

File No. 190317

Committee Item No. 4

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Sub-Committee

Date April 10, 2019

Board of Supervisors Meeting

Date _____

Cmte Board

- Motion
- Resolution
- Ordinance
- Legislative Digest
- Budget and Legislative Analyst Report
- Youth Commission Report
- Introduction Form
- Department/Agency Cover Letter and/or Report
- MOU
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract/Agreement
- Form 126 – Ethics Commission
- Award Letter
- Application
- Public Correspondence

OTHER (Use back side if additional space is needed)

- SFMTA Board of Director Resolution
- SFMTA CEQA Determination
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____

Completed by: Linda Wong

Date April 5, 2019

Completed by: Linda Wong

Date _____

1 [Lease Agreement - Tad's, Inc. - 44 Ellis Street - Annual Base Rent of \$5,317,064]

2
3 **Resolution authorizing the Municipal Transportation Agency to execute a retail lease**
4 **agreement with Tad's, Inc., for approximately 5,368 square feet of retail space at 44**
5 **Ellis Street, for a ten year term, to commence upon approval by the Board of**
6 **Supervisors, plus two five-year extension options, at an initial annual base rent of**
7 **\$5,317,064.**

8
9 WHEREAS, The Ellis-O'Farrell Garage (Garage), located at 123 O'Farrell Street, is
10 owned by the City and County of San Francisco, and under the jurisdiction of the Municipal
11 Transportation Agency (SFMTA), offers three retail spaces; and

12 WHEREAS, On May 6, 2015, the Board of Supervisors under Resolution No. 187-15
13 authorized the Director of Transportation of the SFMTA to execute a lease agreement with
14 Les Joulins for the retail space designated as 44 Ellis Street and comprised of approximately
15 5,368 square feet for an initial term of ten years (Lease); and

16 WHEREAS, On March 1, 2017, the Lease was assumed by Tad's Inc. (Tenant); and

17 WHEREAS, The Lease agreement includes a rent schedule for the ten-year initial term
18 that will result in \$5,127,000 in revenue to the SFMTA and includes \$250,000 in rent credits
19 upon completion of certain pre-authorized improvements; and

20 WHEREAS, For over 20 years, no major improvements have been made to the retail
21 space at 44 Ellis Street and the Tenant has determined that the space needs additional work
22 on top of the pre-authorized improvements contemplated in the Lease in order to comply with
23 current building codes; and

24 WHEREAS, Tenant desires to enter into a new lease agreement which would allow
25 them to make investments in the necessary improvements to the retail space and lease the

1 property for a longer term than the six years that remain in the lease; and

2 WHEREAS, The proposed new lease includes a rent schedule for the initial ten-year
3 term that will result in \$5,317,064 in revenue to the SFMTA, and includes two five-year
4 options to extend the lease; and

5 WHEREAS, Rent for the first five-year option to extend will be at 103% of the base rent
6 from the lease year immediately prior; and

7 WHEREAS, Rent for the second five-year option to extend is at the greater of 103% of
8 the base rent from the lease year immediately prior or 95% of the market rent; and

9 WHEREAS, The proposed lease includes nine months of rent abatement to facilitate
10 Tenant's construction of certain improvements; and

11 WHEREAS, In November 2018, the SFMTA hired an independent appraiser R. Blum
12 and Associates (R. Blum), to determine the Market Rent (as defined in Administrative Code,
13 Section 23.2), and he concluded the Market Rent for the space at 44 Ellis Street to be in a
14 range between \$82.50 and \$87.50 per square foot per year; and

15 WHEREAS, With consideration of nine months of rent abatement, the market rent is
16 adjusted upward and determined to be \$87.56 per square foot per year; a second
17 independent appraiser, David Tattersall, was hired to provide an appraisal review and
18 reached the same conclusion as R. Blum; and

19 WHEREAS, Comparing the current Lease with the proposed lease over a ten year
20 term, the result is a net revenue increase of \$190,154; and

21 WHEREAS, Tenant has been operating in the greater Union Square area for over 45
22 years and retaining a local small business contributes to a proper public purpose; and

23 WHEREAS, On January 3, 2019, the SFMTA, under authority delegated by the
24 Planning Department, determined that the Commercial Lease Agreement with Tad's Inc. is
25 not defined as a "project" under the California Environmental Quality Act (CEQA) pursuant

1 Title 14 of the California Code of Regulations, Sections 15060(c) and 15378(b); and

2 WHEREAS, On March 5, 2019, the SFMTA Board of Directors approved Resolution
3 No. 190305-028 authorizing the Director of Transportation of the SFMTA to execute the Lease
4 and to forward to the Board of Supervisors for final approval; and

5 WHEREAS, A copy of the Lease, including all exhibits, is on file with the Clerk of the
6 Board of Supervisors in File No. 190317, which is hereby declared to be part of this motion as
7 if set forth fully herein; now, therefore, be it

8 RESOLVED, That the Board of Supervisors approves the lease between the City and
9 County of San Francisco and Tad's, Inc.; and, be it

10 FURTHER RESOLVED, That The Board of Supervisors authorizes the Director of
11 Transportation of the SFMTA to enter into a Commercial Lease Agreement with Tad's Inc. for
12 retail space, located at 44 Ellis Street in the Ellis-O'Farrell Garage, for a ten-year term and two
13 five-year options to extend the lease that will result in \$5,317,064 in revenue to the SFMTA;
14 and, be it

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

<p>Items 4 and 5 Files 19-0317 and 19-0316</p>	<p>Department: Municipal Transportation Agency (MTA)</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p>	
<ul style="list-style-type: none"> • <u>File 19-0316:</u> The proposed resolution authorizes the Municipal Transportation Agency (MTA) to terminate the lease agreement with Tad’s Inc. (Tad’s) for retail space located at 44 Ellis Street in the Ellis-O’Farrell Garage. • <u>File 19-0317:</u> The proposed resolution authorizes the new retail lease agreement between MTA, as landlord, and Tad’s, Inc. (Tad’s), as tenant, for approximately 5,368 square feet of retail space at 44 Ellis Street. The proposed resolution would authorize a ten-year lease term to commence upon approval by the Board of Supervisors, from approximately May 2019 to May 2029, with two five-year extension options through approximately May 2039. Total rent to be paid by Tad’s to MTA over the initial 10-year term is \$5,317,024. 	
<p style="text-align: center;">Key Points</p>	
<ul style="list-style-type: none"> • The Ellis-O’Farrell Garage, located at 123 O’Farrell Street, is owned by the City and is under the jurisdiction of the San Francisco Municipal Transportation Agency (MTA). The garage provides three commercial retail spaces totaling 11,000 square feet. The retail space associated with the lease termination and proposed new lease agreement is a 5,368 square feet space that operated as a restaurant at 44 Ellis Street. • In May 2015, the Board of Supervisors approved a resolution authorizing a ten-year commercial lease between MTA, as landlord, and Les Joulins, USA, Inc. (Les Joulins), as tenant, for use as a restaurant and nightclub (File 15-0312). In March 2017, Tad’s, Inc. (Tad’s), which operates a restaurant, assumed the lease with six years remaining from the initial lease term. Tad’s has not been able to open their business since assuming the current lease. • For over 20 years, no major improvements have been made to the retail space at 44 Ellis Street, and the tenant has determined that the space needs additional work on top of the pre-authorized improvements in the proposed lease agreement in order to comply with current building codes. Both MTA and Tad’s desire to terminate the existing lease agreement in order to enter into a new lease agreement that will extend the term and includes rent abatement which would allow the tenant to make the necessary capital investments. 	
<p style="text-align: center;">Fiscal Impact</p>	
<ul style="list-style-type: none"> • Under the proposed lease agreement (File 19-0317), base rent of \$442,860 in Year 1, increasing by 4 percent per year, for total base rent over 10 years of \$5,317,025. The first five-year option to extend will be at 103 percent of the base rent from the lease year immediately prior. The second five-year option to extend is at the greater of 103 percent of the base rent from the lease year immediately prior or 95 percent of the market rent. 	
<p style="text-align: center;">Recommendations</p>	
<ul style="list-style-type: none"> • Amend File 19-0317 to revise the language on page 1, lines 6-7 from “an initial annual base rent of \$5,317,064” to “a total rent over the initial 10-year term of \$5,317,024.” • Approve the proposed resolutions. 	

MANDATE STATEMENT

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

BACKGROUND

The Ellis-O'Farrell Garage, located at 123 O'Farrell Street, is owned by the City and is under the jurisdiction of the San Francisco Municipal Transportation Agency (MTA). The garage provides approximately 950 parking spaces and three commercial retail spaces totaling 11,000 square feet. The retail space associated with the lease termination and proposed new lease agreement is a 5,368 square feet space that operated as a restaurant at 44 Ellis Street.

In May 2015, the Board of Supervisors approved a resolution authorizing a ten-year commercial lease between MTA, as landlord, and Les Joulins, USA, Inc. (Les Joulins), as tenant, for use as a restaurant and nightclub (File 15-0312). The resolution retroactively authorized a lease term of March 1, 2015 through February 28, 2025, with two five-year options to extend the lease through 2035. In March 2017, Tad's, Inc. (Tad's), which operates a restaurant, assumed the lease¹ with six years remaining from the initial lease term. The total amount of base rent for the first ten years of the lease is \$5,127,000. The lease also includes \$250,000 in rent credits upon completion of certain pre-authorized improvements. Tad's has not been able to open their business since assuming the current lease. However, according to MTA, Tad's has consistently met its obligation to pay the rent due under the current lease, totaling \$730,791 as of February 1, 2019.

DETAILS OF PROPOSED LEGISLATION

File 19-0316: The proposed resolution authorizes the Municipal Transportation Agency (MTA) to terminate the lease agreement with Tad's Inc. (Tad's) for retail space located at 44 Ellis Street in the Ellis-O'Farrell Garage.

File 19-0317: The proposed resolution authorizes the new retail lease agreement between MTA, as landlord, and Tad's, Inc. (Tad's), as tenant, for approximately 5,368 square feet of retail space at 44 Ellis Street. The proposed resolution would authorize a ten-year lease term to commence upon approval by the Board of Supervisors, from approximately May 2019 to May 2029, with two five-year extension options through approximately May 2039. Total rent to be paid by Tad's to MTA over the initial 10-year term is \$5,317,024.

The current lease agreement between MTA and Tad's is in effect and the approval of the new proposed lease agreement (File 19-0317) is subject to termination of the current lease (File 19-0316). For over 20 years, no major improvements have been made to the retail space at 44 Ellis

¹ According to MTA, the assignment and assumption of the lease agreement did not require Board of Supervisors approval because Section 16.2 of the lease outlines the tenant's right to transfer the lease with a written notice and financial statement of the proposed transferee. MTA states that Tad's Inc. was the transferee who had a strong financial background. For the last two years, Tad's has consistently paid rent on time to the MTA.

Street, and the tenant has determined that the space needs additional work on top of the pre-authorized improvements in the proposed lease agreement in order to comply with current building codes. According to MTA, it is mutually beneficial to MTA and Tad's to have the retail space at 44 Ellis Street completely renovated and to retain a local business that has been operating in the greater Union Square for over 45 years. Consequently, both MTA and Tad's desire to terminate the existing lease agreement in order to enter into a new lease agreement that will extend the term and includes rent abatement which would allow the tenant to make the necessary capital investments. According to MTA, because a major portion of the work constitutes a capital investment for the Ellis O'Farrell Garage, the MTA would like to facilitate the completion of these improvements. In addition, MTA considered amending the current lease as an alternative to termination. However, the lease would require significant changes, and both parties, including the City Attorney's Office, concluded that it would be better to terminate the current lease and enter a new lease agreement.

Table 1 below summarizes the terms of the current and new proposed retail lease agreement at 44 Ellis Street.

Table 1. Terms of Current and Proposed New Lease at 44 Ellis Street

	Current Lease	Proposed New Lease
Square Footage	5,368	5,368
Term	March 1, 2015 – February 28, 2025	Approximately May 2019 to May 2029
Tenant Improvements	Up to \$250,000; Tenant will be able to use these funds for MTA-approved tenant improvement projects.	Tenant to fund and perform certain improvements to the property which include, but are not limited to, new or renovated mechanical, electrical, plumbing and ventilation systems; new or renovated fire sprinklers, monitoring system, and hood suppression; renovation of two restrooms; new or renovated interior walls, flooring and ceiling finishes; new or renovated exterior façade; new or renovated canopy; new or renovated lighting fixtures; and new paint as determined by tenant subject to terms of the lease.
Monthly Base Rent	\$47,890 (Annual \$574,680) for the lease year from March 2018 to February 2019.	\$36,905 (Annual \$442,860)
Annual Base Rent Increases	4 percent	4 percent
Utilities, Services, and Operating Costs	Tenant is responsible for the cost of all utilities and services provided to the premises.	Tenant is responsible for the cost of all utilities and services provided to the premises.
Option to Extend	Two (2) five-year options	Two (2) five-year options
Base Rent Increase on Exercise of Option	The higher of (1) the rent in year ten of the existing lease plus a 3 percent consumer price index increase, or (2) 95 percent of fair market value.	The first five-year option to extend will be at 103 percent of the base rent from the lease year immediately prior. The second five-year option to extend is at the greater of 103 percent of the base rent from the lease year immediately prior or 95 percent of the market rent.
Security Deposit	\$50,000	\$50,000

Tenant Improvements

As previously mentioned, the proposed new lease agreement contemplates certain improvements to the premises and includes a list of pre-approved work such as hood ventilation replacement, and electrical, plumbing, ceiling, flooring and bathrooms upgrades.

According to MTA, when Tad's assumed the Lease, Tad's agreed the list of pre-authorized work was necessary. Tad's also determined the space needed a new mechanical system and ductwork for heating, ventilating and air conditioning, a new fire protection system for sprinkler and hood, new lighting fixtures, supply and exhaust fans, fan-coil unit, condensing heat pump unit, and new exterior façade and canopy to meet building codes.

The current lease agreement allows the tenant to apply up to \$250,000 as a rent credit against the base rent due, if the tenant completes any of the improvement projects from the pre-approved list. The rent credit is not an estimate of the total cost for the list of pre-authorized tenant improvement work. According to MTA, the agency recognized the space needed work, and the rent credit was intended to allow for some upgrades. None of the improvements that were the subject of the rent credit were completed while the former tenant, Les Joulins, occupied the space.

According to MTA, due to the extent of the work needed to bring the space up to building code and safe operating standards, Tad's has not been able to open their business since assuming the current lease. Tad's intends to completely renovate the restaurant and fund the necessary building improvements to bring the space up to code, at a reported estimated cost of \$2,700,000. According to MTA, Tad's estimates the project will take approximately nine months to complete. Consequently, to facilitate the tenant's construction of necessary improvements to the retail space, the proposed new lease agreement includes nine months of rent abatement. According to MTA, the proposed new lease agreement includes rent abatement and not rent credits because the tenant has been currently working with City departments to get permits and aims to complete the improvement work. The current lease provided rent credits because the tenant at the time (Les Joulins) did not provide any construction schedule. According to MTA, to ensure the tenant will complete the improvements, MTA staff and contractors who manage the facility will work alongside with the tenant throughout the construction process. The tenant has closed operations while awaiting building permits and will work with the Department of Building Inspection (DBI) to inspect the construction build out.

FISCAL IMPACT

Under the proposed lease agreement (File 19-0317), base rent of \$442,860 in Year 1, increasing by 4 percent per year, for total base rent over 10 years of \$5,317,025, as shown in Table 2 below. According to MTA, the rent increase percentage is based on the U.S. Department of Labor's Consumer Price Index (CPI), which is currently between 3 to 4 percent.

Table 2. 10-Year Rent Payable by Tad’s to MTA

Lease Year	Price Per Square Foot/Year	Monthly Rent	Annual Rent
Year 1	\$82.50	\$36,905	\$442,860
Year 2	85.80	38,381	460,574
Year 3	89.23	39,916	478,997
Year 4	92.80	41,513	498,157
Year 5	96.51	43,174	518,084
Year 6	100.37	44,901	538,807
Year 7	104.39	46,697	560,359
Year 8	108.56	48,564	582,774
Year 9	112.91	50,507	606,084
Year 10	117.42	52,527	630,328
Total			\$5,317,024

Rent During Extension Term

The first five-year option to extend will be at 103 percent of the base rent from the lease year immediately prior. The second five-year option to extend is at the greater of 103 percent of the base rent from the lease year immediately prior or 95 percent of the market rent.

Fair Market Rent

As noted above, under the current lease, Tad’s pays rent of \$47,890 per month or \$574,680 per year, equivalent to \$107.06 per square foot per year. Under the proposed new lease, Tad’s pays rent of \$36,905 per month or \$442,860 per year, equivalent to \$82.50 per square foot, a reduction of 24 percent compared to the existing lease.

In November 2018, the MTA hired an independent appraiser, R. Blum+Associates (R. Blum) to appraise the market rent of the retail space at 44 Ellis Street. The appraiser used the direct comparison method and based on recent comparables, determined the range of rental rate to be between \$82.50 and \$87.50 per square foot. R. Blum determined that the market rent of the retail space as of November 15, 2018, in as-is condition, is estimated to be \$87.56 per square foot per year. With consideration of nine months of rent abatement, the market rent is adjusted upward to between \$87.50 and \$92.50 per square foot. Consequently, based on R. Blum’s evaluation, the nine-month rent abatement is valued at \$5 per square foot per year.

MTA set the first year rent at \$82.50 per square foot to account for the nine-month rent abatement which is approximately \$5 per square foot below R. Blum’s fair market rent estimate of \$87.50 per square foot. The value of the rent abatement over 10 years is \$322,244, which is less than the estimated tenant improvement expenditures to be incurred by Tad’s. No additional rent credit for tenant improvement work is included in the proposed lease.

In December 2018, the MTA hired another independent appraiser, David Tattersall & Co. (Tattersall), to provide an appraisal review of the report by R. Blum. The report by Tattersall was in agreement with the market rental rates in the R. Blum report.

Proposed Amendment

The proposed resolution on the new lease agreement (File 19-0317) states on page 1, lines 6-7 “an initial annual base rent of \$5,317,064”. However, as discussed above, the total rent to be paid by Tad’s to MTA over the initial 10-year term of the proposed lease agreement is \$5,317,024. Therefore, the proposed resolution (File 19-0317) should be amended on page 1, lines 6-7 to state “a total rent over the initial 10-year term of \$5,317,024”.

RECOMMENDATIONS

1. Amend File 19-0317 to revise the language on page 1, lines 6-7 from “an initial annual base rent of \$5,317,064” to “a total rent over the initial 10-year term of \$5,317,024.”
2. Approve the proposed resolutions.

COMMERCIAL LEASE AGREEMENT

between

THE CITY AND COUNTY OF SAN FRANCISCO,
ACTING BY AND THROUGH ITS MUNICIPAL TRANSPORTATION AGENCY

and

TAD'S INC., a California corporation

as Tenant

For the lease of

Ellis-O'Farrell Garage
at 44 Ellis Street

San Francisco, California

[March], 2019

TABLE OF CONTENTS

	<u>Page</u>
1. DEMISE	1
2. DEFINITIONS	1
3. PREMISES; AS-IS CONDITION	8
3.1. Premises	8
3.2. Accessibility Inspection Disclosure.....	9
3.3. San Francisco Disability Access Disclosures	10
3.4. No Right to Encroach	10
3.5. Intentionally Left Blank.....	11
3.6. As-Is Condition.....	11
3.7. Release and Waiver	11
3.8. SFMTA’s Rights Regarding Premises.....	11
4. TERM OF LEASE; TERMINATION BY SFMTA; EXTENSION OPTION.....	12
4.1. Term.....	12
4.2. Intentionally Left Blank.....	12
4.3. Waiver of Relocation Benefits.....	12
4.4. Extension Option	12
(a) Option to Extend Term	12
(b) Base Rent and Other Terms	12
5. RENT	15
5.1. Base Rent	15
5.2. Default Interest	15
5.3. Returned Checks	16
5.4. Net Lease	16
5.5. Additional Charges	16
5.6. Adjustments in Base Rent.....	17
5.7. Annual Reporting.....	17
6. TAXES AND ASSESSMENTS	17
6.1. Payment of Taxes	17
6.2. Possessory Interest Tax.....	17

7.	SECURITY DEPOSIT	18
8.	USE OF THE PREMISES.....	18
9.	COMPLIANCE WITH LAWS AND REGULATIONS.....	18
10.	SFMTA ACTING AS OWNER OF PROPERTY; REGULATORY APPROVALS; COMPLIANCE WITH CITY’S RISK MANAGER’S REQUIREMENTS	19
	10.1. SFMTA Acting as Owner of Property.....	19
	10.2. Regulatory Approvals.....	19
	10.3. Compliance with City’s Risk Manager’s Requirements	20
11.	MAINTENANCE AND REPAIRS.....	20
	11.1. Tenant Maintenance and Repair Obligations	20
	11.2. SFMTA’s Right to Inspect.....	20
	11.3. SFMTA’s Right to Repair	21
	11.4. Acts of Nature.....	21
12.	UTILITIES AND SERVICES.....	21
13.	IMPROVEMENTS AND ALTERATIONS.....	22
	13.1. SFMTA Consent Required	22
	13.2. Tenant’s Obligation to Construct the Initial Tenant Improvements.....	22
	13.3. Construction Requirements	22
	13.4. Improvements Part of Realty	23
	13.5. All-Gender Toilet Facilities.....	23
	13.6. Removal of Improvements	24
	13.7. Removal of Non-Permitted Improvements.....	24
	13.8. Signs	24
	13.9. SFMTA’s Alterations	24
14.	LIENS.....	25
15.	HAZARDOUS MATERIALS.....	25
	15.1. Requirements for Handling.....	25
	15.2. Tenant Responsibility	25
	15.3. Tenant’s Environmental Condition Notification Requirements.....	26
	15.4. Requirement to Remediate	27
	15.5. SFMTA’s Right to Audit	27
	15.6. Presence of Hazardous Materials.....	27
	15.7. Survival.....	28

16.	INSURANCE	28
	(a) General Liability Insurance	28
	(b) Automobile Liability Insurance	28
	(c) Worker’s Compensation	28
	(d) Personal Property Insurance	28
	(e) Construction Activities	28
	(f) Property Insurance; Earthquake and Flood Insurance	29
	(g) Builders Risk Insurance	29
	(h) Boiler and Machinery Insurance	29
	(i) Business Interruption Insurance	29
	(j) Professional Liability	29
	(k) Other Coverage	30
	16.2. Claims-Made Policies	30
	16.3. Annual Aggregate Limits	30
	16.4. Payment of Premiums	30
	16.5. Waiver of Subrogation Rights	30
	16.6. General Insurance Matters	30
17.	DAMAGE AND DESTRUCTION	31
	17.1. Damage and Destruction	31
	17.2. Waiver	32
18.	EMINENT DOMAIN	32
	18.1. General	32
	18.2. Partial Takings	33
	18.3. Taking of the Facility	33
	18.4. Temporary Takings	33
	18.5. Award; Waiver; Termination of Lease; Rent	33
19.	INDEMNITY AND EXCULPATION	33
	19.1. General Indemnity	33
	19.2. Hazardous Material Indemnity	34
	19.3. Scope of Indemnities	34
	19.4. Exculpation and Waiver	34
	19.5. Survival	35
20.	ASSIGNMENT AND SUBLETTING	35

20.1.	Transfer to Affiliate	35
20.2.	Transfer to Non-Affiliate	35
20.3.	Sublease	36
20.4.	Notice to SFMTA	37
20.5.	Transfer Agreement Requirements	37
20.6.	Transfer Audit.....	38
20.7.	Acknowledgment	38
20.8.	Transfer Decisions	38
21.	DEFAULT BY TENANT.....	38
22.	SFMTA’S REMEDIES	39
22.1.	Tenant’s Right to Possession Not Terminated.....	39
22.2.	Termination of Tenant’s Right to Possession.....	40
22.3.	Appointment of Receiver	41
22.4.	SFMTA’s Right to Cure Tenant’s Default	41
22.5.	No Accord and Satisfaction	41
22.6.	Waiver of Redemption.....	41
22.7.	Habitual Late Payer	41
22.8.	Remedies Not Exclusive.....	41
23.	LITIGATION EXPENSES; ATTORNEYS’ FEES	42
23.1.	Litigation Expenses	42
23.2.	Appeals	42
23.3.	City Attorney	42
24.	SFMTA’S ENTRY ON PREMISES	42
24.1.	Entry for Inspection	42
24.2.	General Entry.....	42
24.3.	Emergency Entry	43
24.4.	No Liability.....	43
24.5.	Nondisturbance	43
25.	SURRENDER AND QUITCLAIM	43
25.1.	Surrender.....	43
25.2.	Quitclaim	44
25.3.	Abandoned Property	44
25.4.	Survival.....	44

26.	HOLDING OVER	44
	26.1. Terms of Holdover Tenancy	44
	26.2. With Consent	44
	26.3. Without Consent	45
27.	MINERAL RESERVATION	45
28.	CITY AND SFMTA REQUIREMENTS	45
	28.1. Nondiscrimination	45
	(a) Covenant Not to Discriminate	45
	(b) Subleases and Other Contracts	45
	(c) Nondiscrimination in Benefits	46
	(d) CMD Form.....	46
	(e) Penalties	46
	28.2. Requiring Health Benefits for Covered Employees	46
	28.3. First Source Hiring	47
	28.4. Local Business Enterprises	47
	28.5. Indoor Air Quality	47
	28.6. Prohibition of Tobacco Sales and Advertising	47
	28.7. Graffiti Removal	48
	28.8. Restrictions on the Use of Pesticides.....	48
	28.9. MacBride Principles Northern Ireland.....	48
	28.10. Tropical Hardwood and Virgin Redwood Ban	49
	28.11. Preservative-Treated Wood Containing Arsenic	49
	28.12. Notification of Limitations on Contributions	49
	28.13. Sunshine Ordinance	49
	28.14. Conflicts of Interest	50
	28.15. Drug-Free Workplace	50
	28.16. Prevailing Wages and Working Conditions	50
	28.17. Public Transit Information.....	51
	28.18. Food Service and Packaging Waste Reduction Ordinance.....	51
	28.19. Consideration of Criminal History in Hiring and Employment Decisions.....	51
	28.20. Local Hire	52
	28.21. San Francisco Bottled Water Ordinance.....	52

28.22.	Vending Machines; Nutritional Standards and Calorie Labeling Requirements; Offerings	52
28.23.	Employee Signature Authorization Ordinance.....	53
29.	NOTICES	53
30.	REPRESENTATIONS AND WARRANTIES OF TENANT	53
	(a) Valid Existence, Good Standing.....	53
	(b) Authority.....	53
	(c) No Limitation on Ability to Perform	54
	(d) Valid Execution	54
	(e) Defaults.....	54
	(f) Financial Matters	54
31.	TENANT’S MANAGEMENT COVENANTS.....	54
	31.1. Covenants	54
	31.2. Continuous Operations	54
32.	MISCELLANEOUS PROVISIONS	55
	32.1. California Law	55
	32.2. Entire Agreement.....	55
	32.3. Amendments	55
	32.4. Severability	55
	32.5. Interpretation of Lease.....	55
	32.6. Successors.....	56
	32.7. Real Estate Broker’s Fees.....	56
	32.8. Counterparts.....	56
	32.9. Authority.....	56
	32.10. No Implied Waiver	56
	32.11. Time is of Essence	57
	32.12. Cumulative Remedies	57
	32.13. Survival of Indemnities.....	57
	32.14. Relationship of Parties	57
	32.15. No Recording.....	57
	32.16. Additional Written Agreement Required.....	57
33.	LIMITATION ON DAMAGES	57
	33.1. No Recourse Beyond Value of Premises.....	57

33.2. Non-Liability of City Officials, Employees and Agents 58

33.3. Limitation on SFMTA’s Liability Upon Transfer 58

34. TENANT ESTOPPEL CERTIFICATES 58

35. APPROVAL OF BOARD OF SUPERVISORS 58

BASIC LEASE INFORMATION

<i>Lease Date:</i>	[March], 2019
<i>Landlord or SFMTA:</i>	City and County of San Francisco , a municipal corporation, operating by and through its Municipal Transportation Agency
<i>Landlord's Address:</i>	San Francisco Municipal Transportation Agency 1 South Van Ness Avenue, Eighth Floor San Francisco, CA 94103
<i>Tenant:</i>	Tad's Inc., a California corporation
<i>Tenant's Main Contact Person and Mailing Address:</i>	Phineas Ng 1335 Leavenworth Street, #18 San Francisco, CA 94109
<i>Tenant's Billing Contact and Address:</i>	TAD's Inc. c/o Phineas Ng 1335 Leavenworth Street, #18 San Francisco, CA 94109
<i>Tenant's Emergency Contact and Address:</i>	Stephen Ng 5415 L Road El Sobrante, CA 94803
<i>Tenant's Insurance Contact and Address (not broker):</i>	Larry Fu Insurance Agency 2417 Mariner Square Loop, #135 Alameda, CA 94501
<i>Contact Information for Tenant's Agent for Service of Process (including address) :</i>	Phineas Ng 1335 Leavenworth Street #18 San Francisco, CA 94109
<i>Premises:</i>	All that certain retail area in the Ellis-O'Farrell Garage commonly known and designated as 44 Ellis Street, as further described in <u>Section 3.1</u> hereof and depicted in <i>Exhibit A</i> attached hereto.
<i>Facility:</i>	Ellis-O'Farrell Parking Garage located at 123 O'Farrell Street, San Francisco, California
<i>Premises Rentable Square Footage:</i>	5,368 square feet of retail space on the ground floor of the Facility
<i>Length of Term:</i>	The initial term of this Lease shall be ten (10) years
<i>Commencement Date:</i>	[March], 2019
<i>Rent Commencement Date:</i>	Nine (9) months after Lease Commencement Date

<i>Expiration Date:</i>	February 28, 2029			
<i>Option to Extend:</i>	Tenant shall have two (2) five (5) year options to extend the term of the Lease in accordance with <u>Section 4.4</u> hereof.			
<i>Monthly Base Rent: (Rent Schedule -Exhibit F)</i>	Months	Sq. Ft.	Monthly Base Rate	Total Monthly Base Rent
	10-12	5,368	\$82.50/sq. ft.	\$36,905.00
<i>Percentage Rent:</i>	No Percentage Rent for this Lease			
<i>Rent Adjustment Dates:</i>	Beginning on the first anniversary of the Commencement Date of this Lease and continuing on each subsequent anniversary date, the annual and monthly Base Rent payable hereunder shall increase according to <u>Section 5.6</u>			
<i>Security Deposit:</i>	\$50,000			
<i>Permitted Use:</i>	Restaurant and bar along with the ancillary sales of merchandise			
<i>Initial Tenant Improvements:</i>	Tenant to perform certain improvements to the property which include, but are not limited to, new or renovated mechanical, electrical, plumbing and ventilation systems; new or renovated fire sprinklers, monitoring system, and hood suppression; renovation of two restrooms; new or renovated interior walls, flooring and ceiling finishes; new or renovated exterior façade; new or renovated canopy; new or renovated lighting fixtures; and new paint as determined by Tenant subject to terms of the Lease			
<i>Utilities:</i>	Tenant shall be responsible for all utilities except for water and sewer in accordance with <u>Section 12.</u>			
<i>Rules & Regulations:</i>	See Exhibit G attached hereto.			

LEASE AGREEMENT

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

1. DEMISE

In consideration for the rents and all other charges and payments payable by Tenant, and for the agreements, terms and conditions to be performed by Tenant in this Lease, SFMTA does hereby lease to Tenant, and Tenant does hereby hire and take from SFMTA, the Premises upon the agreements, terms and conditions of this Lease for the Term hereinafter stated. Tenant desires to use the address of 38 Ellis Street in place of 44 Ellis Street and SFMTA agrees to acknowledge any such change in address authorized by any appropriate City department or agency.

2. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Changes" is defined in Section 10.2.

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

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

"Class Life" means the classification of and amortization period applicable to the Initial Tenant Improvements under Internal Revenue Code section 168(e).

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

"Common Areas" means all areas outside of the Premises and within the boundaries of the Facility that are not now or hereafter exclusively leased or exclusively permitted to other ground floor tenants or permittees, and that are designated by SFMTA from time to time for the general common use or convenience of SFMTA, Tenant, or other tenants of SFMTA, and the respective authorized Agents and Invitees of the same. The Common Areas include, without limitation, sidewalks, canopies, washrooms, driveways, delivery areas, pedestrian walkways, utility rooms, and other areas or improvements provided or designated by SFMTA for common use, including, without limitation, any trash enclosure area in the Facility designed by SFMTA for use in collecting, sorting, compacting and/or disposing of trash generated by Facility tenants as they may from time to time exist and be available. Common Areas shall not include (i) any parking areas or traffic lanes within the Facility, (ii) any portion of the Facility used exclusively

in connection with SFMTA's operation of such parking areas including, without limitation, parking entrances and exits, pay station lobbies, elevators, and related display cases, or (iii) any other portion of the Facility exclusive of the retail portion of the Facility ((i), and (iii) collectively, the "Excluded Areas").

"**Conduct Code**" is defined in Section 28.12.

"**Concession**" is defined in Section 32.16.

"**Construction Costs**" means actual costs paid by Tenant for all categories of costs for Initial Tenant Improvements, without interest and amortized on a straight line basis over the Class Life of the Initial Tenant Improvements.

"**Construction Costs Report**" means a report prepared by a CPA specifying the Class Life of and verifying Tenant's actual Construction Costs for the Initial Tenant Improvements, accompanied by copies of documentation substantiating all expenditures, such as: (a) executed contracts; (b) invoices for labor, services, goods, and materials, bills of lading, and other bills or receipts marked "Paid" or similarly indicating payment in full; (c) canceled checks or other written evidence of payment; and (d) other documents reasonably requested by SFMTA.

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

"**Core Benefits**" is defined in Section 28.1.

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

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

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

"**Encroachment Area**" is defined in Section 3.4.

"**Encroachment Area Charge**" is defined in Section 3.4.

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

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

"**Environmental Regulatory Agency**" means the United States Environmental Protection Agency, OSHA, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the San Francisco Bay Regional Water Quality Control Board, Cal-OSHA, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, the

San Francisco Public Utilities Commission, or any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

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

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

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

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

"Event of Default" is defined in Section 21.

"Facility" means the garage, building or other structure in or on which the Premises is located.

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

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

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

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

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

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

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

"Hard Costs" is defined in Section 11.3.

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

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

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

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

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

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

"Indemnified Parties" is defined in Section 19.1.

"Indemnify" means to indemnify, protect, defend, and hold harmless forever. **"Indemnification"** and **"Indemnity"** have correlating meanings.

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

"Investigate" or **"Investigation"** when used with reference to Hazardous Materials means any activity undertaken to determine and characterize the nature and extent of Hazardous

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

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

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

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

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

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

"Notice of Removal" is defined in Section 13.6.

"Notice to Vacate" is defined in Section 3.4.

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

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

"Percentage Rent" means the Percentage Rent set forth in the Basic Lease Information and Section 5.2 below.

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

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

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

"Prevailing Party" is defined in Section 23.1.

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

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

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

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

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

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

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

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

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

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

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

"SFMTA" means the San Francisco Municipal Transportation Agency.

"SFMTA Work" is defined in Section 13.9.

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

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

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

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

"Taking" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under Law. A Taking may occur

pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

"Tenant" means the party identified as Tenant in the Basic Lease Information.

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

"Term" is defined in Section 4.1.

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

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

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

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

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

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

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

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

"Waiving Party" is defined in Section 16.5.

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

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

3. PREMISES; AS-IS CONDITION; COMMON AREAS

3.1. Premises.

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

(b) Common Areas

(i) Tenant shall have the non-exclusive right to use, together with other tenants, the Common Areas. All of the Common Areas shall at all times be subject to the exclusive control, regulation, and management of SFMTA. SFMTA shall have the right to construct, maintain, and operate lighting facilities on all Common Areas; to patrol all Common Areas; to temporarily close any Common Areas for maintenance, repairs or alterations; from time to time to change the area, level, location and arrangement of Common Area facilities; to use the Common Areas and restrict access and use of the same during the maintenance, repair, construction or reconstruction of buildings, additions or improvements; to erect buildings, additions and improvements on the Common Areas from time to time; and to restrict parking by tenants, their Agents and Invitees. SFMTA may operate and maintain the Common Areas and perform such other acts and make such other changes at any time and from time to time in the size, shape, location, number and extent of the Common Areas or any of them as SFMTA in its sole discretion shall determine; provided, however, that no exercise by SFMTA of its rights hereunder shall unreasonably restrict access to the Premises.

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

3.2. Accessibility Inspection Disclosure.

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

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

CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.”

3.3. San Francisco Disability Access Disclosures

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

3.4. No Right to Encroach

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

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

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

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

3.5. Intentionally Left Blank

3.6. As-Is Condition

TENANT ACKNOWLEDGES AND AGREES THAT THE PREMISES ARE BEING LEASED AND ACCEPTED IN THEIR "AS IS" CONDITION, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, AND SUBJECT TO ALL APPLICABLE LAWS, RULES AND ORDINANCES GOVERNING THEIR USE, OCCUPANCY AND POSSESSION. TENANT REPRESENTS AND WARRANTS TO SFMTA THAT TENANT HAS INVESTIGATED AND INSPECTED, EITHER INDEPENDENTLY OR THROUGH AGENTS OF TENANT'S OWN CHOOSING, THE CONDITION OF THE PREMISES AND THE SUITABILITY OF THE PREMISES FOR TENANT'S INTENDED USE. TENANT HAS DETERMINED, BASED SOLELY ON ITS OWN INVESTIGATION, THAT THE PREMISES ARE SUITABLE FOR TENANT'S BUSINESS AND INTENDED USE. TENANT ACKNOWLEDGES AND AGREES THAT NEITHER SFMTA NOR ANY OF ITS AGENTS HAVE MADE, AND SFMTA HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE RENTABLE AREA OF THE PREMISES, THE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PREMISES OR THE PROPERTY, THE PRESENT OR FUTURE SUITABILITY OF THE PREMISES FOR TENANT'S BUSINESS, OR ANY OTHER MATTER WHATSOEVER RELATING TO THE PREMISES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

3.7. Release and Waiver

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

3.8. SFMTA's Rights Regarding Premises

SFMTA shall have the full right and authority to make, revoke, impose, and amend any Rules and Regulations pertaining to and reasonably necessary for the proper use, operation and maintenance of the Facility. If no Rules and Regulations currently exist for the Facility, Tenant agrees to be bound by any Rules and Regulations SFMTA later imposes on the Facility. Tenant acknowledges receipt of a copy of the Rules and Regulations currently in force for the Facility and agrees to abide by them. Tenant also acknowledges that SFMTA's exercise of any of its

rights regarding the Premises and other SFMTA property in the vicinity of the Premises will not entitle Tenant to any abatement or diminution of Rent.

4. TERM OF LEASE; TERMINATION BY SFMTA; EXTENSION OPTION

4.1. Term

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

4.2. Intentionally Left Blank

4.3. Waiver of Relocation Benefits

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

4.4. Extension Option

(a) **Option to Extend Term.** SFMTA grants to Tenant two (2) options to extend the Term of this Lease as to the entire Premises only (the "**Extension Options**") for an additional five (5) years (the "**Extension Term**") commencing on the Expiration Date upon the following terms and conditions. Tenant may exercise the Extension Option at any time during the Term but if it determines to do so it must give written notice to SFMTA thereof not less than two hundred seventy (270) days prior to the Expiration Date. Any such notice by Tenant shall be irrevocable by Tenant. If any event of default by Tenant is outstanding hereunder, subject to Tenant's right to cure, either at the time of Tenant's exercise of the Extension Option or at any time prior to the first day of the Extension Term (or if any event shall have occurred which with the giving of notice or the passage of time or both would constitute such a default), then SFMTA may elect by notice to Tenant to reject Tenant's exercise of the Extension Option, whereupon the Extension Option shall be null and void. SFMTA shall also have the right to void Tenant's Extension Option if Tenant has assigned its interest hereunder or sublet more than fifty percent (50%) of the Premises.

(b) **Base Rent and Other Terms.** If Tenant elects to exercise an Extension Option, then the lease for the Extension Term shall cover the entire Premises and shall be upon all of the terms, covenants and conditions of this Lease, except that the Base Rent hereunder shall be increased as follows: (x) the Base Rent for the first Extension Term shall be equal to one hundred three percent (103%) of the monthly Base Rent payable in the month immediately preceding the expiration of the Term and thereafter adjusted annually in accordance with Section 5.6 (Adjustments in Base Rent), and (y) the Base Rent for the second Extension Term shall be increased by the greater of three percent (3%) or ninety-five percent (95%) of the Prevailing Market Rate, which shall be determined as follows and thereafter adjusted annually in accordance with Section 5.6 (Adjustments in Base Rent).

(i) No later than two hundred ten (210) days prior to commencement of the Extension Term, SFMTA shall notify Tenant in writing of SFMTA's determination made in good faith of the Prevailing Market Rate for the Premises to be used to calculate the Base Rent for the Extension Term. As used herein, the term "Prevailing Market Rate" for the Premises shall mean the rental and all other monetary payments and escalations, including, without limitation, consumer price indexing, that SFMTA could obtain from a third party desiring to

lease the Premises for the Extension Term taking into account the age of the Facility, the size and location of the Premises, the quality of construction of the Facility and the Premises, the services provided under the terms of this Lease, the rental then being obtained for new leases of space comparable to the Premises in the locality of the Facility, and all other factors that would be relevant to a third party desiring to lease the Premises for the Extension Term in determining the rental such party would be willing to pay therefor; provided, however, no allowance for the construction of tenant improvements shall be taken into account in determining Prevailing Market Rate, except that there shall be a reasonable allowance for repainting and re-carpeting the Premises as determined by SFMTA.

(ii) Within fifteen (15) business days after receipt of SFMTA's determination of the Prevailing Market Rate, Tenant shall notify SFMTA in writing either of (i) Tenant's acceptance of such determination, in which case such determination shall constitute the new Base Rent as of the commencement of the Extension Term, or (ii) Tenant's own good faith determination of the Prevailing Market Rate, including written justification for its determination.

(iii) If Tenant provides SFMTA with its determination of the Prevailing Market Rate pursuant to Section 4.4(b)(ii) above, then within thirty (30) days following Tenant's notice to SFMTA, the parties shall attempt in good faith to meet no less than two (2) times, at a mutually agreeable time and place, to attempt to resolve in good faith any such disagreement as to the Prevailing Market Rate. The parties may, by an instrument in writing, mutually agree to extend such forty-five (45)-day consultation period for a reasonable period to resolve their disagreement if the parties are negotiating in good faith and would be unable to resolve their differences within such forty-five (45)-day period.

(iv) If within such consultation period SFMTA and Tenant cannot reach agreement as to the Prevailing Market Rate, then promptly after the end of such consultation period SFMTA and Tenant shall submit the matter to arbitration by a single appraiser in accordance with the following procedure.

(1) **Appointment of Appraisers.** Each party shall appoint one (1) appraiser within thirty (30) days after the final date for agreement on the Prevailing Market Rate in accordance with Section 4.4(b)(iii) above. Upon selecting its appraiser, each party shall promptly notify the other party in writing of the name of the appraiser selected. Each such appraiser shall be competent, licensed, qualified by training and experience in the City and County of San Francisco, and shall be a member in good standing of the Appraisal Institute and designated as a MAI, or, if the Appraisal Institute no longer exists, shall hold the senior professional designation awarded by the most prominent organization of appraisal professionals then awarding such professional designations. Each such MAI appraiser may have a prior working relationship with either or both of the parties, provided that such working relationship shall be disclosed to both parties. Without limiting the foregoing, each appraiser shall have at least ten (10) years' experience valuing commercial real estate in the City and County of San Francisco. If either party fails to appoint its appraiser within such thirty (30)-day period, the appraiser appointed by the other party shall individually determine the Prevailing Market Rate in accordance with the provisions hereof.

(2) **Appraisal Instructions.** Each appraiser will make an independent determination of the Prevailing Market Rate. The appraisers may share and have access to objective information in preparing their appraisals, but they will independently analyze the information in their determination of the Prevailing Market Rate. Neither of the appraisers shall have access to the appraisal of the other (except for the sharing of objective information contained in such appraisals) until both of the appraisals are submitted in accordance with the provisions of this Section. Neither party shall communicate with the appraiser appointed by the other party regarding the instructions contained in this Section before the appraisers complete their appraisals. If either appraiser has questions regarding the instructions in this Section or the interpretation of the Lease, such appraiser shall use his or her own professional judgment and

shall make clear all assumptions upon which his or her professional conclusions are based, including any supplemental instructions or interpretative guidance received from the party appointing such appraiser. There shall not be any arbitration or adjudication of the instructions to the appraisers contained in this Section. Each appraiser shall complete, sign and submit its written appraisal setting forth the Prevailing Market Rate (to the nearest half percentage point) to the parties within thirty (30) days after the appointment of the last of such appraisers. If the higher appraised Prevailing Market Rate is not more than one hundred ten percent (110%) of the lower appraised Prevailing Market Rate, then the Prevailing Market Rate shall be the average of such two (2) Prevailing Market Rate figures (to the nearest half percentage point).

(3) "Baseball" Appraisal. If the higher appraised Prevailing Market Rate is more than one hundred ten percent (110%) of the lower appraised Prevailing Market Rate, then the first two appraisers shall agree upon and appoint an independent third appraiser within thirty (30) days after both of the first two (2) appraisals have been submitted to the parties, in accordance with the following procedure. The third appraiser shall have the minimum qualifications as required of an appraiser pursuant to subsection (i) above, and shall also have experience acting as a third appraiser of disputes involving commercial real estate or real estate development opportunities, including ground leases and rental valuation. The two appraisers shall inform the parties of their appointment at or before the end of such thirty (30)-day appointment period. Each party shall have the opportunity to question the proposed third appraiser, in writing only, as to his or her qualifications, experience, past working relationships with the parties, and any other matters relevant to the appraisal set forth in this Lease. Either party may, by written notice to the other party and the two appraisers, raise a good faith objection to the selection of the third appraiser based on his or her failure to meet the requirements of this Section. In such event, if the two (2) appraisers determine that the objection was made in good faith, the two (2) appraisers shall promptly select another third appraiser, subject again to the same process for the raising of objections. If neither party raises a good faith objection to the appointment of the third appraiser within ten (10) days after notice of his or her appointment is given, each such party shall be deemed to have waived any issues or questions relating to the qualifications or independence of the third appraiser or any other matter relating to the selection of the third appraiser under this Lease. If for any reason the two appraisers do not appoint such third appraiser within such thirty (30)-day period (or within a reasonable period thereafter not to exceed twenty (20) days in the event a good faith objection is made as provided above), then either party may apply to the Writs and Receivers Department of the Superior Court of the State of California in and for the County of San Francisco for appointment of a third appraiser meeting the foregoing qualifications. If the Court denies or otherwise refuses to act upon such application within sixty (60) days from the date on which the party first applies to the Court for appointment of the third appraiser, either party may apply to the American Arbitration Association, or any similar provider of professional commercial arbitration services, for appointment in accordance with the rules and procedures of such organization of an independent third appraiser meeting the foregoing qualifications.

Such third appraiser shall consider the appraisals submitted by the first two appraisers as well as any other relevant written evidence which the third appraiser may request of either or both of the first two appraisers. If either of the first two appraisers shall submit any such evidence to such third appraiser, it shall do so only at the request of the third appraiser and shall deliver a complete and accurate copy to the other party and the appraiser such party selected, at the same time it submits the same to the third appraiser. Neither party, nor the appraisers they appoint, shall conduct any ex parte communications with the third appraiser regarding the subject matter of the appraisal. Within thirty (30) days after his or her appointment, the third appraiser shall select the appraised Prevailing Market Rate determined by one or the other of the first two (2) appraisers that is the closer, in the opinion of the third appraiser, to the actual Prevailing Market Rate. The determination of the third appraiser shall be limited solely to the issue of deciding which of the appraisals of the two appraisers is closest to the actual Prevailing Market

Rate. The third appraiser shall have no right to propose a middle ground or to modify either of the two appraisals, or any provision of this Lease.

(4) Conclusive Determination. Except as provided in California Code of Civil Procedure Section 1286.2 (as the same may be amended from time to time), the determination of the Prevailing Market Rate by the accepted appraisal shall be conclusive, final and binding on the parties. Neither of the first two (2) appraisers nor the third appraiser shall have any power to modify any of the provisions of this Lease and must base their decision on the definitions, standards, assumptions, instructions and other provisions contained in this Lease. Subject to the provisions of this Section, the parties will cooperate to provide all appropriate information to the appraisers and the third appraiser. The appraisers (but not the third appraiser) can utilize the services of special experts, including experts to determine such things as property condition, market rates, leasing commissions, renovation costs and similar matters. The appraisers and the third appraiser will each produce their determination in writing, supported by the reasons for the determination.

(5) Fees and Costs; Waiver. Each party shall bear the fees, costs and expenses of the appraiser it selects under Section 4.4(b)(iv)(1) and of any experts and consultants used by that appraiser. The fees, costs and expenses of the third appraiser under Section 4.4(b)(iv)(3) shall be shared equally by SFMTA and Tenant. Each party waives any claims against the appraiser appointed by the other party, and against the third appraiser, for negligence, malpractice or similar claims in the performance of the appraisals or arbitration contemplated by this Section.

(v) If, either by agreement of the parties or by the arbitration procedure provided herein, the Prevailing Market Rate is not finally determined by the commencement of the Extension Term, then Tenant shall pay the Prevailing Market Rate determined by SFMTA until such time as the Prevailing Market Rate is finally determined by agreement of the parties or by the appraisal procedure set forth in this Section, at which time SFMTA shall refund any excess amount to Tenant or Tenant shall pay any shortage to SFMTA, as the case may be. No such delay in the determination of Prevailing Market Rate shall be deemed to constitute a waiver by either party of the adjustment of Prevailing Market Rate as provided in this Section.

5. RENT

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

5.1. Base Rent

From and after the Rent Commencement Date, Tenant shall pay the monthly Base Rent, in advance, on or before the first day of each calendar month throughout the Term. If the Rent Commencement Date is other than the first day of the month, or the Expiration Date is other than the last day of the month, the Base Rent for those months shall be apportioned based on a thirty (30) day month. Under no circumstances shall the Rent Commencement Date be delayed due to failure to complete the Initial Tenant Improvements, Force Majeure, or other reasons.

Notwithstanding the foregoing, on the Commencement Date, the SFMTA will waive Tenant's obligation to pay Base Rent for months one (1) through nine (9) of the Term, so long as Tenant fully performs all of its obligations under this Lease. Tenant acknowledges that if, at any time during the Term, Tenant fails to cure any default in the period provided under Section 21 below and an Event of Default occurs, SFMTA's waiver of Base Rent will be immediately revoked without further notice to Tenant, and the waiver of Base Rent will be null and void. In any notice of default given by Landlord under this Lease, Landlord will have the right to demand payment of all Base Rent that would have been due except for the waiver provided under this paragraph.

5.2. Default Interest

Any Rent, if not paid within five (5) days following the due date and any other payment due under this Lease not paid by the applicable due date, shall bear interest from the due date until paid at the Interest Rate. However, interest shall not be payable on Late Charges incurred by Tenant nor on other amounts to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Tenant. Tenant shall also pay any costs, which shall include reasonable third party costs, including attorneys' fees incurred by SFMTA by reason of Tenant's failure to pay Rent or other amounts when due under this Lease.

5.3. Returned Checks

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

5.4. Net Lease

It is the purpose of this Lease and intent of SFMTA and Tenant that all Rent shall be absolutely net to SFMTA, so that this Lease shall yield to SFMTA the full amount of the Rent at all times during the Term, without deduction, abatement or offset. Except as otherwise expressly set forth in this Lease, under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties shall SFMTA be expected or required to incur any expense or make any payment of any kind with respect to this Lease or Tenant's use or occupancy of the Premises, including any Improvements, except as otherwise expressly provided in this Lease. Without limiting the foregoing, but except as expressly provided to the contrary in this Lease, Tenant shall be solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which SFMTA would otherwise be or become liable by reason of SFMTA's estate or interests in the Premises and any Improvements, any rights or interests of SFMTA in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, renovation, use or occupancy of the Premises by Tenant, any Improvements, or any portion thereof. No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or shall otherwise relieve Tenant from any of its obligations under this Lease, or shall give Tenant any right to terminate this Lease in whole or in part, except as otherwise expressly provided in this Lease. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation, provided that such waiver shall not affect or impair any right or remedy expressly provided Tenant under this Lease.

5.5. Additional Charges

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

any and all other rights under this Lease, at law or in equity. By signing this Lease, each party specifically confirms the accuracy of the statements made in this Section 5.5 and the reasonableness of the amount of the charges described in this Section 5.5.

5.6. Adjustments in Base Rent

On each Adjustment Date specified in the Basic Lease Information for adjustment of the Base Rent, the Base Rent payable by Tenant under this Lease shall be increased by an amount equal to four percent (4%) of the Base Rent in effect immediately prior to the Adjustment Date all as set forth in *Exhibit F* hereto.

5.7. Annual Reporting

No later than April 10, 2020, Tenant shall be responsible for submitting, via email, to the SFMTA contact listed in the Basic Leasing Information, a copy of the Tenant's Gross Revenue Statement, attached hereto as *Exhibit E* and incorporated into this Lease by reference, detailing a true and factual accounting of all Gross Revenue for the prior year. Tenant shall submit the Gross Revenue Statement not more than ten (10) days after the end of a "lease year", wherein "lease year" shall mean that certain period from April 1 to March 31.

6. TAXES AND ASSESSMENTS

6.1. Payment of Taxes

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

6.2. Possessory Interest Tax

Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest. Tenant further recognizes and understands that any sublease or assignment permitted under this Lease and any exercise of any option to renew or other extension of this Lease may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Tenant agrees to pay taxes of any kind, including, but not limited to, possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Tenant's usage of the Premises that may be imposed upon Tenant by Law, all of which shall be paid when the same become due and payable and before delinquency. Tenant agrees not to allow or suffer a lien for any such taxes to be imposed upon the Premises or upon any equipment or property located thereon without promptly

discharging the same, provided that Tenant, if so desiring, may have reasonable opportunity to contest the validity of the same. San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute) require that the City and County of San Francisco report certain information relating to this Lease, and any renewals thereof, to the County Assessor within sixty (60) days after any such transaction and that Tenant report certain information relating to any assignment of or sublease under this Lease to the County Assessor within sixty (60) days after such assignment or sublease transaction. Tenant agrees to provide such information as may be requested by the City or SFMTA to enable the SFMTA to comply with this requirement within thirty (30) days of a request in writing by SFMTA to do so.

7. SECURITY DEPOSIT

Tenant shall pay to SFMTA upon execution of this Lease, in addition to the advance payment of the first month's Base Rent. The Security Deposit, in cash, in the sum specified in the Basic Lease Information, as security for the faithful performance by Tenant of all terms, covenants, and conditions of this Lease is on deposit with SFMTA.

Tenant agrees that SFMTA may (but shall not be required to) apply the Security Deposit in whole or in part to (a) pay any sum due to SFMTA under this Lease; (b) compensate SFMTA for any expense incurred or damage caused by Tenant, its Agents or Invitees; (c) cure any default by Tenant; or (d) cure, or attempt to cure, any failure of Tenant to perform any other covenant, term or condition contained herein. Tenant shall, upon fifteen (15) days written notice, pay SFMTA a sum equal to the portion of the Security Deposit expended or applied by SFMTA. SFMTA shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to any interest on the Security Deposit. Nothing contained in this Section shall in any way diminish or be construed as waiving any of SFMTA's other remedies set forth in this Lease or provided by law or equity.

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

8. USE OF THE PREMISES

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

9. COMPLIANCE WITH LAWS AND REGULATIONS

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

The parties acknowledge and agree that Tenant's obligation to comply with all Laws as provided herein is a material part of the bargained for consideration under this Lease. Tenant's obligation under this Section 9 shall include, without limitation, the responsibility of Tenant to make substantial or structural repairs and Alterations to the Premises, regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or SFMTA, the degree to which the curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Laws involved, and whether the Laws involved are related to Tenant's particular use of the Premises. Any Alteration or Improvements made by or on behalf of Tenant pursuant to the provisions of this Section 9 shall comply with the provisions of Section 13. Except as otherwise expressly set forth in this Lease, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant of its obligations hereunder, nor give Tenant any right to terminate this Lease in whole or in part or to seek redress against SFMTA, except to the extent Tenant may have remedies against SFMTA pursuant to this Lease or applicable Law. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel SFMTA to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

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

10.1. SFMTA Acting as Owner of Property

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

10.2. Regulatory Approvals

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

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

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

Agents from and against any Claim which City or SFMTA may incur as a result of Tenant's failure to obtain or comply with the terms and conditions of any Regulatory Approval.

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

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

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

11. MAINTENANCE AND REPAIRS

11.1. Tenant Maintenance and Repair Obligations

Unless otherwise set forth in the Basic Lease Information, Tenant shall at all times during the Term, starting on the Commencement Date, including any period of early entry under this Lease, or occupancy or use of the Premises by Tenant under another lease or license with SFMTA for the same Premises, and at its sole cost and expense, maintain, repair and replace in good and working order, condition and repair the Premises and all Improvements and Alterations thereon. SFMTA shall not be obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the Premises nor to any Improvements or Alterations now or hereafter located thereon. Tenant hereby waives all rights to make repairs at SFMTA's expense under Sections 1932(1), 1941 and 1942 of the California Civil Code or under any similar Law now or hereafter in effect. Notwithstanding any maintenance obligations of SFMTA that may be set forth in the Basic Lease Information, in the event that Tenant, its Agents or Invitees cause any damage to the Premises, Tenant shall be responsible for repair and SFMTA may repair the same at Tenant's sole cost and expense and Tenant shall immediately reimburse SFMTA therefor within 15 days of receipt of invoice related to such repair.

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

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

11.2. SFMTA's Right to Inspect

Without limiting Section 24 below, SFMTA may make periodic inspections of the Premises and may advise Tenant when maintenance or repair of the Premises is required, but such right of inspection shall not relieve Tenant of its independent responsibility to maintain

such Premises and Improvements in a condition as good as, or better than, their condition at the Commencement Date, excepting ordinary wear and tear.

11.3. SFMTA's Right to Repair

In the event Tenant fails to maintain the Premises in accordance with this Lease or Tenant fails to promptly repair any damage to the Facility or the Facility Systems caused by Tenant or its Agents, SFMTA may repair the same at Tenant's sole cost and expense and Tenant shall immediately reimburse SFMTA therefore. If the cost (including, but not limited to, salaries of SFMTA staff and attorneys' fees) of any such repairs or replacements made at Tenant's expense is in excess of Two Thousand Dollars (\$2,000), then Tenant shall pay to SFMTA an administrative fee equal to ten percent (10%) of the total "**Hard Costs**" of the work. "**Hard Costs**" shall include the cost of materials and installation, but shall exclude any costs associated with design, such as architectural fees. With respect to any work where the total hard costs of such work are less than Two Thousand Dollars (\$2,000), Tenant shall pay to SFMTA, as Additional Rent, an amount equaling Two Hundred Dollars (\$200).

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

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

11.4. Acts of Nature

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

12. UTILITIES AND SERVICES

(a) Tenant, at its sole cost, shall arrange for, and contract directly with, the applicable utility service provider to deliver any and all electricity, gas, telecommunications, telephone and all other utilities, except for water (including sewer), required by Tenant for its use in the Premises. Water service to the Premises is not separately metered. If SFMTA or Tenant installs a water meter or submeter to measure the water consumed by Tenant, the cost of the water consumed by Tenant, as measured by such meter or submeter, shall be billed to Tenant periodically by the utility provider or, in the event SFMTA installs the water meter, by SFMTA, consistent with the periodicity of billings received by SFMTA from the applicable utility provider, and Tenant shall pay all such costs as additional rental hereunder within 10 days of the date of SFMTA's invoice therefor. Prior to the date such separate water meter is installed, Tenant shall pay SFMTA, together with the Base Rent payable hereunder, an additional sum of Three Thousand Dollars (\$2,250) per month commencing on the Rent Commencement Date for water to the Premises (the "Water Charge"), provided that on each Anniversary Date (as defined

in Section 2) during the Term, the Water Charge payable by Tenant shall be increased by Fifty Dollars (\$50) of the Water Charge in effect immediately prior to the Anniversary Date and shall not exceed a maximum of Three Thousand Dollars (\$3000) per month during the Term.

(b) Tenant, at its sole cost, shall arrange for, and contract directly with, the appropriate service provider for electric utility services and garbage collection services required by Tenant for its use of the Premises.

13. IMPROVEMENTS AND ALTERATIONS

13.1. SFMTA Consent Required

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

(b) At least thirty (30) days before commencing any Alterations or Improvements to the Premises, Tenant shall notify SFMTA, unless said Alterations are due to an emergency, in which case Tenant shall provide notice to SFMTA within forty-eight (48) hours of commencing with the Alterations. Tenant's notice shall be accompanied by Final Construction Documents for the Alterations or Improvements, if applicable. SFMTA shall have the right to object to any of the Alterations or Improvements within sixty (60) days after receipt of notice from Tenant. SFMTA's failure to notify Tenant of SFMTA's objection within the 60-day period shall be deemed SFMTA's disapproval of the Alterations.

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

13.2. Tenant's Obligation to Construct the Initial Tenant Improvements

Tenant shall construct the Initial Tenant Improvements at its sole cost and expense, as described in the Basic Lease Information, in accordance with, and subject to all the terms, covenants, conditions and restrictions in the plans approved by SFMTA. Any Subsequent Alteration shall be performed in accordance with this Section.

13.3. Construction Requirements

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

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

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

(c) Tenant, while performing any subsequent construction or maintenance or repair of the Improvements (for purposes of this Section only, "**Work**"), shall undertake

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

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

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

13.4. Improvements Part of Realty

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

13.5. All-Gender Toilet Facilities

If applicable, Tenant shall comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of any new building on City-owned

land and within existing buildings leased by the City, including the Premises, where extensive renovations are made. An “**all-gender toilet facility**” means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures, and “**extensive renovations**” means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by this section. If Tenant has any question about applicability or compliance, Tenant should contact the SFMTA's Strategic Real Estate Manager for guidance.

13.6. Removal of Improvements

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

13.7. Removal of Non-Permitted Improvements

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

13.8. Signs

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

13.9. SFMTA's Alterations

SFMTA reserves the right at any time to make Alterations, additions, repairs, deletions or improvements to the Common Areas or any other part of the Facility, the Facility Systems, or adjacent SFMTA property ("**SFMTA Work**"). SFMTA shall use commercially reasonable efforts to conduct any of the foregoing activities in a manner that, to the extent reasonably

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

14. LIENS

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

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

15. HAZARDOUS MATERIALS

15.1. Requirements for Handling

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

15.2. Tenant Responsibility

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

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

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

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

15.3. Tenant's Environmental Condition Notification Requirements

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

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

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

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

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

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

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

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

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

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

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

15.4. Requirement to Remediate

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

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

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

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

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

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

15.5. SFMTA's Right to Audit

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

15.6. Presence of Hazardous Materials

California Law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Tenant is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Premises, including, but not limited to, vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as

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

15.7. Survival

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

16. INSURANCE

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

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

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

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

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

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

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

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

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

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

(f) **Property Insurance; Earthquake and Flood Insurance.** Tenant shall maintain property insurance policies with coverage at least as broad as Insurance Services Office ("**ISO**") form CP 10 30 06 95 ("**Causes of Loss – Special Form**", or its replacement), including earthquake, subject to provisions of Section 16.6(b), and flood, subject to the provisions of Section 16.6(c), in an amount not less than one hundred percent (100%) of the then-current full replacement cost of the Improvements and other property being insured pursuant thereto (including building code upgrade coverage).

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

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

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

(j) **Professional Liability.** Tenant shall require all providers of professional services, including architectural, design, engineering, geotechnical, and environmental

professionals under contract with Tenant for the Initial Tenant Improvements or any Subsequent Alteration to maintain professional liability (errors or omissions) insurance, with limits not less than One Million Dollars (\$1,000,000.00) each claim and aggregate, with respect to all professional services provided to Tenant therefor.

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

16.2. Claims-Made Policies

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

16.3. Annual Aggregate Limits.

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

16.4. Payment of Premiums

Tenant shall pay the premiums for maintaining all required insurance.

16.5. Waiver of Subrogation Rights

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

16.6. General Insurance Matters

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

(b) As to earthquake insurance:

(i) during construction of the Initial Tenant Improvements, such insurance shall be in an amount at least equal to the maximum amount as is available at rates that are commercially reasonable for owners or operators of comparable restaurants located in the

City and County of San Francisco, from recognized carriers (with a deductible of up to but not to exceed five percent (5%) of the then-current, full replacement cost of the Improvements or other property being insured pursuant thereto (including building code upgrade coverage and without any deduction being made for depreciation).

(ii) from and after Completion of the Initial Tenant Improvements, such insurance shall be in an amount at least equal to One Hundred percent (100%) of the maximum probable loss that would be sustained by the Premises as a result of an earthquake measuring 8.0 on the Richter Scale, as determined not less frequently than every 5 years by the City's Risk Manager, but only at rates that are commercially reasonable for owners or operators of comparable restaurants located in the City and County of San Francisco.

(c) As to flood insurance only:

(i) During construction of the Initial Tenant Improvements, such insurance shall be in an amount at least equal to the maximum amount as is available at rates that are commercially reasonable for owners or operators of comparable restaurants located in the City and County of San Francisco, from recognized insurance carriers (with a deductible up to, but not to exceed fifteen percent (15%) of the then-current, full replacement cost of the Improvements or other property being insured pursuant thereto (including building code upgrade coverage and without any deduction being made for depreciation);

(ii) from and after Completion of the Initial Tenant Improvements, such insurance shall be in an amount at least equal to the amount available at rates that are commercially reasonable for owners or operators of comparable restaurants located in the City and County of San Francisco, from recognized insurance carriers, but only at rates that are commercially reasonable for owners or operators of comparable restaurants located in the City and County of San Francisco.

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

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

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

17. DAMAGE AND DESTRUCTION

17.1. Damage and Destruction

If the Premises or the Facility is damaged by fire or other casualty, then SFMTA shall repair the same provided that funds for such repairs are appropriated by SFMTA, in its sole discretion, for such purpose and that such repairs can be made within the Repair Period. In the event such conditions are satisfied, this Lease shall remain in full force and effect except that so long as such damage or casualty is not attributable to Tenant, its Agents or Invitees, Tenant shall be entitled to a proportionate reduction of Base Rent during the Repair Period based upon the extent to which such damage and the making of such repairs materially interferes with Tenant's

use or occupancy of the Premises less any insurance proceeds Tenant receives, or would have received if Tenant complied with the requirements set forth in Section 16, which proceeds are to be applied against the payment of Rent during any Repair Period.

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

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

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

Notwithstanding anything to the contrary in this Lease, (i) SFMTA shall have no obligation to repair the Premises or the Facility, (ii) Tenant shall not be entitled to any abatement of Rent, and (iii) Tenant shall not be entitled to terminate this Lease, in the event the damage or destruction is attributable to any act or omission of Tenant, its Agents, or Invitees. In no event shall SFMTA be required to repair any damage to Tenant's Property or any paneling, decorations, railings, floor coverings, or any Improvements or other Alterations installed or made on the Premises by or at the expense of Tenant. Notwithstanding any other provision of this Lease, in the event the Premises or the Facility is substantially damaged or destroyed and SFMTA intends to rebuild for a SFMTA program or project that is inconsistent with this Lease, SFMTA may terminate this Lease upon not less than thirty (30) days prior written notice to Tenant.

17.2. Waiver

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

18. EMINENT DOMAIN

18.1. General

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

18.2. Partial Takings

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

18.3. Taking of the Facility

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

18.4. Temporary Takings

Notwithstanding anything to the contrary contained in Section 18, if a taking occurs with respect to all or any part of the Premises for a limited period of time, this Lease shall remain unaffected thereby and Tenant shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. Tenant shall be entitled to receive that portion of any award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by Tenant for the period of the taking, and SFMTA shall be entitled to receive the balance of any award.

18.5. Award; Waiver; Termination of Lease; Rent

Upon termination of this Lease in its entirety pursuant to Section 18.3, or pursuant to an election under Section 18.2, then: (i) Tenant's obligation to pay Rent shall continue up until the date of termination and thereafter shall cease, and (ii) SFMTA shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease and any Improvements Pertaining to the Realty), and Tenant shall have no claim against SFMTA for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Property. SFMTA and Tenant intend that the provisions of Section 18 shall govern fully in the event of condemnation and accordingly, SFMTA and Tenant each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.110, 1265.120, 1265.130, and 1265.140 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

19. INDEMNITY AND EXCULPATION

19.1. General Indemnity

Tenant shall Indemnify SFMTA, City, including, but not limited to, all of their respective boards, commissions, departments, agencies, and other subdivisions, and their respective Agents (collectively, "**Indemnified Parties**") from, and shall defend them, without cost to the Indemnified Parties, against any and all Claims arising directly or indirectly out of: (a) any accident, injury to or death of any person, including any Agents and/or Invitees of Tenant, or loss or damage to or destruction of any property occurring in, on or about the Premises, the Facility

or any other SFMTA property, from any cause whatsoever, or (b) any default by Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease, including the provisions of Section 20, or (c) the use, occupancy, manner of use or occupancy, or condition of the Premises or the activities therein by Tenant, its Agents, or Invitees, or (d) any construction or other work undertaken by Tenant on the Premises whether before or during the Term, or (e) any acts, omissions or negligence of Tenant, its Agents or Invitees, in, on or about the Premises, the Facility or any other SFMTA property.

19.2. Hazardous Material Indemnity

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

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

19.3. Scope of Indemnities

The Indemnification obligations of Tenant set forth in this Lease shall be enforceable regardless of the joint or concurrent, active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the Indemnified Parties. The Indemnification obligations of Tenant set forth in this Lease shall be enforceable except to the extent that such Indemnity is void or otherwise unenforceable under applicable Law in effect on, or validly retroactive to, the date of this Lease. Except as specifically provided otherwise, the Indemnification obligations of Tenant set forth in this Lease shall exclude Claims resulting solely from the willful misconduct or gross negligence of the Indemnified Parties.

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

19.4. Exculpation and Waiver

Tenant, as a material part of the consideration to be rendered to SFMTA, hereby waives any and all Claims, including without limitation all Claims arising from the joint or concurrent, active or passive, negligence of the Indemnified Parties, but excluding any Claims caused solely by the Indemnified Parties' willful misconduct or gross negligence. The Indemnified Parties shall not be responsible for or liable to Tenant, and Tenant hereby assumes the risk of, and waives and releases the Indemnified Parties from all Claims for, any injury, loss or damage to any person or property in or about the Premises by or from any cause whatsoever including,

without limitation, (i) any act or omission of persons occupying adjoining premises or any part of the Facility adjacent to or connected with the Premises, (ii) theft, (iii) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (iv) stopped, leaking or defective Facility Systems, (v) Facility defects, (vi) damages to goods, wares, goodwill, merchandise, equipment or business opportunities, (vii) Claims by persons in, upon or about the Premises, the Facility or any other SFMTA property for any cause arising at any time, (viii) alleged facts or circumstances of the process or negotiations leading to this Lease prior to the Commencement Date, (ix) inability to use all or any portion of the Premises due to sea level rise, and (x) any other acts, omissions or causes.

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

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

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

19.5. Survival

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

20. ASSIGNMENT AND SUBLETTING

20.1. Transfer to Affiliate

(a) Tenant may make an Affiliate Transfer without obtaining SFMTA's consent, but only if Tenant gives SFMTA: (i) prior written notice at least twenty (20) business days before the Transfer Date; and (ii) copies of all documentation evidencing Tenant's relationship with the Affiliate and the Transfer Agreement within five (5) days after the actual Transfer Date.

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

20.2. Transfer to Non-Affiliate

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

(i) Tenant agrees that any of the following will be a reasonable basis for SFMTA to withhold its consent: (1) at the time Tenant requests SFMTA's consent, an Event of Default, or an event that with notice or the passage of time or both would constitute an Event of Default if not cured, has occurred and remains uncured; (2) the Transfer is an Assignment or a Sublease by a Transferee of Tenant; (3) the Transferee's financial condition is or may become insufficient to support all of the financial and other obligations of this Lease; (4) the Transferee's

intended use of the Premises is inconsistent with this Lease or otherwise will affect any SFMTA interest materially and adversely; (5) the nature of the Transferee's use of the Premises would involve an increased risk of the Handling or Release of Hazardous Materials or of fire or other casualty; (6) the business reputation or character of the Transferee or any of its Affiliates is not reasonably acceptable to SFMTA; (7) the Transferee is not likely to conduct a business in the Premises of a quality substantially equal to Tenant's or otherwise reasonably acceptable to SFMTA; or (8) Tenant has not cured an Event of Default or an event that with notice or the passage of time or both would constitute an Event of Default if not cured.

(ii) Tenant also agrees that SFMTA will have the right to impose reasonable conditions to a requested consent to a Transfer, which may include: (1) requiring the Transferee to assume all of Tenant's obligations under this Lease; and (2) giving SFMTA the right to terminate without notice all of Tenant's then-existing Subleases if this Lease is terminated before the existing Subleases expire.

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

(i) For up to thirty (30) days after receipt of the complete Transfer Notice, SFMTA will have the right to: (1) terminate this Lease as of the proposed Transfer Date; (2) sublease or take an assignment from Tenant of the interest that Tenant proposes to Transfer, on the same terms and conditions as stated in the Transfer Agreement; and (3) negotiate and contract directly with the Transferee on terms acceptable to SFMTA in its sole and absolute discretion.

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

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

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

20.3. Sublease

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

(a) Until the occurrence of an Event of Default, Tenant will have the right to receive and collect rents from the Sublease. The Sublease must require the Transferee to pay the rent and other sums due under the Sublease directly to SFMTA upon receiving SFMTA's written notice that Tenant is in default under this Lease, a copy of which SFMTA will deliver to Tenant. Tenant agrees that it will hold in trust for SFMTA's benefit any Sublease rent or other sums that

Tenant collects from the Transferee after SFMTA's notice to the Transferee, and Tenant will be obligated to forward the same to SFMTA immediately upon receipt. SFMTA's collection of rents and other sums under this Section will not constitute SFMTA's acceptance of attornment by the Transferee.

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

Term of Sublease:	5 years x 12 months = 60 months
Subletting Expenses:	\$15,000 + \$15,000 = \$30,000
Amortized Subletting Expenses:	\$30,000/60 months = \$500/month
Excess Rent:	\$5,000/month - \$3,000/month = \$2,000/month
Additional Rent:	\$2,000/month - \$500/month = \$1,500/month

20.4. Notice to SFMTA

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

20.5. Transfer Agreement Requirements

Any Transfer Agreement must include the provisions set forth below.

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

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

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

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

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

20.6. Transfer Audit

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

20.7. Acknowledgment

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

20.8. Transfer Decisions

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

21. DEFAULT BY TENANT

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

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

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

(c) abandonment or vacation of the Premises by Tenant; or

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

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

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

(g) failure by Tenant or Tenant's broker as applicable to provide evidence of insurance coverage complying with the provisions of Section 16, failure to maintain any

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

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

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

(j) failure by Tenant to observe, keep or perform any of the other terms, covenants, agreements or conditions contained in this Lease and required to be observed or performed by Tenant and not specifically enumerated in this Section 21, and such failure continues for a period of fifteen (15) days after written notice by SFMTA, provided that if such default is not capable of cure within such fifteen (15) day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such fifteen (15) day period and thereafter diligently prosecutes the same to completion within sixty (60) days after the receipt of notice of default from SFMTA. SFMTA shall not be required to provide such notice more than twice in any twelve (12) month period with respect to any material non-monetary defaults and after the second notice in any calendar year, any subsequent failure by Tenant during such twelve (12) month period shall automatically constitute an Event of Default hereunder; or

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

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

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

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

22. SFMTA'S REMEDIES

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

22.1. Tenant's Right to Possession Not Terminated

SFMTA has the remedy described in Section 1951.4 of the California Civil Code (a landlord may continue the lease in effect after a tenant's breach and abandonment and recover rent as it becomes due, if the tenant has the right to sublet and assign subject only to reasonable limitations) under which it may continue this Lease in full force and effect and SFMTA may enforce all of its rights and remedies under this Lease, including the right to collect Rent when due. During the period Tenant is in default, SFMTA may enter the Premises without terminating this Lease and relet them, or any part of them, to third parties for Tenant's account. Tenant shall be liable immediately to SFMTA for all reasonable costs SFMTA incurs in reletting the Premises, including, but not limited to, broker's commissions, expenses of remodeling the Premises required by the reletting and like costs. Reletting can be for a period shorter or longer than the remaining Term, at such rents and on such other terms and conditions as SFMTA deems advisable. Tenant shall pay to SFMTA the Rent due under this Lease on the dates the Rent is due, less the Rent SFMTA receives from any reletting. In the event that SFMTA shall elect to so relet, then rentals received by SFMTA from such reletting shall be applied in the following order: (i) to reasonable attorneys' fees incurred by SFMTA as a result of a default and costs in the event suit is filed by SFMTA to enforce such remedies; (ii) to the payment of any indebtedness other than Rent due hereunder from Tenant to SFMTA; (iii) to the payment of any costs of maintaining, preserving, altering, repairing and preparing the Premises for reletting, the other costs of reletting, including but not limited to brokers' commissions, attorneys' fees and expenses of removal of Tenant's Personal Property, trade fixtures and Alterations; (iv) to the payment of Rent due and unpaid hereunder; (v) to the payment of future Rent and other sums payable by Tenant hereunder as the same may become due and payable hereunder; and (vi) the balance, if any, shall be paid to Tenant upon (but not before) expiration of the Term. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of Rent hereunder, be less than the Rent payable during the month by Tenant hereunder, then Tenant shall pay such deficiency to SFMTA. Such deficiency shall be calculated and paid monthly. No act by SFMTA allowed by this Section 22.1 shall terminate this Lease unless SFMTA notifies Tenant that SFMTA elects to terminate this Lease. After Tenant's default and for as long as SFMTA does not terminate Tenant's right to possession of the Premises, if Tenant obtains SFMTA's consent Tenant shall have the right to assign or sublet its interest in this Lease, but Tenant shall not be released from liability.

22.2. Termination of Tenant's Right to Possession

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

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

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

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

(d) Any other amounts necessary to compensate SFMTA for the detriment proximately caused by Tenant's default, or which, in the ordinary course of events, would likely result, including, but not limited to, attorneys' fees and court costs, the costs of carrying the Premises such as repairs, maintenance, taxes and insurance premiums, utilities, security

precautions and the reasonable costs and expenses incurred by SFMTA in (i) retaking possession of the Premises; (ii) cleaning and making repairs and alterations necessary to return the Premises to good condition and preparing the Premises for reletting; (iii) removing, transporting and storing any of Tenant's Property left at the Premises (although SFMTA shall have no obligation so to do); and (iv) reletting the Premises, including, without limitation, brokerage commissions, advertising costs and attorneys' fees. Efforts by SFMTA to mitigate the damages caused by Tenant's breach of this Lease do not waive SFMTA's rights to recover damages upon termination.

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

22.3. Appointment of Receiver

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

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

SFMTA, at any time after Tenant commits a default, may, at SFMTA's sole option, cure the default at Tenant's cost. If SFMTA at any time, by reason of Tenant's default, undertakes any act to cure or attempt to cure such default that requires the payment of any sums, or otherwise incurs any costs, damages, or liabilities (including without limitation, attorneys' fees), all such sums, costs, damages or liabilities paid by SFMTA shall be due immediately from Tenant to SFMTA at the time the sum is paid, and if paid by Tenant at a later date shall bear interest at the lesser of the Interest Rate or the maximum non-usurious rate SFMTA is permitted by Law to charge from the date such sum is paid by SFMTA until SFMTA is reimbursed by Tenant.

22.5. No Accord and Satisfaction

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

22.6. Waiver of Redemption

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

22.7. Habitual Late Payer

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

22.8. Remedies Not Exclusive

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

23. LITIGATION EXPENSES; ATTORNEYS' FEES

23.1. Litigation Expenses

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

23.2. Appeals

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

23.3. City Attorney

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

24. SFMTA'S ENTRY ON PREMISES

24.1. Entry for Inspection

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

24.2. General Entry

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

- (a) To perform any necessary maintenance, repairs or restoration to the Premises or to perform any services which SFMTA has the right or obligation to perform;
- (b) To serve, post, or keep posted any notices required or allowed under the provisions of this Lease;
- (c) To post "**For Sale**" signs at any time during the Term; to post "**For Lease**" signs during the last six (6) months of the Term or during any period in which Tenant is in default;
- (d) On an occasional basis, at all reasonable times after giving Tenant reasonable advance written or oral notice, to show the Premises to prospective tenants or other interested parties;

(e) If any excavation or other construction is undertaken or is about to be undertaken on any property or street adjacent to the Premises, to shore the foundations, footings or walls of the Premises and to erect scaffolding and protective barricades around and about the Premises as reasonably necessary in connection with such activities (but not so as to prevent or unreasonably restrict entry to the Premises), and to do any other act or thing necessary for the safety or preservation of the Premises during such excavation or other construction; or

(f) To obtain environmental samples and perform equipment and facility testing.

24.3. Emergency Entry

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

24.4. No Liability

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

24.5. Nondisturbance

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

25. SURRENDER AND QUITCLAIM

25.1. Surrender

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

If the Premises is not surrendered at the end of the Term or sooner termination of this Lease, and in accordance with the provisions of this Section 25 and Section 13.5, Tenant shall continue to be responsible for the payment of Rent (as the same may be increased pursuant to Section 26.2 or 26.3 as applicable) until the Premises is surrendered in accordance with these Sections, and Tenant shall Indemnify SFMTA from and against any and all loss or liability resulting from delay by Tenant in so surrendering the Premises including, without limitation, any

costs of SFMTA to obtain possession of the Premises; any loss or liability resulting from any Claim against SFMTA made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to SFMTA due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each instance, reasonable attorneys' fees and costs.

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

25.2. Quitclaim

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

25.3. Abandoned Property

Any items, including Tenant's Property, not removed by Tenant as required herein shall be deemed abandoned. SFMTA may retain, store, remove, and sell or otherwise dispose of abandoned Tenant's Property, and Tenant waives all Claims against SFMTA for any damages resulting from SFMTA's retention, removal and disposition of such property; provided, however, that Tenant shall be liable to SFMTA for all costs incurred in storing, removing and disposing of abandoned Tenant's Property and repairing any damage to the Premises or the Facility resulting from such removal. Tenant agrees that SFMTA may elect to sell abandoned Tenant's Property and offset against the sales proceeds SFMTA's storage, removal, and disposition costs without notice to Tenant or otherwise according to the procedures set forth in California Civil Code Section 1993, the benefits of which Tenant waives.

25.4. Survival

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

26. HOLDING OVER

26.1. Terms of Holdover Tenancy

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

26.2. With Consent

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

26.3. Without Consent

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

27. MINERAL RESERVATION

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

28. CITY AND SFMTA REQUIREMENTS

The San Francisco Municipal Codes (available at www.sfgov.org) and City and SFMTA policies described or referenced in this Lease are incorporated by reference as though fully set forth in this Lease. The descriptions below are not comprehensive but are provided for notice purposes only; Tenant is charged with full knowledge of each such ordinance and policy and any related implementing regulations as they may be amended from time to time. Tenant understands and agrees that its failure to comply with any provision of this Lease relating to any such code provision shall be deemed a material breach of this Lease and may give rise to penalties under the applicable ordinance. Capitalized or highlighted terms used in this Section and not defined in this Lease shall have the meanings ascribed to them in the cited ordinance.

28.1. Nondiscrimination

(a) Covenant Not to Discriminate. In the performance of this Lease, Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under Chapter 12B or 12C of the San Francisco Administrative Code or in retaliation for opposition to any practices forbidden under Chapter 12B or 12C of the Administrative Code against any employee of Tenant, any City and County employee working with Tenant, any applicant for employment with Tenant, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant in the City and County of San Francisco.

(b) Subleases and Other Contracts. Tenant shall include in all subleases and other contracts relating to the Premises a non-discrimination clause applicable to such subtenant or other contractor in substantially the form of Section 28.1(a). In addition, Tenant shall incorporate by reference in all subleases and other contracts the provisions of Sections 12B.2 (a), 12B.2 (c)-(k) and 12C.3 of the Administrative Code and shall require all subtenants and other contractors to comply with such provisions.

(c) **Nondiscrimination in Benefits.** Tenant does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "**Core Benefits**") as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local Law authorizing such registration, subject to the conditions set forth in Section 12B.2 of the Administrative Code.

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

(e) **Penalties.** Tenant understands that pursuant to Section 12B.2(h) of the Administrative Code, a penalty of \$50.00 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

28.2. Requiring Health Benefits for Covered Employees

Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in Administrative Code Chapter 12Q (Chapter 12Q).

(a) For each Covered Employee Tenant shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO.

(b) Notwithstanding the above, if Tenant meets the requirements of a "small business" by the City pursuant to Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with Section 28.2.

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

(d) Any Sublease or Contract regarding services to be performed on the Premises entered into by Tenant shall require the Subtenant or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in Chapter 12Q of the Administrative Code. Tenant shall notify the Office of Labor Standards Enforcement ("**OLSE**") when it enters into such a Sublease or Contract and shall certify to OLSE that it has notified the Subtenant or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Subtenant or Contractor through written agreement with such Subtenant or Contractor. Tenant shall be responsible for ensuring compliance with the HCAO for each Subtenant, Contractor and Subcontractor performing services on the Premises. If any Subtenant, Contractor or Subcontractor fails to comply, the City may pursue the remedies set forth in Section 12Q.5 of the Administrative Code against Tenant based on the Subtenant's, Contractor's, or Subcontractor's failure to comply, provided that OLSE has first provided Tenant with notice and an opportunity to cure the violation.

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

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

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

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

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

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

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

28.3. First Source Hiring

The City has adopted a First Source Hiring Program (San Francisco Administrative Code Sections 83.1 et seq.) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions as those terms are defined by the ordinance. Tenant acknowledges receiving and reviewing the First Source Hiring Program materials and requirements and agrees to comply with all requirements of the ordinance as implemented by SFMTA and/or City, including without limitation, notification of vacancies throughout the Term and entering into a First Source Hiring Agreement, if applicable. Tenant acknowledges and agrees that it may be subject to monetary penalties for failure to comply with the ordinance or a First Source Hiring Agreement and that such non-compliance shall be a default of this Lease.

28.4. Local Business Enterprises

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

28.5. Indoor Air Quality

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

28.6. Prohibition of Tobacco Sales and Advertising

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

28.7. Graffiti Removal

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

28.8. Restrictions on the Use of Pesticides

Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "**IPM Ordinance**") describes an integrated pest management ("**IPM**") policy to be implemented by all City departments. Tenant shall not use or apply or allow the use or application of any pesticides on the Premises, and shall not contract with any party to provide pest abatement or control services to the Premises, without first receiving City's written approval of an integrated pest management plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the term of this Lease, (ii) describes the steps Tenant will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. Tenant shall comply, and shall require all of Tenant's contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Tenant were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (d) require Tenant to keep certain records and to report to City all pesticide use by Tenant's staff or contractors. If Tenant or Tenant's contractor will apply pesticides to outdoor areas, Tenant must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation and any such pesticide application shall be made only by or under the supervision of a person holding a valid Qualified Applicator certificate or Qualified Applicator license under state law. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

28.9. MacBride Principles Northern Ireland

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

28.10. Tropical Hardwood and Virgin Redwood Ban

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

28.11. Preservative-Treated Wood Containing Arsenic

Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Tenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment.

28.12. Notification of Limitations on Contributions

If this Lease is subject to the approval by City's Board of Supervisors, Mayor, or other elected official, the provisions of this Section 28.12 shall apply. Through its execution of this Lease, Tenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (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, if applicable, 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 20 percent in Tenant; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that if this Section 28.12 applies, Tenant must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 and must provide to City the name of each person, entity or committee described above.

28.13. Sunshine Ordinance

In accordance with Section 67.24(e) of the Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between SFMTA and persons or firms seeking contracts will be open to

inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

28.14. Conflicts of Interest

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

28.15. Drug-Free Workplace

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

28.16. Prevailing Wages and Working Conditions

Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Tenant shall require its contractors and subcontractors performing (i) labor in connection with a "public work" as defined under California Labor Code Section 1720 et seq. (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction to: (A) pay workers performing such work not less than the highest prevailing rate of wages, (B) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (C) employ apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, "**Prevailing Wage Requirements**"). Tenant agrees to cooperate with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Prevailing Wage Requirements.

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

Tenant shall also pay, and shall require its subtenants, and contractors and subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities on the Premises as set forth in and to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 21C.3), a Show (as defined in Section 21C.4), a Special Event (as defined in Section 21C.8), Broadcast Services (as defined in Section 21C.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 21C.10), and Security Guard Services for Events (as defined in Section 21C.11).

28.17. Public Transit Information

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

28.18. Food Service and Packaging Waste Reduction Ordinance

Tenant agrees to comply fully with and be bound by all of the provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. By entering into this Lease, Tenant agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Tenant agrees that the sum of one hundred dollars (\$100.00) liquidated damages for the first breach, two hundred dollars (\$200.00) liquidated damages for the second breach in the same year, and five hundred dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Lease was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's failure to comply with this provision.

28.19. Consideration of Criminal History in Hiring and Employment Decisions

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

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

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

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

(e) Tenant and subtenants shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Tenant or subtenant at the Premises, that 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 subtenants shall post the notice prepared by OLSE, available on OLSE's website, in a conspicuous place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

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

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

28.20. Local Hire

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

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

28.21. San Francisco Bottled Water Ordinance

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

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

Tenant shall not install or permit any vending machine on the Premises without the prior written consent of SFMTA. Any permitted vending machine must comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code section 4.9- 1(c), as may be amended from time to time (the "**Nutritional Standards Requirements**"). Tenant agrees to incorporate the Nutritional Standards

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

28.23. Employee Signature Authorization Ordinance

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

29. NOTICES

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

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

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

30. REPRESENTATIONS AND WARRANTIES OF TENANT

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

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

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

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

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

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

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

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

31. TENANT'S MANAGEMENT COVENANTS

31.1. Covenants

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

31.2. Continuous Operations

Tenant shall use commercially reasonable efforts to ensure that all of the Premises are used continuously during the Term for the Permitted Use and shall not allow any portion of the Premises to remain unoccupied or unused without the prior written consent of SFMTA, which consent may be withheld in SFMTA's sole and absolute discretion. Notwithstanding the foregoing, the SFMTA shall not unreasonably withhold its consent to any cessation of operations for any reasonably necessary time period due to the following causes or in the following

circumstances: (a) if the Premises become untenable due to fire or other casualty, (b) as may be necessary in connection with performing repairs to the Premises, or (c) while conducting periodic inventory of Tenant's goods and merchandise.

32. MISCELLANEOUS PROVISIONS

32.1. California Law

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

32.2. Entire Agreement

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

32.3. Amendments

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

32.4. Severability

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

32.5. Interpretation of Lease

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

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

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

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

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

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

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

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

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

32.6. Successors

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

32.7. Real Estate Broker's Fees

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

32.8. Counterparts

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

32.9. Authority

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

32.10. No Implied Waiver

No failure by SFMTA to insist upon the strict performance of any obligation of Tenant under this Lease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of full or partial Rent during the continuance of any such breach shall constitute a waiver of such breach or of SFMTA's rights to demand strict compliance with such term, covenant or condition. SFMTA's consent to or approval of any act by Tenant requiring SFMTA's consent or approval shall not be deemed to waive or render unnecessary SFMTA's consent to or approval of any subsequent act by Tenant. Any waiver by SFMTA of any default must be in writing and shall not be a waiver of any other default (including any future default) concerning the same or any other provision of this Lease.

32.11. Time is of Essence

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

32.12. Cumulative Remedies

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

32.13. Survival of Indemnities

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

32.14. Relationship of Parties

SFMTA is not, and none of the provisions in this Lease shall be deemed to render SFMTA, a partner in Tenant's business, or joint venturer or member in any joint enterprise with Tenant. Neither party shall act as the agent of the other party in any respect hereunder. This Lease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

32.15. No Recording

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

32.16. Additional Written Agreement Required

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

33. LIMITATION ON DAMAGES

33.1. No Recourse Beyond Value of Premises

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

Before filing suit for an alleged default by SFMTA, Tenant shall give SFMTA notice and reasonable time to cure the alleged default.

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

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

33.3. Limitation on SFMTA's Liability Upon Transfer

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

34. TENANT ESTOPPEL CERTIFICATES

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

35. APPROVAL OF BOARD OF SUPERVISORS

Notwithstanding anything to the contrary contained in this Lease, Tenant acknowledges and agrees that no officer or employee of City has authority to commit City to this Lease unless and until City's Board of Supervisors shall have duly adopted a resolution approving this Lease and authorizing the transactions contemplated hereby. Therefore, any obligations or liabilities of City hereunder are contingent upon adoption of such a resolution, and this Lease shall be null and void if City's Mayor and the Board of Supervisors do not approve this Lease, in their respective sole discretion. Approval of this Lease by any department, commission or agency of City shall not be deemed to imply that such resolution will be enacted, nor will any such approval create any binding obligations on City.

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

SFMTA:

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

By: _____
Edward D. Reiskin
Director of Transportation

Date: _____

TENANT:

TAD'S INC., a California corporation

By: S STEPHEN NG
Its: TAD'S INC. - OWNER
Date: 3/1/19

By: [Signature] PHILLIPS NG
Its: TAD'S INC. - OWNER
Date: 3/1/19

Authorized By:
SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS

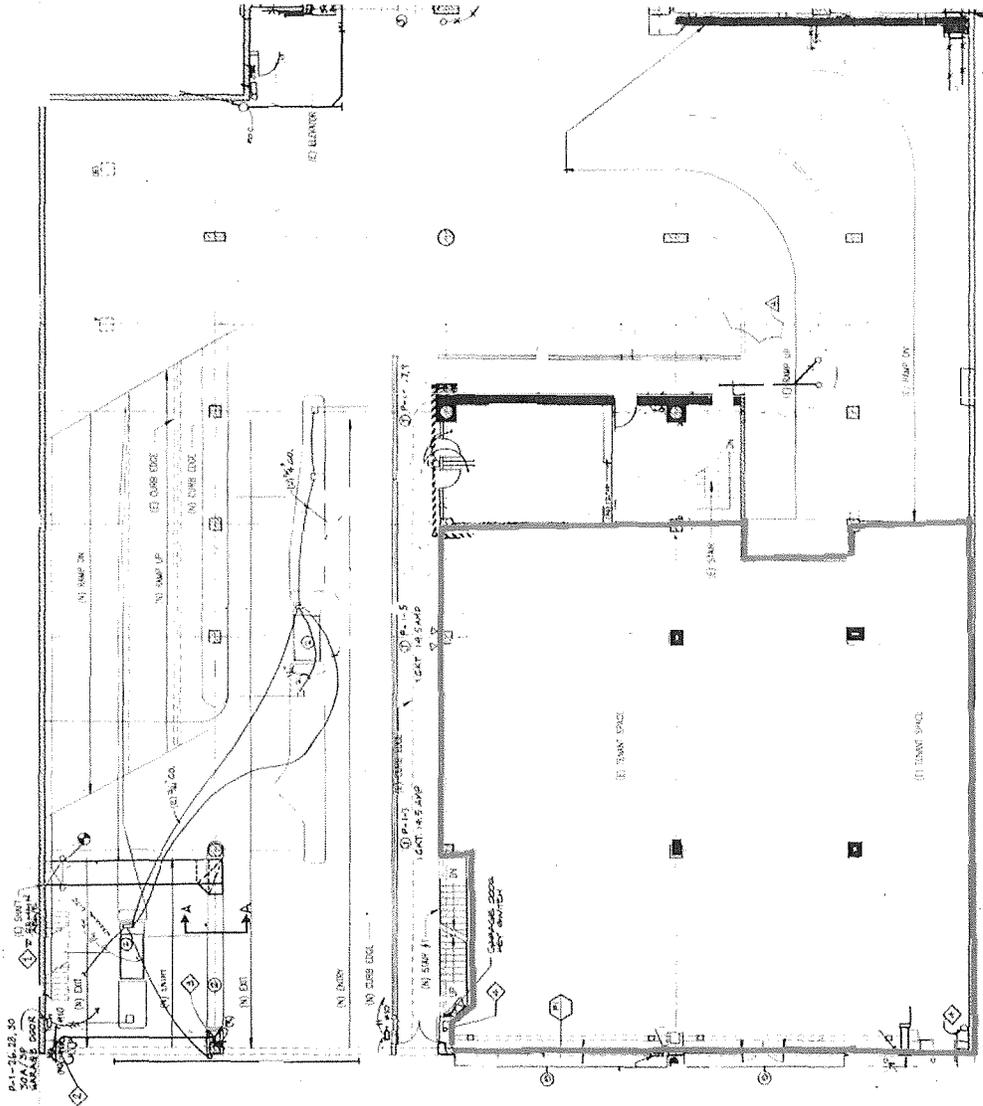
Resolution No. _____
Adopted: _____
Attest:

Secretary, SFMTA Board of Directors

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

By: _____
Stephanie Stuart, Deputy City Attorney

EXHIBIT A
LEASE PREMISES



ELLIS STREET

EXHIBIT B

NOTICE OF COMMENCEMENT DATE

[Date]

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

RE: Acknowledgement of Commencement Date, Lease Between Tad's Inc., (Tenant), and the City and County of San Francisco, acting by and through its Municipal Transportation Agency (Landlord), for the Premises located at 44 Ellis Street, San Francisco, California.

Dear M _____:

This letter will confirm that for all purposes of the Lease, the Commencement Date is hereby established as _____ 20, __, and the Rent Commencement Date of the Lease is hereby established as _____ 20, __.

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

By: _____
Edward D. Reiskin
Director of Transportation

Date signed: _____

Tenant: Tad's Inc.

By: _____
Name: _____

Title: _____

Date signed: _____

EXHIBIT C

TENANT ESTOPPEL CERTIFICATE

The undersigned, _____, is the tenant of the real property commonly known as 44 Ellis Street located in San Francisco, California (the "Property"), and hereby certifies to **THE CITY AND COUNTY OF SAN FRANCISCO THROUGH THE SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY ("SFMTA")** [and to _____ ("Developer/Lender")] the following:

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

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

Dated: _____, 20__.

Tad's Inc.

By:
Name:
Title:

EXHIBIT D

RULES AND REGULATIONS

1. The sidewalks, halls, passages, exits, entrances, elevators and stairways of the Facility shall not be obstructed by Tenant or used by it for any purpose other than for ingress to and egress from the Premises. City shall in all cases retain the right to control and prevent access to the halls, passages, exits, entrances, elevators, escalators and stairways that are not for the use of the general public, and City shall in all cases retain the right to control and prevent access thereto of all persons whose presence in the judgment of City would be prejudicial to the safety, character, reputation and interests of the Facility and its tenants, provided that nothing herein contained shall be construed to prevent such access to persons with whom Tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities. Tenant shall not go upon the roof of the Facility, except in areas that City may designate as "Common Areas" from time to time.
2. No sign, placard, picture, name, advertisement or notice visible from the exterior of the Premises shall be installed or displayed by Tenant on any part of the outside or inside of the Facility without the prior written consent of City. City shall have the right to remove, at Tenant's expense and without notice, any sign installed or displayed in violation of this rule. All approved signs or lettering on doors shall be printed, painted, affixed or inscribed at the expense of Tenant by a person approved by City, which approval will not be unreasonably withheld. Material visible from outside the Facility will not be permitted.
3. This Rule Intentionally Deleted
4. This Rule Intentionally Deleted
5. City will furnish Tenant with two (2) keys to the Premises, free of charge. City may make a reasonable charge for such additional keys and for having locks changed. Tenant shall not make or have made additional keys without City's prior written consent, which consent shall not be unreasonably withheld or delayed. Tenant shall not alter any lock or install any new or additional locking devices without the prior written consent of City. All locks installed in the Premises, excluding Tenant's vaults and safes, or special security areas (which shall be designated by Tenant in a written notice to City), shall be keyed to the Facility master key system. City may make reasonable charge for any additional lock or any bolt (including labor) installed on any door of the Premises. Tenant, upon the termination of its tenancy, shall deliver to City all keys to doors in the Premises. If Tenant loses any keys, Tenant shall pay City for the cost of re-keying the Premises.
6. The elevators to be used for the loading of freight shall be available to Tenant in accordance with such reasonable scheduling as City shall deem appropriate. Tenant shall schedule with City, by written notice given no less than forty-eight (48) hours in advance, its move into or out of the Facility, which moving shall occur only on weekend days if required by City; and Tenant shall reimburse City upon demand for any additional security or other charges incurred by City as a consequence of such moving. The persons employed by Tenant to move equipment or other items in or out of the Facility must be acceptable to City. The floors, corners and walls of elevators and corridors used for the moving of equipment or other items in or out of the Facility must be adequately covered, padded and protected, and City may provide such padding and protection, at Tenant's expense, if City determines that such measures undertaken by Tenant or Tenant's movers are inadequate. City shall have the right to prescribe the weight, size and position of all equipment, materials, supplies, furniture or other property brought into the Facility. Heavy objects shall, if considered necessary by City, stand on wood strips of such thickness as is

necessary to properly distribute the weight of such objects. City will not be responsible for loss of or damage to any such property from any cause, and all damage done to the Facility by moving or maintaining Tenant's property shall be repaired at the expense of Tenant.

7. Tenant shall not use, keep or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to City or other occupants of the Facility by reason of noise, odors, and/or vibrations, or interfere in any way with other tenants or those having business in the Facility.
8. City reserves the right to exclude from the Facility between the hours of 1 a.m. and 5:30 a.m. every day all persons who do not present a pass to the Facility signed by City and properly in the possession of the person presenting such pass. City will furnish passes to persons for whom Tenant requests the same in writing. Tenant shall be responsible for all persons for whom it requests passes and shall be liable to City for all acts of such persons. City shall in no case be liable for damages for any error with regard to the admission to or exclusion from the Facility of any person. In the case of invasion, mob, riot, public excitement or other circumstances rendering such action advisable in City's opinion, City reserves the right to prevent access to the Facility during the continuance of same by such action as City may deem appropriate, including closing any doors in the Facility.
9. The directory of the Facility will be provided for the display of the name and location of tenants and a reasonable number of the principal officers and employees of tenants, and City reserves the right to exclude any other names therefrom. Any additional name that Tenant shall desire to place upon the directory must first be approved by City and, if so approved, a charge will be made for each such name.
10. Tenant shall not cut or bore holes for wires in the partitions, woodwork or plaster of the Premises. Tenant shall not affix any floor covering to the floor of the Premises in any manner except as approved by City.
11. No curtains, draperies, blinds, shutters, shades, screens or other coverings, hangings or decorations shall be attached to, hung or placed in, or used in connection with any window of the Facility without City's prior written consent. In any event, with the prior written consent of City, such items shall be installed on the office side of City's standard window covering and shall in no way be visible from the exterior of the Facility.
12. Tenant shall see that the doors of the Premises are closed and locked and that all water faucets, water apparatus and utilities are shut off before Tenant or Tenant's employees leave the Premises, so as to prevent waste or damage, and for any default or carelessness in this regard Tenant shall make good all injuries sustained by other tenants or occupants of the Facility or City. On multiple-tenancy floors, all tenants shall keep the doors to the Facility corridors closed at all times except for ingress and egress, and all tenants shall at all times comply with any rules or orders of the fire department with respect to ingress and egress.
13. The toilet rooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed, no foreign substance of any kind whatsoever shall be deposited therein. The expense of any breakage, stoppage or damage resulting in any violation of this rule shall be borne by Tenant.
14. Except with City's prior consent, Tenant shall not sell, or permit the sale from the Premises of, or use or permit the use of any sidewalk or mall area adjacent to the Premises for the sale of, newspapers, magazines, periodicals, theater tickets or any other goods, or service, nor shall Tenant carry on, or permit or allow any employee or other person to carry on,

business in or from the Premises for the service or accommodation of occupants or any other portion of the Facility, nor shall the Premises be used for manufacturing of any kind, or for any business or activity other than that specifically provided for in Tenant's lease.

15. Tenant shall not install any radio or television antenna, loudspeaker, or other device on or about the roof area or exterior walls of the Facility. Tenant shall not interfere with radio or television broadcasting or reception from or in the Facility or elsewhere.
16. Tenant shall not use in any space, or in the common areas of the Facility, any hand-trucks except those equipped with rubber tires and side guards or such other material-handling equipment as City may approve. No other vehicles of any kind shall be brought by Tenant into the Facility or kept in or about the Premises.
17. Tenant shall store all its trash and garbage within the Premises until removal of the same to such location in the Facility as may be designated from time to time by City. No material shall be placed in the Facility trash boxes or receptacles if such material is of such nature that it may not be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage in the City of San Francisco without being in violation of any law or ordinance governing such disposal.
18. All loading and unloading of merchandise, supplies, materials, garbage and refuse shall be made only through such entryways and freight elevators and at such times as City shall designate. In its use of the loading areas of the Facility, Tenant shall not obstruct or permit the obstruction of said loading areas, and at no time shall Tenant park vehicles therein except for immediate loading and unloading purposes.
19. Canvassing, soliciting, peddling or distribution of handbills or any other written material in the Facility is prohibited and Tenant shall cooperate to prevent the same.
20. Tenant shall immediately, upon request from City (which request need not be in writing), reduce its lighting in the Premises for temporary periods designated by City, when required in City's judgment to prevent overloads of the mechanical or electrical systems of the Facility.
21. City reserves the right to select the name of the Facility and to make such change or changes of name as it may deem appropriate from time to time, and Tenant shall not refer to the Facility by any name other than: (i) the name as selected by City (as the same may be changed from time to time), or (ii) the postal address approved by the United States Post Office. Tenant shall not use the name of the Facility in any respect other than as an address of its operation in the Facility without the prior written consent of the City.
22. Tenant assumes all responsibility for protecting its Premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry closed.
23. No vending machine shall be maintained or operated within the Premises or the Facility without City's prior written consent.
24. All incoming mail and package deliveries shall be received at the area in the Facility designated by City for such purposes and distributed through means established by City. No messenger or other delivery personnel shall be permitted to enter any area of the Facility other than the area designated by City for the pick-up and receipt of such deliveries.

25. City reserves the right to exclude or expel from the Facility any person who is, in the judgment of City, intoxicated or under the influence of alcohol or other drug or who is in violation of any of the Rules or Regulations of the Facility.
26. No animal or bird shall be permitted in the Premises or the Facility, except for seeing eye dogs when in the company of their masters.
27. The requirements of Tenant will be attended to only upon application by telephone or writing or in person at the management office of the Facility. Employee of City shall not perform any work or do anything outside of their regular duties unless under special instructions from City.
28. City may waive any one or more of these Rules and Regulations for the benefit of any particular tenant or tenants, but no such waiver by City shall be construed as a waiver of these Rules and Regulations in favor of any other tenant or tenants, nor prevent City from thereafter enforcing any such Rules and Regulations against any or all of the tenants of the Facility.
29. Wherever the word "Tenant" occurs in these Rules and Regulations, it is understood and agreed that it shall mean Tenant's associates, agents, clerks, employees and visitors. Wherever the word "City" occurs in these Rules and Regulations, it is understood and agreed that it shall mean City's assigns, agents, officers, employees and visitors.
30. These Rules and Regulations are in addition to, and shall not be construed in any way to modify, alter or amend, in whole or part, the terms, covenants, agreements and conditions of any lease of premises in the Facility.
31. City reserves the right to make such other and reasonable rules and regulations as in its judgment may from time to time be needed for the safety, care and cleanliness of the Facility, and for the preservation of good order therein.
32. Tenant shall be responsible for the observance of all the foregoing Rules and Regulations by Tenant's employees, agents, clients, customers, invitees and guests.

EXHIBIT E

GROSS REVENUE STATEMENT

[Date]

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

RE: Gross Revenue Reporting, [Year1, Year2, Year3 or Year4 etc.], Lease Between Tad's Inc. (Tenant), and the City and County of San Francisco, acting by and through its Municipal Transportation Agency (Landlord), for the Premises located at 44 Ellis Street, San Francisco, California

Dear Senior Manager:

The gross revenue for [Y1, Y2, Y3 or Y4 etc.] is:

[Quarter 1] \$ _____

[Quarter 2] \$ _____

[Quarter 3] \$ _____

[Quarter 4] \$ _____

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

Very truly yours,

By: _____
Title: _____

EXHIBIT F

RENT SCHEDULE

Lease Year		Price Per Sq. Ft./Year	Rent Per Month	Rent Per Year
Year	1	\$82.50	\$36,905.00	\$442,860.00
Year	2	\$85.80	\$38,381.20	\$460,574.40
Year	3	\$89.23	\$39,916.45	\$478,997.38
Year	4	\$92.80	\$41,513.11	\$498,157.27
Year	5	\$96.51	\$43,173.63	\$518,083.56
Year	6	\$100.37	\$44,900.58	\$538,806.90
Year	7	\$104.39	\$46,696.60	\$560,359.18
Year	8	\$108.56	\$48,564.46	\$582,773.55
Year	9	\$112.91	\$50,507.04	\$606,084.49
Year	10	\$117.42	\$52,527.32	\$630,327.87
		Year 1-10		\$5,317,024.60

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. 190305-028

WHEREAS, The Ellis-O'Farrell Garage (Garage), located at 123 O'Farrell Street, is owned by the City and County of San Francisco and under the jurisdiction of the SFMTA; and,

WHEREAS, On May 17, 2013, the SFMTA issued a Request for Proposal for the retail space designated as 44 Ellis Street and comprised of approximately 5,368 square feet, and only received one response from Les Joulins USA Inc. (Les Joulins); and,

WHEREAS, On March 1, 2015, the SFMTA entered into a lease agreement with Les Joulins for an initial term of ten years (Lease); and,

WHEREAS, On March 1, 2017, the Lease was assumed by Tad's Inc. (Tenant); and,

WHEREAS, The Lease agreement includes a rent schedule for the ten-year initial term that will result in \$5,127,000 in revenue to the city and includes \$250,000 in rent credits upon completion of pre-authorized improvements; and,

WHEREAS, For over 20 years, the retail space had no major improvements and the Tenant determined the space needed additional work on top of the pre-authorized work in order to comply with current building codes; and,

WHEREAS, Tenant desires to enter into a new lease agreement which allows them to make investments in the necessary improvements to the space and lease the property for a longer term than the six years that remain in the lease; and,

WHEREAS, In November 2018, the SFMTA hired an independent appraiser R. Blum and Associates (R. Blum), and R. Blum concluded a range of rental rate between \$82.50 and \$87.50 per square foot per year; and,

WHEREAS, With consideration of nine months of rent abatement, the market rent is adjusted upward and concluded at \$87.56 per square foot per year. A second independent appraiser, David Tattersall, was hired to provide an appraisal review and concluded in agreement with the R. Blum report; and,

WHEREAS, The proposed new lease agreement is for a ten-year term and nine months of rent abatement which will result in \$5,317,064 in revenue, and includes two five-year options to extend the lease; and,

WHEREAS, Rent for the first five-year option to extend will be at 103% of the base rent from the lease year immediately prior; and

WHEREAS, Rent for the second five-year option to extend is at the greater of 103% of the base rent from the lease year immediately prior or 95% of the market rent; and,

WHEREAS, Comparing the current Lease with the proposed lease over a ten year term, the result is a net revenue increase of \$190,154; and,

WHEREAS, Tenant has been operating in the greater Union Square for over 45 years and retaining a local small business contributes to a proper public purpose; and,

WHEREAS, On January 3, 2019, the SFMTA, under authority delegated by the Planning Department, determined that the Commercial Lease Agreement with Tad's Inc. is not defined as a "project" under the California Environmental Quality Act (CEQA) pursuant Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and, now therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute a Commercial Lease Agreement with Tad's Inc. for retail space, located at 44 Ellis Street in the Ellis-O'Farrell Garage, for a ten-year term and two five-year options to extend the lease that will result in \$5,317,064 in revenue to the SFMTA; and be it further,

RESOLVED, That the SFMTA Board of Directors requests the Board of Supervisors' approval of the Commercial Lease Agreement.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of March 5, 2019.



Secretary to the Board of Directors
San Francisco Municipal Transportation Agency



Commercial Lease Agreement with Tad's Inc., for the Ellis-O'Farrell Garage Retail Space

The San Francisco Municipal Transportation Agency (SFMTA) Board of Directors proposes to authorize the Director of Transportation to execute a Commercial Lease Agreement with Tad's Inc., a retail space located within the City-owned Ellis-O'Farrell Garage (Garage) at 123 O'Farrell Street, for a ten-year term and two five-year options to extend the lease. In 2013 the SFMTA assumed responsibility for managing all Garage operations, including for retail leases. SFMTA entered a lease agreement in 2015 with Les Joulins USA Inc., for their tenancy in the ground floor retail space at 44 Ellis Street. Approval of the new lease agreement is subject to termination of the 2015 lease agreement.

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

Forrest Chamberlain Jan 23, 2018

Forrest Chamberlain Date
San Francisco Municipal Transportation Agency



London Breed, Mayor

Malcolm Heinicke, Chair
Gwyneth Borden, Vice Chair
Cheryl Brinkman, Director
Amanda Eaken, Director

Lee Hsu, Director
Cristina Rubke, Director
Art Torres, Director

Edward D. Reiskin, Director of Transportation

March 11, 2019

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

*Subject: Request for to enter into a Lease Agreement with Tad's, Inc. for
SFMTA retail space at 44 Ellis Street, San Francisco*

Honorable Members of the Board of Supervisors:

The San Francisco Municipal Transportation Agency (SFMTA) requests that the San Francisco Board of Supervisors authorize the SFMTA to execute a Commercial Lease Agreement with Tad's Inc. for retail space, located at 44 Ellis Street in the Ellis-O'Farrell Garage, for a ten-year term that will result in \$5,317,064 in revenue and includes two five-year options to extend the lease.

Background

The Ellis-O'Farrell Garage, located at 123 O'Farrell Street, is owned by the City and is under the jurisdiction of the SFMTA. It provides about 950 parking spaces and includes three commercial retail spaces totaling 11,000 square feet. The retail space associated with the lease is a 5,368 square feet space that operated as a restaurant at 44 Ellis Street.

On May 17, 2013, the SFMTA issued a Request for Proposal for the lease of the retail space at 44 Ellis Street and only received one response from the then-current tenant, Les Joulins. Les Joulins had been a tenant in the retail space since April 1997, and because of their long tenure, the SFMTA accepted their proposal.

The SFMTA entered into a lease agreement with Les Joulins on March 1, 2015. Two years later, on March 1, 2017, Tad's assumed the Lease. The Lease includes an initial term of ten years. Six years remain from the initial Lease term. The total amount of base rent for the first ten years of the Lease is \$5,127,000. The Lease includes \$250,000 in rent credits upon completion of certain pre-authorized improvements.

For over 20 years, the retail space at 44 Ellis Street has been occupied but has not undergone any major improvements. The Lease contemplates certain improvements to the premises and includes a list of pre-approved work such as hood ventilation replacement, and electrical, plumbing, ceiling, flooring and bathrooms upgrades. When Tad's assumed the Lease, Tad's agreed the list of pre-authorized work was necessary, and also determined the space needed a

new mechanical system and ductwork, a new fire protection system for sprinkler and hood, new lighting fixtures, and new exterior façade and canopy to meet building codes. The Lease allows tenant to apply up to \$250,000 as a rent credit against the base rent due, if tenant completes any of the improvement project from the pre-approved list. The rent credit is not an estimate of the total cost for the list of pre-authorized tenant improvement work. The SFMTA recognized the space needed work and the rent credit was intended to allow for some upgrades. None of the improvements that were the subject of the rent credit were completed while Les Joulins occupied the space. Due to the extent of the work needed to bring the space up to building code and safe operating standards, Tad's has not been able to open their business since assuming the Lease.

It is mutually beneficial to the SFMTA and Tad's to have the retail space at 44 Ellis Street completely renovated and to retain a local business. Tad's would like to terminate the existing Lease and enter into a new lease agreement that extends the term and includes rent abatement which would allow them to make the necessary capital investments. Considering that a major portion of the work constitutes a capital investment for the Ellis-O'Farrell Garage, the SFMTA would like to facilitate the completion of these improvements.

In November 2018, the SFMTA hired an independent appraiser, R. Blum, to appraise the market rent of the subject space. R. Blum used the direct comparison method and based on recent comparables, the range of rental rate is between \$82.50 and \$87.50 per square foot. With consideration of nine months of rent abatement, the market rent is adjusted upward to between \$87.50 and \$92.50 per square foot. R. Blum determined the market rent as of November 15, 2018, in as-is condition, is estimated to be \$87.56 per square foot per year. In December 2018, the SFMTA hired another independent appraiser, David Tattersall (Tattersall), to provide an appraisal review of the report by R. Blum. Tattersall concluded he is in agreement with the R. Blum report.

The proposed new lease agreement is for a ten-year term, and the initial nine months of rent abatement which will result in \$5,317,064 in revenue and includes two five-year options to extend the lease. The first five-year option to extend will be at 103 percent of the base rent from the lease year immediately prior. The second five-year option to extend is at the greater of 103 percent of the base rent from the lease year immediately prior or 95 percent of the market rent.

The rent for the proposed lease starts at \$82.50 per square foot per year, which is approximately \$5 per square foot below R. Blum's evaluation due to consideration of nine months of rent abatement. The rent abatement allows the tenant appropriate time to construct the space. Tad's intends to completely renovate the restaurant and make the necessary building improvements to bring the space up to code, at a reported cost of \$2,700,000. No additional rent credit for tenant improvement work is included. Even though

Tad's has not been able to open their business since assuming the Lease, Tad's has consistently met its obligation to pay the rent due under the Lease, totaling \$730,791 as of February 1, 2019. Comparing the current Lease with the proposed lease over a ten-year term, the result is a net revenue increase of \$190,154 to the SFMTA.

Tad's has been operating in the greater Union Square area for over 45 years. Tad's is considered a "legacy business" and retaining a local small business contributes to a proper public purpose. Tad's will be keeping the "Tad's Steaks" sign at the request of San Francisco Arts Commission, which is part of San Francisco's history. The current Lease is still in effect and the approval of the new lease agreement is subject to termination of the Lease.

Public Outreach

Tad's has been fully engaged. No other additional public outreach was done for this Commercial Lease Agreement.

Alternatives Considered

The SFMTA considered keeping the current Lease and leaving the space in its current condition, however, that approach does not facilitate a good business relationship with the tenant considering the substantial improvements that must be made by the tenant to bring the space up to current building codes. A second alternative considered was to amend the current Lease, however, the Lease would require significant changes and both parties agreed it is better to terminate the current Lease and enter a new lease agreement. The SFMTA wants to retain this local small business in the greater Union Square for the long term.

Funding Impact

The proposed termination of the Lease and subsequent consideration of a new lease with Tad's will result in a net revenue increase to the SFMTA of \$190,024 between the two agreements when compared over a ten-year term. The current Lease generates \$5,127,000 in total base rent. The proposed terms of the new lease agreement will have a ten-year term, and the lease will generate \$5,317,024 in total base rent. The new lease structure will enable Tad's to make necessary building improvements thereby strengthening efforts for small business retention.

Environmental Review

On January 23, 2019, the SFMTA, under authority delegated by the Planning Department, determined that the Commercial Lease Agreement is not defined as a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

SFMTA Board Action

On March 5, 2019, the SFMTA Board of Directors approved Resolution 190305-028 which authorized the Director of Transportation the SFMTA to execute a Commercial Lease Agreement with Tad's Inc. for retail space, located at 44 Ellis Street in the Ellis-O'Farrell Garage, for a ten-year term that will result in \$5,317,064 in revenue, and includes two five-year options to extend the lease.

Recommendation

The SFMTA requests that the San Francisco Board of Supervisors authorize the SFMTA to execute a Commercial Lease Agreement with Tad's Inc. for retail space, located at 44 Ellis Street in the Ellis-O'Farrell Garage, for a ten-year term that will result in \$5,317,064 in revenue, and includes two five-year options to extend the lease.

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

Sincerely,



Edward D. Reiskin
Director of Transportation



TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Kanishka Karunaratne Cheng *KKC*
RE: Lease Agreement – Tad's, Inc. – 44 Ellis Street – Annual Base Rent of
\$5,317,064
DATE: March 19, 2019

Resolution authorizing the San Francisco Municipal Transportation Agency to execute a retail lease agreement with Tad's, Inc., for approximately 5,368 square of retail space at 44 Ellis Street, for a 10-year term, plus two five-year extension options, at an initial annual base rent of \$5,317,064.

Should you have any questions, please contact Kanishka Karunaratne Cheng at 415-554-6696.

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2019 MAR 19 PM 2:59
AK

FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s):	City elective office(s) held:
Members, SF Board of Supervisors	Members, SF Board of Supervisors

Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: Tad's, Inc.	
<i>Please list the names of</i> (1) members of the contractor's board of directors: <i>Stephen Ng, President</i> (2) the contractor's chief executive officer, chief financial officer and chief operating officer: <i>None</i> (3) any person who has an ownership of 20 percent or more in the contractor; <i>Phineas, Ng, Secretary</i> (4) any subcontractor listed in the bid or contract; <i>None</i> (5) any political committee sponsored or controlled by the contractor. <i>None</i>	
Contractor address: 44 Ellis Street, San Francisco, CA	
Date that contract was approved:	Amount of contract: Initial term that will result in \$5,317,064 in revenue, and includes two five-year options to extend the lease

Describe the nature of the contract that was approved: Commercial Lease Agreement with City and County of San Francisco, by and through San Francisco Municipal Transportation Agency (SFMTA) as landlord, and Tad's Inc. as tenant, for retail space located at 44 Ellis Street in the Ellis-O'Farrell Garage.
Comments:

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves San Francisco Board of Supervisors

Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

Filer Information <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415)554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed