninety (90) days after the Gas Termination Date, (ii) the expiration or earlier termination of this Lease, or (iii) such other date mutually agreed upon in writing by City and Tenant, Tenant shall remove the Gas Tank and any and all Gas Systems then present on the Premises in accordance with all Environmental Laws, and shall Remediate any Releases of Hazardous Materials relating to the use of the Gas Tank or such Gas Systems, in accordance with all Environmental Laws. Upon the removal of the Gas Tank and any such Gas Systems, Tenant shall repave over the areas where such removal occurred and shall comply with all procedures required by any governmental agencies or authorities monitoring the removal including any and all mitigation requirements.

(c) No Relocation Rights or Benefits

Except as specifically provided in Article 15 [Eminent Domain], Tenant hereby waives any and all rights, benefits, or privileges of the California Relocation Assistance Law, California Government Code Sections 7260 et seq., and the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. Sections 4601 et seq., or under any similar law, statute, or ordinance now or hereafter in effect.

22.2. Automatic Reversion

Upon the Expiration Date or earlier termination of this Lease, the Premises shall automatically, and without further act or conveyance on the part of Tenant or City, become the property of City, free and clear of all liens and Encumbrances and without payment therefor by City and shall be surrendered to City upon such date. Upon or at any time after the date of termination of this Lease, if requested by City, Tenant shall promptly deliver to City, without charge, a quitclaim deed to the Premises suitable for recordation and any other instrument

reasonably requested by City to evidence or otherwise effect the termination of Tenant's leasehold estate under this Lease and to effect such transfer or vesting of title to the Premises or any permitted Improvements or Alterations that City agrees are to remain part of the Premises pursuant to the provisions of Section 8.2 [Ownership of Improvements].

23. HAZARDOUS MATERIALS

23.1. No Hazardous Materials

Tenant covenants and agrees that neither Tenant nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated, or disposed of in, on, or about the Premises or any Improvements or transported to or from the Premises or any Improvements with the sole exceptions that Tenant may (a) keep and use such substances in the Premises in such reasonably limited amounts as are customarily used for the Permitted Use specified in the Basic Lease Information and provided further that such limited amounts are at all times handled, used, and disposed of in accordance with applicable Laws and (b) operate and use the Gas Tank so long as it complies with all of its obligations under this Lease, including the requirements stated in Section 7.1(c) [Gas Tank Operation] above. Tenant shall immediately notify City if and when Tenant learns or has reason to believe there has been any Release of Hazardous Material in, on, or about the Premises or any Improvements. City may from time to time request Tenant to provide adequate information for City to determine that any Hazardous Material permitted under this Lease is being handled in compliance with all applicable Environmental Laws, and Tenant shall promptly provide all such information. Without limiting the provisions of Section 20 [Access by City], City and its Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions of this Lease at all reasonable times upon reasonable advance oral or written notice to Tenant (except in the event of an emergency).

23.2. Tenant's Environmental Indemnity

If Tenant breaches any of its obligations contained in Section 23.1 [No Hazardous Materials], or, if any act or omission or negligence of Tenant or any of its Agents or Invitees results in any Release of Hazardous Material in, on, under or about the Premises (including any Improvements thereon) or any other City property, without limiting Tenant's general Indemnity contained in Section 18.2 [Tenant's Indemnity], Tenant, on behalf of itself and its successors and assigns, shall Indemnify City and the Indemnified Parties, and each of them, from and against all Hazardous Materials Claims arising during or after the Term of this Lease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the Investigation and Remediation of Hazardous Material and with the restoration of the Premises or any other City property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other City property. Without limiting the foregoing, if Tenant or any of Tenant's Agents or Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or any other City property, Tenant shall, immediately, at no expense to City, take any and all appropriate actions to return the Premises or other City property affected thereby to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Tenant shall provide City with written notice of and afford City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

23.3. Exiting Corrective Actions

The Parties acknowledge that, as of the Restated Lease Effective Date, in conjunction with the SFPUC pursuant to a Corrective Action Plan Request and SFPUC's Ground Water Use Plan for the Westside Basin (the "**Remediation Criteria**"), Tenant is engaged in the ongoing

remediation of a Release (the "UST Release") that occurred because of, or from, the presence on the Premises of two (2) underground storage tanks that were previously placed on the Property during the course of Tenant's occupancy of the Premises pursuant to the Original Lease, but have since been removed. Notwithstanding the provisions of Section 23.1 [No Hazardous Materials] above, so long as Tenant continues to comply with all of its obligations and responsibilities pursuant to or arising under the Remediation Criteria and fulfills as they arise any Tenant obligations imposed by applicable Laws with respect to the UST Release, Tenant shall not be deemed to be in default of its obligations pursuant Section 23.1 [No Hazardous Materials] above with respect to the continued presence on or about the Premises of any Hazardous Materials resulting from the UST Release.

24. SECURITY DEPOSIT

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

25. GENERAL PROVISIONS

25.1. Notices

Except as otherwise expressly provided in this Lease, any notice given pursuant to or in connection with this Lease shall be effective only if in writing and given by delivering the notice in person, or by sending it first-class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid, to: (a) Tenant (i) at Tenant's address set forth in the Basic Lease Information, if sent before Tenant's taking possession of the Premises, or (ii) at the Premises if sent on or subsequent to Tenant's taking possession of the Premises, or (iii) at any place where Tenant or any Agent of Tenant may be found if sent subsequent to Tenant's vacating, abandoning or surrendering the Premises; or (b) City at City's address set forth in the Basic Lease Information; or (c) to such other address as either City or Tenant may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days before the effective date of such change. A properly addressed notice transmitted by one of the foregoing methods shall be deemed received upon confirmed delivery, attempted delivery, or rejected delivery. Neither party may give official or binding notice by e-mail or telefacsimile and, accordingly, the effective time of a notice shall not be affected by the receipt, before receipt of the original, of an e-mailed or telefacsimile copy of the notice.

25.2. No Implied Waiver

No failure by either Party to insist upon the strict performance of any obligation under this Lease or to exercise any right, power or remedy arising out of a breach, irrespective of the length of time for which such failure continues, no acceptance of full or partial Base Rent or Additional Charges during the continuance of any such breach, or possession of the Premises before the

expiration of the Term by any Agent of City, shall constitute a waiver of such breach or of a Party's right to demand strict compliance with such term, covenant, or condition or operate as a surrender of this Lease. No express written waiver of any default or the performance of any provision of this Lease shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision of this Lease shall not be deemed to be a waiver of a subsequent default or performance. The consent of a Party given in any instance under the terms of this Lease shall not relieve the other Party of any obligation to secure the consent of the Party who previously consented in any other or future instance under the terms of this Lease.

25.3. Amendments

Neither this Lease nor any term or provision of this Lease may be changed, waived, discharged, or terminated, except by a written instrument signed by the Parties.

25.4. Authority

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

25.5. Joint and Several Obligations

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

25.6. Interpretation of Lease

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

25.7. Successors and Assigns

Subject to the provisions of **Article 16** [Assignment and Subletting], the terms, covenants, and conditions contained in this Lease shall bind and inure to the benefit of City and Tenant and, except as otherwise provided in this Lease, their personal representatives and successors and assigns; provided, however, that upon any sale, assignment, or transfer by City named in this Lease (or by any subsequent landlord) of its interest in the Premises as owner or lessee, including any transfer by operation of Law, City (or any subsequent landlord) shall be relieved from all subsequent obligations and liabilities arising under this Lease subsequent to such sale, assignment,

or transfer.

25.8. Brokers

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

25.9. Severability

If any provision of this Lease or the application thereof to any person, entity, or circumstance shall be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the fullest extent permitted by Law, except to the extent that enforcement of this Lease without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Lease.

25.10. Governing Law

This Lease shall be construed and enforced in accordance with the Laws of the State of California.

25.11. Entire Agreement

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

25.12. Attorneys' Fees

In the event that either City or Tenant fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the non-prevailing party in such dispute, as the case may be, shall pay the prevailing party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights under this Lease (whether or not such action is prosecuted to a judgment). For purposes of this Lease, reasonable attorneys' fees of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. The term "**attorneys' fees**" shall also include, without limitation, all such fees incurred

with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees were incurred. The term "costs" shall mean the costs and expenses of counsel to the parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

25.13. Holding Over

Any holding over after the expiration of the Term with the express consent of City shall be construed to automatically extend the Term of this Lease on a month-to-month at such Base Rent as determined by City as part of its consent, and shall otherwise be on the terms and conditions in this Lease specified so far as applicable (except for those pertaining to the Term). Any holding over without City's consent shall constitute a default by Tenant, shall be at a Base Rent determined by City at its sole and absolute discretion by applying a market-derived yield rate to the highest fair market value of the fee interest in the Premises based on the highest and best use of the Premises determined on an average per square foot or per acre basis, as appropriate, and the prevailing market rate for space of comparable size, location and use within San Francisco and San Mateo Counties and shall entitle City to exercise any or all of its remedies as provided in this Lease, notwithstanding that City may elect to accept one or more payments of Rent.

25.14. Time of Essence

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

25.15. Cumulative Remedies

All rights and remedies of either Party set forth in this Lease shall be cumulative, except as may otherwise be provided in this Lease.

25.16. 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 of this Lease. Tenant specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Lease, Tenant has an immediate and independent obligation to defend City and the other Indemnified Parties from any claim that actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Tenant by City and continues at all times thereafter.

25.17. Relationship of Parties

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

25.18. Transfer by City

If City sells or otherwise transfers the Premises, City shall be released from its obligations under this Lease arising on or after the date of such sale or transfer and Tenant shall look solely to

the successor-in-interest to City. Upon a sale of the Premises by City, Tenant shall attorn to the purchaser or transferee, such attornment to be effective and self-operative without the execution of any further instruments on the part of the parties to this Lease. This Lease shall not be deemed to constitute any commitment by City, or create any priority or right in favor of Tenant, with regard to any future sale or other disposition of all or any part of the Premises.

25.19. Recording

Tenant shall not record this Lease nor any memorandum or short form of this Lease in the Official Records.

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

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

25.21. Wages and Working Conditions

With respect to the construction of the Improvements and any Alterations, any employee performing services for Tenant shall be paid not less than the highest prevailing rate of wages (as determined under Section 6.22(E) of the San Francisco Administrative Code for work in San Francisco, and as determined in the local jurisdiction if in a different county), shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in the county in which the Premises are located. Tenant shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing labor in the construction of any Improvements or Alterations to the Premises.

25.22. Non-Discrimination in City Contracts and Benefits Ordinance

(a) Covenant Not to Discriminate

In the performance of this Lease, Tenant shall not discriminate against any employee of, 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) Subleases and Other Subcontracts

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

(c) Non-Discrimination in Benefits

Tenant does not as of the date of this Lease and will not during the term of this

Lease, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) Condition to Lease

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

(e) Incorporation of Administrative Code Provisions by Reference

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

25.23. Requiring Health Benefits for Covered Employees

Unless exempt, Tenant shall 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 (Chapter 12Q), including the implementing regulations, as the same may be amended or updated from time to time. The provisions of Chapter 12Q are incorporated in this Lease by reference and made a part of this Lease as though fully set forth in this Lease. The text of the HCAO is currently 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 applicable 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 meets the requirements of a "small business" as described in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with part (a) above.

(c) Tenant's failure to comply with the requirements of the HCAO shall constitute a material breach by Tenant of this Lease. 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 thirty (30)-day period, Tenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have 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 Sublease or Contract regarding services to be performed on the Premises entered into by Tenant shall require the Subtenant or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Tenant shall notify the Purchasing Department when it enters into such a Sublease or Contract and shall certify to the Purchasing Department that it has notified the Subtenant or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Subtenant or Contractor through written agreement with such Subtenant or Contractor. Tenant shall be responsible for ensuring compliance with the HCAO by each Subtenant, Contractor and Subcontractor performing services on the Premises. If any Subtenant, Contractor or Subcontractor fails to comply, City may pursue the remedies set forth in this Section against Tenant based on the Subtenant's, Contractor's, or Subcontractor's failure to comply, provided that the Contracting Department has first provided Tenant with notice and an opportunity to cure the violation.

(e) Tenant shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

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

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

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

(i) Within five (5) business days after any request by City, Tenant shall provide City with access to pertinent records relating to any Tenant's compliance with the HCAO. In addition, City and its agents may conduct random audits of Tenant at any time during the term of this Lease. Tenant shall cooperate with City in connection with any such audit.

25.24. Notification of Limitations on Contributions

Through its execution of this Lease, Tenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require 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, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) 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 such contract or six months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Tenant further acknowledges that the prohibition on contributions applies to each Tenant; each member of Tenant's board of directors, and Tenant's chief executive officer, chief financial officer, and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Tenant; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that Tenant must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Upon City's request, Tenant shall provide to City the

names of each person, entity, or committee described above.

25.25. No Relocation Assistance; Waiver of Claims

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

25.26. MacBride Principles - Northern Ireland

The provisions of San Francisco Administrative Code §12F are incorporated in this Lease by this reference and made part of this Lease. By signing this Lease, Tenant confirms that it has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

25.27. Conflicts of Interest

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

25.28. Charter Provisions

This Lease is governed by and subject to the provisions of the Charter of the City and County of San Francisco.

25.29. Tropical Hardwood and Virgin Redwood Ban

City 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 the Improvements or the Alterations, or otherwise in the performance of this Lease that 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.

25.30. Prohibition of Tobacco Sales and Advertising

Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the Premises. This advertising prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (a) communicate the health hazards of cigarettes and tobacco products, or (b) encourage people not to smoke or to stop smoking.

25.31. Prohibition of Alcoholic Beverage Advertising

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. 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 alcoholic beverages, (b) encourage people not to drink alcohol or to stop drinking alcohol, or (c) provide or publicize drug or alcohol treatment or rehabilitation services.

25.32. Consents, Approvals, Elections, and Options

Except as otherwise provided by applicable Law, any consent or approval required by City or the SFPUC, or any election or option exercisable by the SFPUC, may be given or exercised by the SFPUC's General Manager at his or her sole discretion. No consent, approval, election, or option shall be effective unless evidenced by a written instrument.

25.33. Counterparts

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

25.34. Disclosure

Tenant understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code Chapter 67) and the State Public Records Law (Gov't Code Section 6250 et seq.), apply to this Lease and any and all records, information, and materials submitted to the City in connection with this Lease. Accordingly, any and all such records, information and materials may be subject to public disclosure in accordance with the City's Sunshine Ordinance and the State Public Records Law. Tenant hereby authorizes the City to disclose any records, information and materials submitted to the City in connection with this Lease.

25.35. Food Service Waste Reduction

Tenant shall comply fully with and be bound by all of the provisions of the Food Service 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 in this Lease by reference and made a part of this Permit as though fully set forth in this Lease. This provision is a material term of this Lease. By entering into this Lease, Tenant agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine. Without limiting City's other rights and remedies, Tenant agrees that the sum of One Hundred Dollars (\$100.00) liquidated damages for the first breach, Two Hundred Dollars (\$200.00) liquidated damages for the second breach in the same year, and Five Hundred Dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Lease was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's failure to comply with this provision.

25.36. 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.

25.37. Bottled Drinking Water

Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the San Francisco Bottled Water Ordinance, as set forth in San Francisco Environment Code Chapter 24, including the administrative fines, remedies, and implementing regulations provided in that statute, as the same may be amended from time to time. The provisions of Chapter 24 are incorporated by reference and made a part of this Lease as though fully set forth.

25.38. Criminal History in Hiring and Employment Decisions

(a) Unless exempt, Tenant agrees to comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; "**Chapter 12 T**"), which are hereby incorporated as may be amended from time to time, with respect to applicants and employees of Tenant who would be or are performing work at the Premises. Chapter 12T, and the provisions of this Section, shall not apply to the extent, however, that its or their application to Tenant would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

(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 any 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: (i) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (ii) participation in or completion of a diversion or a deferral of judgment program; (iii) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (iv) a Conviction or any other adjudication in the juvenile justice system; (v) a Conviction that is more than seven years old, from the date of sentencing; or (vi) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

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

(f) Tenant and any 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 any Subtenants understand and agree that upon any failure to

comply with the requirements of Chapter 12T, City may 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.

25.39. Vending Machines; Nutritional Standards

Tenant shall not install or permit any vending machine on the Premises without City's prior written consent. Any permitted vending machine must comply with the food nutritional 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 shall incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section shall be deemed a material breach of this Lease. Without limiting City's other rights and remedies under this Lease, City shall have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements.

25.40. All-Gender Toilet Facilities

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


NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, TENANT ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THE TERMS AND CONDITIONS OF THIS LEASE UNLESS AND UNTIL A RESOLUTION OF THE SFPUC HAS BEEN DULY ADOPTED AND A RESOLUTION OR ORDINANCE OF THE BOARD OF SUPERVISORS HAS BEEN DULY ENACTED APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY AND THE MAYOR APPROVES THE SAME. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY UNDER THIS LEASE ARE CONTINGENT UPON PASSAGE OF SUCH RESOLUTIONS OR ORDINANCE, AND THIS LEASE SHALL NOT BE EFFECTIVE UNLESS AND UNTIL THE SFPUC AND THE BOARD OF SUPERVISORS APPROVE THIS LEASE, EACH AT THEIR SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS.

[SIGNATURES ON FOLLOWING PAGES]

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

TENANT:

POMEROY RECREATION & REHABILITATION CENTER,
a California not-for-profit corporation

By: 
Name: Ken Jones
Its: Interim CEO

By: _____
Name: _____
Its: _____

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

AUTHORIZED BY
SAN FRANCISCO PUBLIC
UTILITIES COMMISSION

By: _____
HARLAN L. KELLY, JR.
Its: General Manager
San Francisco Public Utilities Commission

Resolution No. _____
Adopted: _____
Attested: _____
Secretary

Board of Supervisors Resolution No.

Adopted _____

APPROVED AS TO FORM:
DENNIS J. HERRERA
City Attorney


By: 
Richard Handel
Deputy City Attorney

EXHIBIT A

Legal Description of Premises

All that certain real property located at 207 Skyline Boulevard in San Francisco, California, described as follows:

A portion of SFPUC Parcel 55 between Herbst Road and Skyline Boulevard according to SFPUC records and as shown on attached drawing **Exhibit B.**

EXHIBIT C

Form of Estoppel Certificate

LANDLORD ESTOPPEL CERTIFICATE

RE: Amended And Restated Lease, dated _____, 2016 (the "**Lease**"), by and between the City and County of San Francisco, a municipal corporation, acting by and through its Public Utilities Commission ("**City**") and Pomeroy Recreation and Rehabilitation Center, a California corporation ("**Tenant**"), relating to certain property located in San Francisco County, California (the "**Premises**")

Ladies and Gentlemen:

The undersigned hereby confirms, represents and warrants to Tenant that:

1. Attached to this letter is a true and correct copy of the Lease;
2. The Expiration Date of the Lease is _____;
3. The Lease is in full force and effect and, except as shown in the attachments to this Certificate, has not been assigned, modified, supplemented, or amended in any way;
4. The Lease represents the entire agreement between Tenant and City with respect to the Premises;
5. To City's knowledge, on this date, there are no known defaults under this Lease and no event has occurred, that, with the giving of notice, the passage of time or both, would constitute a default by City or Tenant under the Lease except as set forth in the attached Schedule A;
6. All rent amounts due and owing to date have been paid, and no rental, other than for the current month, has been paid in advance except as set forth in Schedule A;
7. The undersigned executing this estoppel certificate represents and warrants that he or she is duly authorized to execute this certificate on City's behalf.

The truth and accuracy of the certifications contained in this letter may be relied upon by Tenant and the addressee set forth above, and their successors and assigns.

Very truly yours

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting through its Public
Utilities Commission

By: _____
Name: _____
Title: _____
Date: _____

TENANT ESTOPPEL CERTIFICATE

RE: Amended and Restated Lease, dated _____, 2016 (the "Lease"), by and between the City and County of San Francisco, a municipal corporation, acting by and through its Public Utilities Commission ("City") and Pomeroy Recreation & Rehabilitation Center a California corporation ("Tenant"), relating to certain property located in San Francisco County, California (the "Premises")

Ladies and Gentlemen:

The undersigned hereby confirms, represents and warrants to City that:

1. Attached to this letter is a true and correct copy of the Lease;
2. Tenant has accepted possession of the Premises under the Lease;
3. The Expiration Date of the Lease is _____;
4. The Lease is in full force and effect and, except as shown in the attachments to this Certificate, has not been assigned, modified, supplemented, or amended in any way;
5. The Lease represents the entire agreement between Tenant and City with respect to the Premises;
6. To Tenant's knowledge, on this date, there are no known defaults under this Lease and no event has occurred, that, with the giving of notice, the passage of time or both, would constitute a default by City or Tenant under the Lease except as set forth in the attached Schedule A;
7. All rent amounts due and owing to date have been paid, and no rental, other than for the current month, has been paid in advance except as set forth in Schedule A;
8. The undersigned executing this estoppel certificate represents and warrants that he or she is duly authorized to execute this certificate on behalf of Tenant.

The truth and accuracy of the certifications contained in this letter may be relied upon by City and the addressee set forth above, and their successors and assigns.

Very truly yours

Pomeroy Recreation & Rehabilitation Center, a California not-for-profit corporation

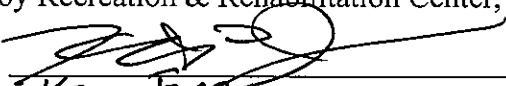
By: 
Name: Ken Jones
Title: Interim CEO
Date: 8/1/16

EXHIBIT D

Depiction of Existing Improvements

Existing improvements are depicted in the following six (6) sets of drawings prepared by Tenant's architects on file at the Premises:

Project Number 9-14: "PRRC Original Building," Herzka and Knowles, February 8, 1972. AIA. A1, A2, A5, A6, A7, A8, A9, A10, S1, S2, S3, S4, S5.1, S5.2, S6, S7, S8, S9, S5.3.

Project Number 88022-01: "Day and Respite Care Addition" H+K Associates Architects, February 2, 1980. 1, L1, L2, A1, AZ, A3, A4, A5, A6, A7

Project Number 9-14-4: "Pool Building," Hertzka and Knowles Architects, AIA, December 14, 1983. A1, A2, A3, A4, A5, A6, A7, A8, A9, A10, A11, M1, M2, M3, M4, M5, M6, M7, M8, M9, S1, S2, S3, S4, S5, S6, S7, S8, S9, E1, E2, E3.

Project Number 8211: "Remodel and Addition to the Recreation Center for the Handicapped Daily Skills Center" Marques Corp., February 11, 1983. A0.1, A0.2, A1.2, A1.2, A1.3, A2.1, A2.2, A2.3, A3.1, A5.1, A5.2, A5.3, A5.4, A5.5, A6.1, A6.2, A8.1, A9. **Project Number 87026-01:** "Multipurpose Porch," H+K Associates Architects, January 5, 1990. A1, A3, A4, A5, A6, S1, S2, M1, M2, E1.

Project Number 93023: "Push Playground," Hertka and Knowles, November 11, 1994. Exiting Garden, Playground Equipment Plan, Amphitheater Detail, 1, A2, P1, P2