



Edwin M. Lee, Mayor
Philip A. Ginsburg, General Manager

LEASE

between

CITY AND COUNTY OF SAN FRANCISCO,

And ParkWide Activities, LLC.

for the Operation of a Master Bike Bicycle Rental Concession in Various Parks

August 17, 2011

CITY AND COUNTY OF SAN FRANCISCO

Edwin M. Lee, Mayor

SAN FRANCISCO RECREATION and PARK COMMISSION

Mark Buell, President

Tom Harrison, Vice President

Gloria Bonilla, Commissioner

David E. Lee, Commissioner

Meagan Levitan, Commissioner

Lawrence Martin, Commissioner

Paige Arata, Commissioner

Philip A. Ginsburg, General Manager

RECREATION AND PARK DEPARTMENT



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PARKWIDE ACTIVITIES, LLC

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RECREATION AND PARK DEPARTMENT

LEASE

THIS LEASE (this "Lease") dated for reference purposes only as of August 17, 2011 is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Landlord"), acting by and through its Recreation and Park Commission (the "Commission"), and **ParkWide Activities, LLC**.

City and Lessee hereby agree as follows:

1. BASIC LEASE INFORMATION

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

Lease Reference Date: August 17, 2011

Landlord: CITY AND COUNTY OF SAN FRANCISCO

Lessee: ParkWide Activities, LLC.

Premises (Section 3.1): The Premises are comprised of the following sites, each as more fully depicted and described on the attached **Exhibit A**:

- a) A portion of the parking lot behind the Bandshell in Golden Gate Park (the "Bandshell Site");
- b) A portion of the North side of John F Kennedy Drive at Hagiwara Tea Garden Drive (the "JFK Drive Site");
- c) A portion of the Marina Green (the "Marina Green Site");
- d) A portion of the Justin Herman Plaza (the "Justin Herman Plaza Site"); and
- e) A portion of the Union Square Plaza (the "Union Square Site").

The Bandshell Site, the JFK Drive Site, the Marina Green Site, the Justin Herman Plaza Site and the Union Square Site are sometimes each referred to as a "Site."

Each Site contains an area for a kiosk and daily operations, and the Bandshell Site and Marina Green Site each contain an overnight storage area, all as depicted and described on the attached **Exhibit A**.

Term (Section 4.1):	The initial term of this Lease shall be five (5) years, commencing on August 17, 2011 and expiring on August 16, 2016 (the "Expiration Date").
Option to Extend (Section 4.5)	Lessee shall have the option to extend the term of this Lease for one three (3)-year extension period, commencing on the date immediately following the Expiration Date, on the terms and conditions set forth in Section 4.5 .
Rent (Section 5):	Lessee shall pay the greater of Base Rent or Percentage Rent as defined below.
Base Rent (Section 5.2)	Annual Base Rent shall be \$127,400.00 per annum, payable in monthly installments as provided in Section 5.2 .
Adjustments to Base Rent (Section 5.2)	Beginning on the first anniversary of the Commencement Date of this Lease and continuing on each subsequent anniversary date (each, an "Adjustment Date"), the annual and monthly Base Rent payable hereunder shall increase according to Section 5.2(b) .
Percentage Rent (Section 5.2):	<p>In addition to the monthly Base Rent specified above, Lessee shall pay a monthly Percentage Rent in an amount equal to the difference between (i) the Percentage Rent for such calendar month; and (ii) the Base Rent for such calendar month in any month in which the Percentage Rent exceeds the Base Rent. See Section 5.3.</p> <p>In the event that Lessee's annual Gross Receipts are less than \$1,500,000 Lessee shall pay the greater of the Base Rent or a percentage of revenues equal to 13.5% of Gross Receipts.</p> <p>In the event that Lessee's annual Gross Receipts are equal to or greater than \$1,500,000 and less than \$2,000,000, Lessee shall pay the greater of the Base Rent or a percentage of revenues equal to 15% of Gross Receipts.</p> <p>In the event that Lessee's annual Gross Receipts are equal to or greater than \$2,000,000, Lessee shall pay the greater of the Base Rent or a percentage of revenues equal to 17% of Gross Receipts.</p>
Use (Section 7.1):	Lessee shall operate a bike rental concession on each Site, as described in Section 7.1 .
Security Deposit (Section 23):	Twenty Thousand Dollars (\$20,000.00)
Notice Address of City	Recreation and Park Department

(Section 24.42): Property Management
McLaren Lodge Annex
San Francisco, California 94117

with a copy to: Office of the City Attorney
City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Key Contact for City: Cassandra Costello

Contact Email Address: Cassandra.Costello@sfgov.org

Notice Address of Lessee
(Section 24.42): ParkWide Activities, LLC
501 Bay Street
San Francisco, CA 94133

Key Contact for Lessee: Jeanne Orellana
501 Bay Street
San Francisco, CA 94133

2. DEFINITIONS

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

"Additional Charges" means any and all real and personal property taxes, possessory interest taxes, insurance premiums and other costs, impositions and expenses described in hereof or otherwise payable by Lessee under this Lease.

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

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

"Alterations" means any alterations, installations or additions to any Improvements or to the Premises, including but not limited to any interior alterations or renovations.

"Anniversary Date" means the annual anniversaries of the Commencement Date.

"Assignment" has the meaning given in **Section 15.1** hereof.

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

"**Basic Lease Information**" means the information with respect to this Lease summarized in **Article 1** hereof.

"**Base Rent**" means the annual Base Rent specified in the Basic Lease Information and described in **Sections 5.1** and **5.2** hereof.

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

"**Commencement Date**" means the date on which the Term of this Lease commences as described in **Section 4.1** hereof.

"**Commission**" means the City and County of San Francisco Recreation and Park Commission or its successor.

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

"**Department**" means City's Recreation and Park Department.

"**Department Facilities**" means any and all surface and subsurface facilities owned by the City and now or later located in, under, on or about the Premises, including, without limitation, sidewalks, plazas and street improvements.

"**Effective Date**" means the date on which this Lease becomes effective pursuant to **Section 4.4** hereof.

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

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

"**Environmental Laws**" means any present or future federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises (including any permitted Improvements) and any other property, including, without limitation, soil, air and groundwater conditions.

"**Event of Default**" means any one of the events of default described in **Section 16.1** hereof.

"**Expiration Date**" means the date on which the Term of this Lease terminates as described in **Section 4.1** hereof.

"**Extension Option**" has the meaning set forth in **Section 4.6** hereof.

"**Extension Term**" has the meaning set forth in **Section 4.6** hereof.

"**General Manager**" means the General Manager of the Recreation and Park Department.

"**Gross Receipts**" means all amounts received and receivable by Lessee from all sales and business conducted in, from or attributable to the Premises by Lessee or any other party,

including amounts received from orders or bookings for rental or sales of merchandise made by telephone, mail or online or through tour operators or third parties. The following items shall be excluded from Gross Receipts for purposes of calculating the Percentage Rent: (a) returns and refunds, and (b) the amount of any sales tax, parking tax, or similar tax or imposition, imposed on all sales or charges where such sales tax, similar tax or imposition is billed to the purchaser as a special item.

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

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

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

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

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

"Index" means the Consumer Price Index for All Urban Consumers (base years 1982-1984 = 100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is changed so that the base year differs from that used as of the date most immediately preceding the Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, such other government index or computation with

which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

"Investigation" when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion thereof or which have been, are being, or threaten to be Released into the environment. Investigation shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.

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

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

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

"Lease" means this Lease as it may be amended in accordance with its terms.

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

"Lessee's Personal Property" means the personal property of Lessee described in **Section 8.3** hereof.

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

"Management Plan" shall have the meaning set forth in **Section 7.11**.

"Official Records" means the official records of the county(ies) in which the Premises are located.

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

"Percentage Rent" means a sum equal to a percentage of Lessee's Gross Receipts made from or upon the Premises during each calendar month of the Term in the percentage amount set forth in the Basic Lease Information.

"Premises" has the meaning given in **Section 3.1** hereof. The Premises shall include any existing or permitted Improvements, together with any additions, modifications or other Alterations thereto permitted hereunder. Notwithstanding anything to the contrary in this

Lease, the Premises do not include Department Facilities, nor any water, water rights, riparian rights, water stock, mineral rights or timber rights relating to the Premises.

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

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

"Rent" means the Base Rent, as adjusted pursuant to the provisions of **Section 5.2(b)**, together with any and all Percentage Rent and Additional Charges, whether or not any such amounts are specifically characterized as rent.

"Site" means the Bandshell Site, the JFK Drive Site, the Marina Green Site, the Justin Herman Plaza Site or the Union Square Site, as defined in the Basic Lease Information.

"Sublease" has the meaning given in **Section 15.1** hereof.

"Storage Units" has the meaning given in **Section 7.1(b)** hereof.

"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.

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

"Transfer" means any Assignment or Sublease.

"Transferee" means any recognized assignee of any part of Lessee's leasehold interest hereunder or any recognized sublessee of any portion of the Premises, pursuant to a Transfer that complies with **Article 15** hereof.

"Unmatured Event of Default" means any default by Lessee under this Lease that, with the giving of notice or the passage of time, or both, would constitute an Event of Default hereunder.

3. PREMISES

3.1 Leased Premises. Subject to the terms, covenants and conditions of this Lease, City leases to Lessee and Lessee leases from City the Bandshell Site, the JFK Drive Site, the Marina Green Site, the Justin Herman Plaza Site and the Union Square Site described in the Basic Lease Information and depicted and described on the attached **Exhibit A**, (collectively, the "Premises").

3.2 Additional Park Locations. Subject to the approval of the Board of Supervisors, Lessee may be permitted to operate a bicycle rental concession in additional City park locations. Lessee's operations in any such additional locations shall be pursuant to the terms and conditions of this Lease, provided however that the Base Rent and Percentage Rent payable with respect to such additional locations shall be as negotiated by City and Lessee prior to Lessee's commencement of operation at any additional City park location. No legally binding obligations with respect to additional City park locations will exist unless and until the parties are able and willing to negotiate, execute and deliver a mutually acceptable amendment to this Lease regarding the additional site. In addition, no officer or employee of the City has authority to commit the City to such a transaction unless and until an appropriate resolution of the Board of Supervisors, has been duly passed approving the transaction based upon information produced from the environmental review (CEQA) process and on other public review and hearing processes and subject to all applicable governmental approvals.

3.3 Rights Reserved to City. Notwithstanding anything to the contrary in this Lease, City reserves and retains all of the following rights relating to the Premises at all times:

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

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

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

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

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

(f) Without limiting the generality of **Section 3.2(e)** above, the right to grant future easements, rights of way, permits and/or licenses over, across, under, in and upon the Premises for the installation, operation, maintenance, repair and removal of (i) equipment for furnishing cellular telephone, radio or other telecommunications services, including, without limitation, antennas, radio, devices, cables and other equipment associated with a telecommunications cell site, and (ii) commercial billboards, signs and/or advertising kiosks, provided that any such easement or right-of-way shall not materially interfere with Lessee's use of the Premises hereunder, and provided further that the grant of any such easement or right-of-way shall be conditioned upon the grantee's assumption of

liability to Lessee for damage to its property that Lessee may sustain hereunder as a result of the grantee's use of such easement or right of way; and

(g) All rights of access provided for in **Article 19** below.

3.4 Subject to Public and Municipal Uses and Rules. Lessee acknowledges that the property of which the Premises are a part constitutes a portion of City's public park system, which City holds for public and municipal use. Lessee's rights under this Lease shall be subject and subordinate to City's use of the Premises for such purposes. However, so long as there is no Event of Default or Unmatured Event of Default on the part of Lessee outstanding hereunder and subject to the terms and conditions of this Lease, City shall use reasonable efforts to avoid interfering with Lessee's quiet use and enjoyment of the Premises, subject to City's rights under **Section 7.8** below. Lessee shall comply with the Department's rules and regulations relating to its park property, as the same may change from time to time (the "Rules and Regulations"). A copy of the current Rules and Regulations can be downloaded from the web address provided in the attached **Exhibit C**.

3.5 As Is Condition of Premises.

(a) **Inspection of Premises.** Lessee represents and warrants that Lessee has conducted a thorough and diligent inspection and investigation, either independently or through Agents of Lessee's own choosing, of the Premises and the suitability of the Premises for Lessee's intended use. Lessee is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses.

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

(c) **Utilities.** City has no responsibility or liability of any kind with respect to any utilities that may be on, in or under the Premises. Lessee has the sole responsibility to locate any utilities and protect them from damage.

4. TERM

4.1 Term of Lease; Commencement Date and Expiration Date. The Premises are leased for a term (the "Term") commencing on August 17, 2011 (subject to the provisions of **Section 4.2** below). The Term shall end on the expiration date specified in the Basic Lease Information, unless sooner terminated or extended pursuant to the provisions of this Lease.

The dates on which the Term commences and terminates pursuant hereto are referred to respectively as the "Commencement Date" and the "Expiration Date."

4.2 Delay in Delivery of Possession. If City is unable to deliver possession of some or all of the Sites comprising the Premises to Lessee on the scheduled Commencement Date, the validity of this Lease shall not be affected thereby and City shall not be liable to Lessee for any Losses resulting there from. Lessee waives all provisions of any Laws to the contrary. In the event of any such delay in delivery of possession, the Commencement Date shall be the date on which City delivers the first Site(s) to Lessee, and the Term and payment of Base Rent and Additional Charges shall not commence until such date, which shall be the Commencement Date for the purposes of this Lease. If the Term commences within two months of the scheduled Commencement Date in accordance with the terms hereof, this Lease shall nevertheless expire on the scheduled Expiration Date, unless sooner terminated or extended pursuant to the provisions of this Lease. If the Term commences more than two months later than the scheduled Commencement Date in accordance with the terms hereof, the Expiration Date will be adjusted so the overall initial Term of the Lease is five (5) years. If City delays delivery of one or more Sites, the provisions of **Section 5.1** below shall apply.

4.3 Delays Caused by Lessee. Notwithstanding anything to the contrary above, if City's inability to deliver possession of part or all of the Premises on the scheduled Commencement Date results from the acts or omissions of Lessee or any of Lessee's Agents, then notwithstanding the provisions of **Section 4.4** the Base Rent and Additional Charges payable by Lessee hereunder for the Premises or the applicable portion thereof shall commence on the date on which City would have delivered possession of the Premises but for such acts or omissions.

4.4 Effective Date. This Lease shall become effective on the date (the "Effective Date") upon which all of the following have occurred: (i) the effective date of a resolution by the City's Board of Supervisors approving this Lease and authorizing the City's execution of this Lease, (ii) the Parties hereto have duly executed and delivered this Lease, (iii) Lessee delivers a certified certificate of status issued by the State of California and evidencing that Lessee is a duly formed limited liability company in good standing and authorized to conduct business in the State of California, and (iv) Lessee has delivered the certificates described in **Section 18.3** hereof to City.

4.5 Option to Extend. City grants to Lessee a one-time option to extend the Term of this Lease as to the entire Premises only (the "Extension Option") for an additional three (3) years (the "Extension Term"), commencing upon the date immediately following the Expiration Date, upon the following terms and conditions. Lessee may exercise the Extension Option at any time during the Term but if it determines to do so it must give written notice to City thereof not less than one hundred eighty (180) days prior to the Expiration Date. Any such notice by Lessee shall be irrevocable by Lessee. If any event of default by Lessee is outstanding hereunder either at the time of Lessee'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 City may elect by notice to Lessee to reject Lessee's exercise of the Extension Option, whereupon the Extension Option shall be null and void. City shall also have the right to void Lessee's Extension Option if Lessee has assigned its interest hereunder of sublet more than fifty percent (50%) of the Premises. If Lessee elects to exercise the 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.

5. RENT

Lessee shall pay to City each year of the term of this Lease the *greater of* (a) the Base Rent, as defined below in **the Basic Lease Information**, or (b) the Percentage Rent, pursuant to **Section 5.3** below. City reserves the right to direct Lessee, upon 30 days written notice, to deposit all rent payments from the Lessee's account into the City designated revenue account by bank or wire transfer.

5.1 Initial Operating Period. Lessee acknowledges that City may be unable to deliver the entire Premises by the scheduled Commencement Date. In the event that City does not deliver all of the Sites to Lessee by the scheduled Commencement Date, this Lease shall nevertheless commence on the Commencement Date, as determined in accordance with the provisions of **Section 4.2**, but during the Initial Operating Period (as defined below), the Base Rent shall be paid according to the schedule below and only for those Sites which City has delivered to Lessee. The "Initial Operating Period shall be the period commencing on the Commencement Date and ending on the earlier of (i) the date which is three (3) months after the Commencement Date or (ii) the date on which City delivers the final Site to Lessee. Upon expiration of the Initial Operating Period, Lessee shall pay the full Base Rent as described in the Basic Lease Information.

The following schedule shall be utilized only for the calculation of any prorated rent due during the Initial Operating Period. In the event Lessee fails to operate at each Site after the expiration of the Initial Operating Period or at any subsequent point during the term of this Lease, Lessee shall be required to pay the full Base Rent as set forth in the Basic Lease Information. The Base Rent for each Site during the Initial Operating Period shall be as follows:

MONTHLY LOCATION MINIMUMS:													
US= Union Square; JHP= Justin Herman Plaza; MG= Marina Green; GGP= Golden Gate Park; JFK= John F Kennedy													
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TO
US	632	1300	2600	2600	2600	5200	5200	3900	3380	3380	1300	680	\$3
JHP	632	1300	2600	2600	2600	5200	5200	3900	3380	3380	1300	680	\$:
MG	508	964	1900	1900	1900	3800	3800	2850	2470	2470	970	864	:
GGP	440	1000	2000	2000	2000	4000	4000	3000	2600	2600	1000	540	\$:
JFK	220	240	1000	1000	1000	2000	2000	1500	1300	1300	500	220	\$:
ANNUAL	2432	4804	10100	10100	10100	20200	20200	15150	13130	13130	5070	2984	\$1:

5.2 Annual Base Rent; Monthly Payments.

(a) Generally. Lessee shall pay to City during the Term of this Lease, beginning on the Commencement Date, the *greater of* (a) the minimum Annual Base Rent or (b) the Percentage Rent calculated using the applicable percentage of the Gross Receipts, specified in the Basic Lease Information. The Base Rent shall be payable monthly in advance on or before the first (1st) day of each month, at Revenue Unit, Recreation and Park Department, McLaren Lodge Annex, 501 Stanyan Street, San Francisco, California 94117, or such other place as City may designate in writing. Lessee shall make monthly payments of Base Rent pursuant to the following schedule:

January-	\$ 2,432
February-	\$ 4,804
March-	\$ 10,100
April-	\$ 10,100
May-	\$ 10,100
June	\$ 20,200
July	\$ 20,200
August	\$ 15,150
September	\$ 13,130
October	\$ 13,130
November	\$ 5,070
December	\$ 2,984

If the Commencement Date occurs on a day other than the first day of a calendar month, or if the Expiration Date occurs on a day other than the last day of a calendar month, then the monthly payment of the Base Rent for such fractional month shall be prorated based on a thirty (30) day month. At such time as the combined Base Rent and Percentage Rent payments made by Lessee in any Lease year equal the Annual Base Rent set forth in the Basic Lease Information, no further monthly payments of Base Rent shall be payable for the balance of such Lease year, however Lessee shall, for the remainder of such year, pay Percentage Rent at the applicable rate specified in the Basic Lease Information.

(b) Adjustments in Minimum Annual Base Rent. On the Anniversary Date each year, the annual Base Rent and monthly Base Rent payable by Lessee shall be adjusted by the greater of:

(i) An increase of 5%, or

(ii) A percentage increase calculated in the following manner. The Index published most immediately preceding the Anniversary Date ("Adjustment Index"), shall be compared with the Index published most immediately preceding the Commencement Date ("Beginning Index"). If the Adjustment Index has increased over the Base Index, then the annual Base Rent and monthly Base Rent payable on and after the Anniversary Date shall be set by multiplying the Base Rent by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Base Index. In no event shall the Base Rent on or after the Anniversary Date be less than the Base Rent in effect immediately prior to the Anniversary Date.

5.3 Percentage Rent.

(a) Agreement to Pay; Determination. Lessee shall pay Percentage Rent to City in the respective percentage amounts set forth in the Basic Lease Information in accordance with the provisions of this Article 5. On or before the fifteenth (15th) day of each full calendar month of the Lease Term, Lessee shall deliver to City a statement certified as correct by an officer or owner of Lessee and otherwise in form satisfactory to City, showing the Gross Revenue during the last preceding calendar month (a "Percentage Rent Statement"). If the applicable percentage (as shown in the Basic Lease Information) of Lessee's Gross Receipts during such calendar month exceeds the monthly payment of Base

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Rent paid by Lessee for such month, Lessee shall pay to City, together with such statement, the difference between the Base Rent paid and the Percentage Rent payable for such month. Percentage Rent shall be determined by Lessee for each calendar month of the year. In the event this Lease terminates during a month at no fault of Lessee, payment of the Percentage Rent for that portion of the month during which sales are made on the Premises shall be determined and reported by Lessee to City within fifteen (15) days after Lessee ceases to make sales on the Premises, but in the event this Lease terminates as a result of Lessee's default, including insolvency thereof, any amounts due hereunder shall be payable forthwith. The Percentage Rent Statement shall show the computation of Percentage Rent for the period covered by such statement.

(b) Cash Register Requirements. Lessee shall install on the Premises at least one cash register. Lessee shall use cash registers which segregate sales by categories and shall have separate function keys with non-resettable daily sequential transaction numbers and non-resettable daily cumulative sales totals. Such cash register(s) used on the Premises shall be of a type approved by General Manager in writing and shall register every transaction made in, on, about or from the Premises, including every type of Gross Receipts, and the tape or digital record of each said cash register shall be accessible to and subject to inspection by the General Manager or his/her agent.

Mechanical cash register(s) must have a non-resettable cumulative total, a detail audit tape, a transaction number with a four-digit capacity, an indicator readily visible to customers as the amount rung, and a seven-digit capacity or grater, as determined by the General Manager based on the type of business, with a four-digit overrun counter. If computerized cash registers or other similar electronic devices are used, that system must accurately record all sales on the Premises and be no more subject to tampering than mechanical cash register(s).

Each sale or other transaction on the Premises must be recorded at the time of each sale or other transaction, in the presence of the customer, and Lessee shall present a receipt from such sale or other transaction to the customer. Each customer must be issued a receipt or sales slip for each transaction, which transaction must be recorded either on serially numbered sales slips or cash register types. All cash receipts must include Lessee's identification thereon. Each cash register (including computerized cash registers or other similar electronic devices) shall be serviced by an established contractor approved by General Manager. At General Manager's request, Lessee must furnish to City a statement from an established contractor that the transaction number, the cumulative total and the overrun counter have been sealed in a manner approved by General Manager.

Upon the installation or removal of any cash register (including computerized cash registers or other similar electronic devices) used on the Premises, Lessee must immediately furnish to General Manager notice in writing stating make, model number, serial number and cumulative total reading and overrun counter reading of the cash register(s) (including computerized cash registers or other similar electronic devices). Any repair contractor employed to repair or replace any cash register (including computerized cash registers or other similar electronic devices if used) on the Premises is hereby authorized and directed to disclose and furnish to City or its auditors any information obtained by the contractor in the course of making such repair or replacement pertaining to said cash register (including computerized cash registers or other similar electronic devices if used). City shall have the right during business hours to examine the totals of the cash register(s) (including

computerized cash registers other similar electronic devices if used) used on the Premises and to inspect for compliance with this section.

(c) Ongoing Percentage Rent Reconciliation. In the event that in any year of Term, Lessee's annual Gross Receipts equal or exceed \$1,500,000, escalating the Percentage Rent of annual Gross Receipts payable by Lessee, Lessee shall make a payment to the City equal to \$22,500 with the next monthly payment following the month in which the Lessee's annual Gross Receipts exceeded \$1,500,000. Such payment shall be in addition to any Base Rent or Percentage Rent due for that month's operations. The \$22,500 payment reflects the difference between the lower Percentage Rent rate of 13.5% of annual Gross Receipts and the escalated Percentage Rent rate of 15% of annual Gross Receipts which shall be payable in each Lease year in which the annual Gross Receipts equal or exceed \$1,500,000.

Further, in the event that in any year of the Term, Lessee's annual Gross Receipts equal or exceed \$2,000,000, escalating the Percentage Rent of annual Gross Receipts payable by Lessee, Lessee shall make a payment to the City equal to \$40,000 with the next monthly payment following the month in which the Lessee's annual Gross Receipts exceeded \$2,000,000. Such payment shall be in addition to any Base Rent or Percentage Rent due for that month's operations. The \$40,000 payment reflects the difference between the lower Percentage Rent rate of 15% of annual Gross Receipts and the escalated Percentage Rent rate of 17% of annual Gross Receipts which shall be payable in each Lease year in which the annual Gross Receipts equal or exceed \$2,000,000.

(d) Annual Report and Reconciliation. On or before the date which is sixty (60) days following the end of each Lease year, Lessee shall deliver to City a statement (the "Annual Statement"), certified as correct by an officer or owner of Lessee, certified or audited by an independent certified public accountant, and otherwise in form satisfactory to City. The Annual Statement shall set forth the Gross Receipts, as defined above and shown on Lessee's books, for the Lease year just concluded and the authorized and claimed deductions, if any, therefrom. Such Annual Statement shall also show the aggregate total of installments of Percentage Rent paid by Lessee for any months during such Lease year just concluded ("Percentage Rent Installments") and the amount by which the annual Percentage Rent differs from the Percentage Rent Installments. Lessee must submit payment of the balance owing together with any Annual Statement showing that Lessee has underpaid Percentage Rent for such Lease year. If the Percentage Rent Installments exceed the annual Percentage Rent, Lessee may deduct such excess from the next installments Base Rent or Percentage Rent due hereunder, or if, due to expiration of this Lease, no further installments of Rent are due from Lessee to City, City shall promptly refund forthwith such excess to Lessee. Lessee shall not be entitled to any interest on the overpayment of Percentage Rent. Each Annual Statement shall be reviewed or examined by an independent certified public accounting firm acceptable to City in its sole discretion.

5.4 Reporting; Books and Records; Audits

(a) Monthly Reporting. On the 15th day following each month's end, Lessee shall submit a copy of the monthly Percentage Rent Statement required in **Section 5.3(a)** via email to the City contact listed in the Basic Lease Information section, detailing a true and factual accounting of all Gross Receipts, taxes paid and rent figures calculated for that month.

(b) Books and Records. Lessee agrees to keep accurate books and records according to generally accepted accounting principles. For purposes herein "books and records" shall include, but not be limited to, daily sales journals, cash register tapes, pre-numbered receipts, guest checks, sales tickets, monthly sales summaries summarizing daily sales, general ledgers, income statements, sales tax returns, income tax returns and any other bookkeeping documents Lessee utilizes in its business operations. Lessee shall not co-mingle personal funds with business funds. Lessee shall use cash registers which segregate sales by categories and shall have separate function keys with non-resettable daily sequential transaction numbers and non-resettable daily cumulative sales totals.

(c) Audit. Lessee agrees to make its books and records available to City, or to any City auditor, or to any auditor or representative designated by City (hereinafter collectively referred to as "City representative"), for the purpose of examining said books and records to determine the accuracy of Lessee's earnings from Lessee's business. Said books and records shall be kept for four (4) years and shall be maintained and/or made available in San Francisco to City's representative for the purpose of auditing or re-auditing these accounts; except that, if an audit is made within said four-year period and City claims that errors or omissions have occurred, the books and records shall be retained and made available until those matters are resolved. If an audit reveals that Lessee has understated its Gross Receipts, Lessee shall pay City, promptly upon demand, the difference between the amount Lessee has paid and the amount it should have paid to City. If Lessee understates its Gross Receipts by three percent (3%) or more, the cost of the audit shall be borne by Lessee. If Lessee understates its Gross Receipts with knowledge of such understatement or by reason of gross negligence, then, in addition to paying for the cost of the audit, on the first such occasion Lessee shall pay City ten (10) times the amount of the difference between the amount City should have received and amount City actually received. A second such understatement made with knowledge of or by reason of gross negligence shall be considered an Event of Default.

(d) Patrons Audit. Lessee shall participate in the City's Patrons Audit program whereby signs provided by the City will be clearly posted at each point of sale, stating that receipts are to be given for each purchase, and that if a receipt is not given, the patron shall be allowed some form of compensation as mutually agreed upon by the City and Lessee.

5.5 Late Charge. If Lessee fails to pay any Rent or fails to submit a Percentage Rent Statement by the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to 5% of the amount due, in each instance. The late payment charge has been agreed upon by City and Lessee, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that City will incur as a result of any such failure by Lessee, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate City for its damages resulting from such failure to pay and Lessee shall promptly pay such charge to City together with such unpaid amount.

5.6 Default Interest. If any Rent is not paid on the due date, such unpaid amount shall bear interest from the due date until paid at the rate of ten percent (10%) per year or, if a higher rate is legally permissible, at the highest rate an individual is permitted to charge under Law. However, interest shall not be payable on late charges incurred by Lessee nor on any amounts on which late charges are paid by Lessee 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 Lessee.

5.7 Net Lease. This Lease is a "net lease." Accordingly, Lessee shall pay to City all Rent (including Base Rent, Percentage Rent, Additional Charges and any other payments

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

6. TAXES, ASSESSMENTS AND OTHER EXPENSES

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

(a) Payment Responsibility. Lessee shall pay any and all real and personal property taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any Improvements, Lessee's Personal Property, the leasehold estate or any subleasehold estate, or Lessee's use of the Premises or any Improvements. Lessee shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency, subject to Lessee's right to contest the validity of such charge pursuant to **Section 6.1(c)**. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which City receives the tax bill directly from the taxing authority, Lessee shall reimburse City for payment of such sums immediately upon demand.

(b) Taxability of Possessory Interest. Without limiting the foregoing, Lessee recognizes and agrees that this Lease may create a possessory interest subject to property taxation and that Lessee may be subject to the payment of property taxes levied on such interest.

(c) No Liens. Lessee shall not allow or suffer a lien for any taxes payable by Lessee hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without promptly discharging the same. Lessee may have a reasonable opportunity to contest the validity of any such taxes provided Lessee, before commencement of any proceeding or contest, furnishes to City a surety bond issued by a surety company qualified to do business in California and acceptable to City's Controller. The amount of such bond shall be equal to one hundred twenty five percent (125%) of the amount of taxes in dispute and shall be in such form as approved by the City Attorney of City. The bond shall insure payment of any judgment that may be rendered should Lessee be unsuccessful in any such contest. Lessee shall Indemnify City, the other Indemnified Parties, and the Premises from and against any Losses arising out of any proceeding or

contest provided for hereunder. The foregoing Indemnity shall not be limited by the amount of the bond.

(d) Reporting Requirement. Lessee agrees to provide such information as City may request to enable City to comply with any tax reporting requirements applicable to this Lease.

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

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

7. USE; COVENANTS TO PROTECT PREMISES AND DEPARTMENT FACILITIES

7.1 Lessee's Permitted Use. Lessee may use the Premises and any Improvements allowed hereunder only for the following uses:

(a) Bicycle Rentals. Lessee shall occupy and use the Premises to offer bicycle rentals to serve the convenience of the general public in accordance with the provisions of this Article 7, including, without limitation, the operating standards and covenants and required hours of operation. Lessee agrees to have a fleet of bicycles to accommodate the public at each Site available for rental. Such bicycle fleet shall consist of safe, clean and attractive bicycles. Lessee shall cause each Site to have a custom built kiosk to serve the bicycle renting public. The custom built kiosks will be constructed to best fit the specific Site and surroundings, and the kiosks and the locations within each Site on which the kiosks are placed shall be subject to the advance written approval of the General Manager.

(b) Storage. The Bandshell Site includes space at the handball courts in Golden Gate Park for the placement of two (2) twenty (20) foot storage containers and space behind the Bandshell parking lot for the placement of two (2) forty (40) foot storage containers. The Marina Green Site includes space for the placement by Lessee of two (2) forty (40) foot storage containers. Refer to the Premise Area on **Exhibit A** for a depiction of storage areas for the Bandshell Site and the Marina Green Site. The storage containers are sometimes referred to in this Lease as the "Storage Units." Lessee shall be responsible for providing and securing storage containers for the Bandshell Site and the Marina Green Site. Without limiting the generality of **Section 3.5.b.** above, City shall have no liability for the condition of such storage containers and shall have no liability if Lessee's personal property stored in the storage containers are damaged or stolen at any of the Sites. The storage containers and storage area on the Bandshell Site shall be used for the sole purpose of storing Lessee's bicycles, equipment, and personal property used in connection with the operation of Lessee's bicycle rental operations in Golden Gate Park and the storage containers and storage area on the Marina Green Site shall be used for the sole purpose of storing Lessee's bicycles, equipment, and personal property used in connection with the operation of Lessee's bicycle rental operations in Marina Green. The City shall have no

obligation to supply storage for the Justin Herman Plaza Site or the Union Square Plaza Site, and Lessee shall, at Lessee's own expense, obtain any required storage space for those Sites. At The Marina Green and in Golden Gate Park, Lessee may, with the Department's approval, utilize trailers instead of storage containers provided that such trailers shall not exceed the size of the storage containers approved for each site.

(c) Operation of Gem Car and Truck and Trailer. Lessee is hereby granted the right to use and operate, at Lessee's expense, Gem Cars and a truck and trailer, purchased or leased by Lessee, essential to the operations of its bicycle rental business, for the delivery and removal of Lessee's equipment and personal property. While using these vehicles, Lessee will be required to adhere to Park Code and traffic laws. See **Exhibit D** for depiction of such vehicles.

(d) Retail Merchandise. Lessee shall be permitted to sell a limited amount of merchandise at each Site. Such retail offerings shall be subject to the prior written approval of the Department and shall consist entirely of items complimentary to the operation of a bicycle rental concession. The items offered and the display of such retail items shall be subject to the approval of the General Manager. Proposed items include bottled water and ParkWide t-shirts.

7.2 Appropriate Operations, Goods, and Services. Upon written notice by the Department that the operations, goods, or services provided at the Premises are not consistent with the approved Management Plan (as defined in **Section 7.11**) or are otherwise inconsistent with the provisions of this **Article 7**, Lessee shall have fifteen (15) calendar days to remedy the deficiency in operations, goods or services. If the deficiency is not corrected in the 15-day period, Lessee shall be in default of this Lease. Design and operation of Lessee's bicycle rental operation and all improvements for Lessee's operation of the Premises shall be in compliance with the Americans with Disabilities Act of 1990.

7.3 Days and Hours of Operation; Public Use Outside of Operating Hours.

(a) Hours of Operation; Minimum Hours. Lessee shall actively operate its business at each Site comprising the Premises and use its best business efforts to further the operations thereof and maximize its potential revenue and to serve the public. Lessee may chose not to operate at any Site due to inclement weather. Hours may be adjusted during special events or activities with prior approval by the General Manager. Failure to comply with the following minimum schedule without Department approval may result in the loss of the location. Lessee shall operate during the following minimum hours of operation:

Minimum Hours of Operation		
Location	April through October	November through March
Justin Herman Plaza Site	9am to 5pm, seven days a week	9am to 4pm, seven days a week
Union Square Plaza Site	9am to 5pm, seven days a week	9am to 4pm, , seven days a week

Bandshell Site	10am to 5pm, seven days a week	10am to 4pm, seven days a week
JFK Drive Site	10am to 5pm, Saturdays and Sundays	10am to 4pm on Sundays. Will not operate on Saturdays.
Marina Green Site	10am to 5pm, seven days a week	10am to 4pm, seven days a week

(b) Public Use Outside of Hours of Operation; Removal of Equipment and Personal Property. Lessee acknowledges that the Premises are located within City parks, and that outside of Lessee's hours of operation, part or all of the Premises (other than the Storage Units and the kiosk located on the Marina Green Site, which are reserved to Lessee's sole use) may be used by City or the public for City's business or for public, recreational, educational or cultural events. Lessee, at Lessee's sole cost and expense, shall remove Lessee's equipment and personal property from the each day at close of business (other than the Storage Units and the kiosk located on the Marina Green Site), and shall store such equipment and personal property off-site.

7.4 Operation Standards. Lessee must adhere to all City park policies applicable to each Site and follow the guidelines below:

(a) Lessee must ensure that bicycles are clean and serviced at all times.

(b) Upon rental, customers must be given bike safety information specific to San Francisco.

(c) Lessee shall provide ParkWide proprietary maps for guidance of bike rental customers throughout San Francisco.

(d) Lessee shall provide emergency services information to each bicycle rental customer.

(E) Each customer shall be offered the use of an appropriately sized bike helmet in sound condition at no extra charge. In the event that the customer declines to wear the bike helmet, Lessee shall require customer to sign a form verifying that the customer was offered a bicycle helmet and declined to wear the helmet.

7.5 Rates and Charges. The rates and charges for goods sold and services offered shall be reasonable and competitively priced with similar businesses in San Francisco. The Department reserves the right to review and approve any increases in rates and charges for bicycle rentals. Any increase in the bicycle rental rates or charges shall be subject to approval by the Commission. Bicycle rental rates shall be as follows:

Bike Rentals	Hourly-2 hour minimum	½ Day-3 hours	Full Day-to close	24 Hours
Kids (Trailers, Baby Seats, 3-Wheelers)	N/A	\$20	\$25	\$35
Adult Bikes (Comfort Bikes and Cruisers)	\$9	\$27	\$36	\$46
High				

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Performance	\$14	\$42	\$56	\$66
Tandems	\$18	\$54	\$72	\$82
Electric Bikes	N/A	N/A	\$79	\$89
2 Person Surrey (seats 2 people)	\$25 (no minimum hours)	N/A	N/A	
4 Person Surrey (seats 4-6 people)	\$35 (no minimum hours)	N/A	N/A	\$10

Services	
Daily Guided Tour (Golden Gate Park Only)	Adult- \$50, Child \$30

Upgrades	
One Way Rentals	\$10
One Way Rentals Within Golden Gate Parke	\$5

7.6 Covenants Regarding Use. As a material inducement to City to enter into this Lease, Lessee covenants with City as follows:

(a) **No Unlawful Uses or Nuisances.** Lessee shall not use or occupy any of the Premises or any Improvements, or permit the use or occupancy thereof, in any unlawful manner or for any illegal purpose, or permit to be carried on any offensive, immoral, noisy or hazardous use or any use in violation of the conditions of any certificate of occupancy. Lessee shall take all precautions to eliminate immediately any nuisances or hazards relating to its activities on or about the Premises or any Improvements permitted hereunder.

(b) **Covenant Against Waste.** Lessee shall not cause or permit any waste, damage or injury to the Premises.

(c) **Covenant to Protect Premises and Department Facilities.** At all times during the Term of this Lease, Lessee shall protect the Premises and the Department Facilities, if any, from any damage, injury or disturbance. If Lessee or any of its Agents or Invitees damages, injures or disturbs any of the Premises or the Department Facilities, or any portion thereof, Lessee shall immediately notify City of that occurrence. Without limiting any of its other rights hereunder, City may immediately take all actions it deems proper to repair the Department Facilities at Lessee's sole expense, and, following notice and a reasonable opportunity to cure (except in the event of an emergency in which case no notice or cure period is required), City may take all actions it deems proper to repair the Premises at Lessee's sole expense. Lessee shall promptly, upon City's request, remove or alter to City's satisfaction and at Lessee's sole cost, any Improvements, Alterations or Lessee's Personal Property placed on the Premises by or on behalf of Lessee as necessary to avoid interference with City's use of the Premises for municipal purposes; provided, such removal shall be at Landlord's sole cost if the applicable Improvements or Alterations were approved by Landlord in writing pursuant to the terms of this Lease. City may adopt from time to time such rules and regulations with regard to Lessee's facilities and operations hereunder as City may determine are necessary or appropriate to safeguard the Department Facilities and City's interests in the Premises. Lessee shall comply with all such rules and regulations upon receipt of a copy thereof.

(d) **Covenant Against Dumping; Waste Disposal.** Lessee shall not cause or permit the dumping or other disposal on, under or about the Premises of landfill, refuse, Hazardous Material or other materials that are unsightly or could pose a hazard to the human health or safety, native vegetation or wildlife, or the environment. Organic wastes

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from the Premises shall be composted on-site to the extent reasonably possible. Lessee shall use its best efforts to reduce the amount of trash and waste generated from the Premises, to acquire products for use on the Premises which reuse or recycle packaging, and to recycle all materials used on the Premises to the extent reasonably possible.

(e) Covenant to Protect Trees or Other Native Vegetation. Lessee shall not engage in or permit the cutting, removal, or destruction of trees or any other native vegetation on the Premises, without the prior written approval of the General Manager.

(f) No Tree Planting. Lessee shall not plant any trees on the Premises, nor shall Lessee plant any other vegetation on the Premises without the prior written approval of the General Manager.

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

(h) Pesticides Prohibition. Lessee shall comply with the provisions of Section 39.9 of Chapter 39 of the San Francisco Administrative Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, and (iii) require Lessee to submit to the Department an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Lessee may need to apply to the Premises during the terms of this Lease, (b) describes the steps Lessee will take to meet the City's IPM Policy described in Section 39.1 of the Pesticide Ordinance, and (c) identifies, by name, title, address and telephone number, an individual to act as the Lessee's primary IPM contact person with the City. In addition, Lessee shall comply with the requirements of Sections 39.4(a) and 39.4(b) of the Pesticide Ordinance as of January 1, 1999 and January 1, 2000, respectively.

(i) Weed Control. Lessee shall not introduce any noxious weeds on or about the Premises. Lessee shall control noxious weeds, provided that Lessee may use chemical herbicides only if such use complies with the requirements of **Section 7.6(h)** above.

(j) Covenant Against Burning. Lessee shall not burn any weeds, debris or other substances on or about the Premises.

(k) Sewerage System. Lessee shall maintain and its sole cost and expense, and in accordance with the direction and to the satisfaction of the General Managers of the Recreation and Park Department and the SFPUC, the sewerage system now installed on the Premises and shall not permit any sewage or fouled waste water to be disposed of on the Premises, except as provided for and as customary per said sewerage system.

(l) Soil Erosion. Lessee shall not cause any material erosion of soil on or around the Premises. Lessee shall not engage in any activity that causes a material change, disturbance, fill, alteration or impairment to the topography of the Premises by placing on it any soil, dredging, spoils, landfill, or other material, nor shall Lessee engage in any activity

that would change, disturb, alter or impair the significant relatively natural ecological features and values of the Premises, without the prior written approval of the General Manager.

(m) Operating Covenants. Lessee shall use the Premises continuously for the permitted use specified in the Basic Lease Information and shall not allow the Premises to remain unoccupied or unused without City's prior written consent, which City may give or withhold in its sole discretion. Lessee shall use and operate its business on the Premises in a first class and professional manner, and shall take all commercially reasonable steps to maximize revenue (and Percentage Rent) from its operations on the Premises.

(n) Recycling and Resource Conservation. The City of San Francisco has set ambitious recycling and composting goals for City Departments including 75% landfill diversion by 2010 and maximum participation in the City's municipal composting program at all City Department locations where there is food service. In addition, the City has recently passed the Food Service Waste Reduction Ordinance (see **Section 24.39**) which, in part, "Prohibits the use of polystyrene foam dispensable food service ware and requires the use of recyclable or compostable food service ware by restaurants, retail food vendors, City Departments and the City's contractors and lessee." City contractors and lessees may not use Disposable Food Service Ware that contains Polystyrene Foam in City Facilities and while performing under a City contract or lease. City contractors and lessees using any Disposable Food Service Ware shall use suitable Biodegradable/Compostable or Recyclable Disposable Food Service Ware in City Facilities and while performing under a City contract or lease unless there is no suitable Affordable Biodegradable/Compostable or recyclable product available as determined by the City Administrator in accordance with Subsection 1604(a).

Lessee shall develop a program to work toward a zero waste goal, including the implementation of a composting system for food waste, packaging and 100% biodegradable supplies whenever practical. Lessee shall submit a recycling and composting plan at Commencement of Lease, and provide an annual report on each anniversary date of this Lease outlining their progress toward meeting the recycling and composting goals described above and their success toward a zero waste goal.

7.7 Logos, Website, Merchandise and Branded Products.

(a) Logos and Website. The City and Lessee have a mutual interest in the public's enjoyment, recognition, and appreciation of City parks and their amenities. In furtherance of this purpose and to promote City parks, the Lessee or its subcontractors, at the Lessee's expense, may develop or create artwork, logos, trademarks or service marks, related to City parks, or Lessee's services or operations on the Premises, or similar related mark or logo, (collectively "Logo" or "Logos"), subject to the following conditions:

If Lessee or its subcontractors create a new Logo, the Department must pre-approve the Logo. In addition, Lessee must immediately discontinue use of any Logo, at the termination of this lease. Photos, customer reviews, newspaper articles or other information relating to Lessee's prior operation of ParkWide Activities LLC in City parks are Lessee's sole property.

Lessee may, at Lessee's expense, and with Department's consent, develop and sell products including, but not limited to clothing, bottled water, sunscreen and lipbalm, and other printed materials, that are "branded" with the Logo or Logos created by Lessee under this Agreement. Such logo shall not be used by Lessee at the termination of this lease. In

addition to the Department's right to pre-approve all merchandise under **Section 7.2** of this Lease (Appropriate Operations, Goods, and Services), the Recreation and Park Department retains the right to pre-approve all products that are to receive the Logo, including the use and placement of such Logo on the products.

(b) Branded Products. Any products sold by Lessee that are branded with Logo shall be properly accounted for in accordance with the Section 5.4(b) books and records and GAAP. The percentage of sales of such products is to be shared with City per Section 5.3 of this Lease, sales of records in accordance with **Section 5.4 (b)** and GAAP shall maintained through the Term of the Lease. A monthly sales report, in a form acceptable to the Department, showing the sales and Gross Receipts of each branded item sold, if any, shall be remitted each month with Lessee's monthly Rent payment.

7.8 Special Events. City reserves the right from time to time to grant its permission to persons who are conducting activities under permits issued by the Department to temporarily close one or more Sites and/or interrupt bicycle rental operations on one or more Sites, and. City shall have no liability in connection therewith. Lessee acknowledges that these events may affect Lessee's ability to generate revenues and accepts this practice as a condition of this Lease. City agrees to use reasonable efforts to provide not less than one week's advance written notice of its intention to permit closure of an adjacent roadway or one or more Site comprising the Premises. During the period of such closure, Lessee may, at Lessee's option, be excused from the requirement to be open for business in the affected Site. The Department shall, in good faith, work with Lessee to identify a reasonable alternative operating site should one of the Sites be inoperable due to a special event. The Department shall make good faith efforts to identify alternative operating space that is proximate to original operating location. Failure of Department to identify an appropriate alternative site shall not constitute a breach of this Lease and Lessee shall not be entitled to any compensation or other remedies in the event that they are unable to operate pursuant to this Section. Lessee's use of any such alternative Site shall be on all of the terms and conditions of this Lease applicable to the Premises. In the event that Lessee is unable to operate at a particular location due to special events more than two times in any calendar month and Lessee is additionally unable to operate in a suitable additional alternative location, the Lessee's Base Rent payment for that month shall be prorated to reflect the Lessee's inability to operate during special events.

7.9 Safety Protocols. Lessee is required to operate bicycle rental operations at the highest level of safety. Upon each bicycle rental, customers will be given the following safety guidelines:

- (a) Wear your helmet at all times.
- (b) Ride single file on the right side of the road, trail and bridge.
- (c) Keep both hands ready to brake.
- (d) Cross street car and railroad tracks perpendicularly.
- (e) Shift to low gear (1) before going up hill
- (f) Follow all traffic laws and no riding on sidewalks.

Additionally, each bicycle rider will be given a brief safety training with trained and experienced Park Wide Bike Rentals staff which will include information about appropriate directional hand signals. Please see **Exhibit E** for copy of hand signals.

Each bicycle rider will also be required to fill out a waiver which entails detailed safety information and risks of bicycle riding. Please see **Exhibit F** for copy of waiver.

7.10 Bike Share Program. It is the mutual desire of both the Department and Lessee to operate a bike share program. Lessee and City shall use reasonable efforts to jointly develop a proposal and operation plan for bike sharing program in one or more of the City parks in which the Premises are located. All details of such program shall be subject to Commission approval including but not limited to: location, rates, rules and regulations. Failure by City and Lessee to develop and implement a bike sharing program shall not constitute a breach of this Lease. This Lease does not grant the Lessee an exclusive right to operate a bike sharing program in City parks and the Department shall retain the authority to enter into an agreement with another entity to provide bike sharing services in City parks, provided however that the Department shall not enter into agreement with an entity other than the Lessee for the operation of a Bike Share Program in any park in which the Lessee operates pursuant to this Lease without the express, written approval of the Lessee, which shall not be unreasonably withheld or delayed.

7.11 Management Plan. Prior to Lessee's commencement of operation at the Premises, Lessee shall develop a management plan detailing the proposed (the "Management Plan") management and operations of ParkWide bicycle rentals. The Management Plan shall be consistent with the locations and operations plan attached to this Lease as **Exhibit B**, and shall be subject to the written approval of the Department, which approval shall not be unreasonably withheld or delayed.

7.12 Exclusive Concession Right. During the Term of this Lease, to the extent permitted by law, and so long as Lessee is not in default hereunder and is operating in a first class manner a bicycle rental concession in each Site in accordance with the approved Management Plan and the other terms and conditions of this Lease, and subject to the provisions of **Section 7.10** above regarding the operation of a Bike Share Program, Lessee shall have the exclusive right to operate a bicycle rental concession on Department property.

8. IMPROVEMENTS

8.1 Construction of Improvements. Lessee shall not construct or install any Improvements nor make or permit any Alterations in, to or about the Premises, without the General Manager's prior written consent in each instance, which the General Manager may give or withhold in its sole and absolute discretion. Subject to the General Manager's consent as provided above, any permitted Improvements or Alterations shall be done at Lessee's sole expense (i) in strict accordance with plans and specifications approved in advance by the General Manager in writing, (ii) by duly licensed and bonded contractors or mechanics approved by the General Manager, (iii) in a good and professional manner, (iv) in strict compliance with all Laws including prevailing wage laws, and (v) subject to all other conditions that the General Manager or the Commission may reasonably impose, including, without limitation, provision of such completion security as is acceptable to Landlord. In no event shall the construction or installation of any such Improvements or the making of any Alterations impair the use or operation of Department Facilities (if any), or any portion

thereof, or the Department's access thereto. Prior to the commencement of any work on the Premises to construct any permitted Improvements or make any permitted Alterations, Lessee, at its sole expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to Landlord. No material change from the plans and specifications approved by Landlord may be made without Landlord's prior written consent. Landlord and its Agents shall have the right to inspect the course of such construction at all times. Upon completion of such Improvements or Alterations, Lessee shall furnish Landlord with a complete set of final as-built plans and specifications. Lessee shall require from each contractor and subcontractor performing any work on or about the Premises a policy of general public liability insurance, with such limits as may reasonably be required by City from time to time, but in any event not less than One Million Dollars (\$1,000,000) combined single limit. Such insurance shall also be in compliance with the requirements set forth in **Section 18.2**.

8.2 Improvements Become Property of the City. Any alterations, additions, improvements and repairs which may be affixed to the Premises, shall become the property of the Lessor, and shall remain upon and be surrendered with the Premises upon expiration or sooner termination of this Lease, except that Lessee shall retain ownership and shall have the right to remove all trade fixtures, furniture, furnishings and personal property used by Lessee in the operation of the Premises which were purchased or added by Lessee and which can be removed from the Premises without damage to the natural features, Department Facilities or other improvements to the Premises.

8.3 Lessee's Personal Property. All furniture, furnishings and articles of movable personal property and equipment installed in the Premises by or for the account of Lessee that can be removed without structural or other material damage to the Premises (all of which are herein called "Lessee's Personal Property") shall be and remain the property of Lessee and may be removed by it subject to the provisions of **Section 21.1** hereof. At least ten (10) days prior to delinquency, Lessee shall pay all taxes levied or assessed upon Lessee's Personal Property and shall deliver satisfactory evidence of such payment to City.

8.4 Proposed Improvements. Upon execution of this Lease, Lessee shall commence and diligently pursue to completion the specific Improvements detailed in **Exhibit G**. These Improvements are the result of negotiations between Lessee and Landlord and are necessary for Lessee's bicycle rental operation in Golden Gate Park. Prior to commencing the proposed Improvements, Lessee shall be required to obtain the approval of any and all entities that may have jurisdiction. Lessee and City agree that any such work shall be performed in coordination with Department Staff and existing concessionaires that may be affected by such work. The required Improvements shall be completed within three (3) months following the Commencement Date. All Improvements shall be made at the sole expense of the Lessee. In the event that City is unable to deliver the premises upon Lease commencement, Lessee shall be required to complete the required improvements within three (3) months of City's delivery of the premises.

8.5 Failure to Make Improvements. Failure or inability of Lessee to complete each and every capital improvement, at no fault of City, to be done by Lessee pursuant to **Section 8.4** of this Lease within 90 days of the Lease Effective Date and in the manner provided therein shall constitute a breach of the Lease.

9. REPAIRS AND MAINTENANCE

9.1 Lessee Responsible for Maintenance and Repair. Lessee assumes full and sole responsibility for the operation, maintenance and management of the Premises and any permitted Improvements from and after the Commencement Date. Except as provided in

Section 9.2 below, City shall not under any circumstances be responsible for the performance of any of Lessee's Improvements or alterations to the Premises or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises), nor shall City be liable for any portion of the cost thereof or the operation or maintenance of the Premises. Lessee shall maintain the Premises and any existing and permitted Improvements at all times in clean, safe, attractive and sanitary condition and in good order and repair, to City's reasonable satisfaction. If any portion of the Premises or any of City's property located on or about the Premises is damaged by any of the activities conducted by Lessee or its Agents or Invitees hereunder, Lessee shall immediately, at its sole cost, repair any and all such damage and restore the Premises or City's property to its previous condition. Lessee shall keep the Premises and all fixtures and equipment clean, neat, safe, sanitary and in good order at all times.

9.2 City's Maintenance and Repair Obligations. Notwithstanding **Section 9.1**, City shall maintain, repair and keep in good condition the Park area in which the Premises are located.

9.3 Utilities.

(a) City agrees to pay for all electricity usage for Lessee's use of the Premises, except for electricity usage in Golden Gate Park which shall be the responsibility of the Lessee. Gas will not be used. Lessee agrees to pay for all telephone, fax and internet connection charges needed for its use of the Premises, including the cost of bringing any such service(s) to locations in the Premises.

(b) No antennae or telecommunication dish may be installed on the Premises without the advance written approval of Landlord. No such antennae or telecommunications dishes shall interfere with City's emergency and non-emergency communications facilities or the transmission facilities of Landlord. Lessee agrees, at the request of Landlord, to permit Landlord to install, at Landlord's sole cost, transmission equipment for City's emergency or 800 Mhz City wide radio system communications facilities (or its successor) at a location on top of the Improvements acceptable to Lessee.

9.4 No Right to Repair and Deduct. Lessee expressly waives the benefit of any existing or future Law or judicial or administrative decision that would otherwise permit Lessee to make repairs or replacements at City's expense, or to terminate this Lease because of City's failure to keep the Premises or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises) or any part thereof in good order, condition or repair, or to abate or reduce any of Lessee's obligations hereunder on account of the Premises or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises) or any part thereof being in need of repair or replacement. Without limiting the foregoing, Lessee expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Lessee to terminate this Lease and with respect to any obligations of City for Lessee ability of the Premises and any right of Lessee to make repairs or replacements and deduct the cost thereof from Rent.

10. LIENS Lessee shall keep the Premises and all of City's property free from any liens arising out of any work performed, material furnished or obligations incurred by or for Lessee. In the event Lessee does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, City shall have in addition to all other remedies provided herein and by Law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such

sums paid by City and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to City by Lessee upon demand. City shall have the right at all times to post and keep posted on the Premises any notices permitted or required by Law or that City deems proper for its protection and protection of the Premises and City's property, from mechanics' and materialmen's liens. Lessee shall give City at least fifteen (15) days' prior written notice of the commencement of any repair or construction on any of the Premises. Notwithstanding the foregoing, Lessee shall have the right, upon posting of an adequate bond or other security acceptable to City, to contest any such lien, and in such case City shall not seek to satisfy or discharge such lien unless Lessee has failed to do so within ten (10) days after final determination of the validity thereof. Lessee shall Indemnify City, the other Indemnified Parties and the Premises against any and all Losses arising out of any such contest.

11. COMPLIANCE WITH LAWS

11.1 Compliance with Laws. Lessee shall promptly, at its sole expense, maintain the Premises, any Improvements permitted hereunder and Lessee's use and operations thereon in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary. Such Laws shall include, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C.S. §§ 12101 et seq. and Title 24 of the California Code of Regulations, all present and future Environmental Laws (as defined in this Lease below), and all present and future life safety, fire sprinkler, seismic retrofit and other building code requirements. The Parties acknowledge and agree that Lessee's obligation to comply with all laws as provided herein is a material part of the bargained-for consideration under this Lease. Lessee's obligation under this Section shall include, without limitation, the responsibility of Lessee to make substantial or structural repairs and alterations to the Premises (including any Improvements), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Lessee or City, the degree to which the curative action may interfere with Lessee's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Law involved, and whether the Law involved is related to Lessee's particular use of the Premises. Without limiting **Section 7.6** hereof, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Lessee from its obligations hereunder, or shall give Lessee any right to terminate this Lease in whole or in part or to otherwise seek redress against City. Lessee waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel City to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

11.2 Regulatory Approvals

(a) Responsible Party. Lessee understands and agrees that Lessee's use of the Premises may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Lessee shall be solely responsible for obtaining any and all such regulatory approvals. Lessee shall not seek any regulatory approval without first obtaining the written consent of the General Manager. Lessee shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Lessee's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Lessee, and City shall

have no liability, monetary or otherwise, for any such fines or penalties. Lessee shall Indemnify City and the other Indemnified Parties against all Losses arising in connection with Lessee's failure to obtain or comply with the terms and conditions of any regulatory approval.

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

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

11.4 Reports. Lessee shall submit a report and provide such documentation to City as City may from time to time request regarding Lessee's operations and evidencing compliance thereof with this Lease and all Laws. In the event that Lessee prepares or obtains any report or other informational document relating to the Premises or any Improvements thereon, Lessee shall promptly deliver a copy of such report or document to Landlord.

12. FINANCING; ENCUMBRANCES; SUBORDINATION

12.1 Encumbrance of Landlord's Fee Interest. The following provisions shall apply notwithstanding anything to the contrary contained in this Lease.

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

(b) Encumbrance By Lessee. Lessee shall not under any circumstances whatsoever Encumber in any manner City's estate in the Premises or any adjoining property, or City's interest under this Lease, or any portion thereof.

12.2 Leasehold Encumbrances. Without limiting **Article 15** hereof, Lessee shall not Encumber this Lease or Lessee's interest in this Lease, or assign or pledge assignment of the

same as security for any debt, without first obtaining the written consent of City, which City may give or withhold in its sole discretion.

13. DAMAGE OR DESTRUCTION

13.1 Damage or Destruction to the Improvements. In the case of damage to or destruction of the Premises by fire or any other casualty, whether insured or uninsured, Lessee shall, at its sole cost and with reasonable promptness and diligence, restore, repair, replace or rebuild the Premises as nearly as possible to the same condition, quality and class the Premises were in immediately before such damage or destruction, unless such damage or destruction was caused solely and directly by the gross negligence or willful misconduct of City or its Agents. With respect to any damage to or destruction by fire or any other casualty to any Improvements permitted hereunder made by or on behalf of Lessee during the Term hereof, Lessee may, at its option and at its sole cost, restore, repair, replace or rebuild such Improvements to the condition such Improvements were in prior to such damage or destruction, subject to any changes made in strict accordance with the requirements of **Section 8.1** above. However, if Lessee does not notify City in writing within thirty (30) days after the date of such damage or destruction of Lessee's election to restore, repair, replace or rebuild any such damaged or destroyed Improvements built by or on behalf of Lessee as provided above, Lessee shall promptly, at its sole cost, demolish such Improvements and remove them (including all debris) from the Premises in compliance with the provisions of **Section 21.1** below.

13.2 Abatement in Rent. In the event of any damage or destruction to the Premises or any permitted Improvements that prevents Lessee from using, and Lessee does not use, the Premises or any portion thereof, for thirty (30) consecutive days (the "Eligibility Period"), Rent and Additional Charges payable hereunder shall be abated or reduced, after expiration of the Eligibility Period, for such time that Lessee continues to be so prevented from using, and does not use, the Premises or a portion thereof, in the proportion that the rentable area of the portion of the Premises that Lessee is prevented from using bears to the total rentable area of the Premises during the restoration (except to the extent that the damage or destruction was caused by the negligence or intentional misconduct of Lessee, its Agents or Invitees).

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

14. EMINENT DOMAIN

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

14.2 Total Taking; Automatic Termination. If a total Taking of the Premises occurs, then this Lease shall terminate as of the Date of Taking.

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14.3 Partial Taking; Election to Terminate.

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

(b) City shall have the right to terminate this Lease in the event of a partial Taking of a substantial portion of any of City's adjoining real property, even if the Taking does not directly affect the Premises.

(c) Either Party electing to terminate under the provisions of this **Article 14** shall do so by giving written notice to the other Party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth day after such written notice is given or the Date of Taking.

14.4 Rent; Award. Upon termination of this Lease pursuant to an election under **Section 14.3** above, then: (i) Lessee's obligation to pay Rent shall continue up until the date of termination, and thereafter shall cease, except that Rent shall be reduced as provided in **Section 14.5** below for any period during which this Lease continues in effect after the Date of Taking, and (ii) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease), and Lessee shall have no claim against City for the value of any unexpired term of this Lease, provided that Lessee may make a separate claim for compensation, and Lessee shall receive any Award made specifically to Lessee, for Lessee's relocation expenses or the interruption of or damage to Lessee's business or damage to Lessee's Personal Property.

14.5 Partial Taking; Continuation of Lease. If a partial Taking of the Premises occurs and this Lease is not terminated in its entirety under **Section 14.3** above, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the Parties shall be as follows: (i) Base Rent shall be reduced by an amount that is in the same ratio to the Base Rent as the area of the Premises taken bears to the area of the Premises prior to the Date of Taking, and (ii) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease). Lessee shall have no claim against City for the value of any unexpired Term of this Lease, provided that Lessee may make a separate claim for compensation. Lessee shall retain any Award made specifically to Lessee for Lessee's relocation expenses or the interruption of or damage to Lessee's business or damage to Lessee's Personal Property.

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

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during the Term up to the total Rent owing by Lessee for the period of the Taking, and City shall be entitled to receive the balance of any Award.

15. ASSIGNMENT AND SUBLETTING

15.1 Restriction on Assignment and Subletting.

Lessee shall not directly or indirectly (including, without limitation, by merger, acquisition, sale or other transfer of any controlling interest in Lessee), voluntarily or by operation of Law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises, any Improvements or its leasehold estate hereunder (collectively, "Assignment"), or permit any portion of the Premises or any Improvements to be occupied by anyone other than itself, or sublet any portion of the Premises or any permitted Improvements thereon. (collectively, "Sublease"). Any Assignment or Sublease shall be voidable at the option of the City in its sole and absolute discretion; and the City shall have the right to terminate immediately this Lease by sending written notice to Lessee.

15.2 Effect of Transfer. No Sublease or Assignment by Lessee shall relieve Lessee, or any guarantor, of any obligation to be performed by Lessee under this Lease. Any Sublease or Assignment shall constitute a material Event of Default by Lessee under this Lease. The acceptance of any Rent or other payments by City from a proposed Transferee shall not constitute consent to such Sublease or Assignment by City or a recognition of any Transferee, or a waiver by City of any failure of Lessee or other transferor to comply with this Section.

15.3 Indemnity for Relocation Benefits. Without limiting Section 15.2, Lessee shall cause any Transferee to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease. Lessee shall Indemnify City and the other Indemnified Parties for any and all Losses arising out of any relocation assistance or benefits payable to any Transferee.

16. DEFAULT; REMEDIES

16.1 Events of Default. Any of the following shall constitute an event of default ("Event of Default") by Lessee hereunder:

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

(b) **Covenants, Conditions and Representations.** Any failure to perform or comply with any other covenant, condition or representation made under this Lease, provided Lessee shall have a period of fifteen (15) days from the date of written notice from City of such failure within which to cure such default under this Lease, or, if such default is not capable of cure within such 15-day period, Lessee shall have a reasonable period to complete such cure if Lessee promptly undertakes action to cure such default within such 15-day period and thereafter diligently prosecutes the same to completion and Lessee uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of

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default from City; provided, however, that upon the occurrence during the Term of three (3) defaults of the same obligation City shall not be required to provide any notice regarding Lessee's failure to perform such obligation, and any subsequent failure by Lessee after Lessee has received two such notices shall constitute a default by Lessee hereunder without any requirement on the part of City to give Lessee notice of such failure or an opportunity to cure;

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

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

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

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

(b) Continue Lease and Enforce Rights. The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows City to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as City does not terminate Lessee's right to possession, if Lessee has the right to sublet or assign, subject only to reasonable limitations. For purposes hereof, none of the following shall constitute a termination of Lessee's right of possession: acts of maintenance or preservation; efforts to relet the Premises or the appointment of a receiver upon City's initiative to protect its interest under this Lease; or withholding consent to an Assignment or Sublease, or terminating an Assignment or Sublease, if the withholding or termination does not violate the rights of Lessee specified in subdivision (b) of California Civil Code Section 1951.4. If City exercises its remedy under California Civil Code Section 1951.4, City may from time to time sublet the Premises or any part thereof for such term or terms (which may extend beyond the Term) and at such rent and upon such other terms as City in its sole discretion may deem advisable, with the right to make alterations and repairs to the Premises. Upon each such subletting, Lessee shall be immediately liable for payment to City of, in addition to Base Rent and Additional Charges due hereunder, the cost of such subletting and such alterations and repairs incurred by City and the amount, if any, by which the Base Rent and Additional Charges owing hereunder for the period of such subletting (to the extent such period does not exceed the Term) exceeds the amount to be paid as Base Rent and Additional Charges for the Premises for such period pursuant to such

subletting. No action taken by City pursuant to this **Section 16.2(b)** shall be deemed a waiver of any default by Lessee and, notwithstanding any such subletting without termination, City may at any time thereafter elect to terminate this Lease for such previous default.

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

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

17. WAIVER OF CLAIMS; INDEMNIFICATION

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

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

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

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

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

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

18. INSURANCE

18.1 Lessee's Insurance. Lessee shall procure and maintain throughout the Term of this Lease and pay the cost thereof the following insurance:

(a) **Comprehensive Insurance.** Comprehensive or commercial general liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence, Three Million Dollars (\$3,000,000) aggregate, combined single limit for bodily injury and property

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

(b) Public Liability and Other Insurance. Lessee shall at all times, at its cost, also maintain insurance for the mutual benefit of City and Lessee against:

Claims for personal injury, including, without limitation, bodily injury or property damage, occurring in or upon the Premises or the property adjoining the Premises, under a policy of general public liability insurance, with such limits as may reasonably be required by City from time to time, but in any event not less than One Million Dollars (\$1,000,000) combined single limit.

Worker's compensation insurance with employer's liability insurance covering all persons employed and with respect to whom death or bodily injury claims could be asserted against City, Lessee, the Premises or any other City property, not less than \$1,000,000 each accident.

Comprehensive automobile liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, if Lessee uses automobiles in connection with its use of the Premises.

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

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

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

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

Name Lessee as the insured and the City and County of San Francisco, its officers, agents and employees, as additional insureds, as their respective interests may appear hereunder.

That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Lease, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

All policies shall be endorsed to provide thirty (30) days' advance written notice to City of cancellation, non-renewal or reduction in coverage, mailed to the address(es) for City set forth in the Basic Lease Information.

(d) All insurance and surety companies are subject to approval as to coverage forms and financial security by the City. Insurers and sureties rated by A.M. Best Co. shall have a current rating of not less than A-,VIII.

18.3 Proof of Insurance. Lessee shall deliver to City certificates of insurance in form and with insurers satisfactory to City, evidencing the coverages required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon City's request, and Lessee shall provide City with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. In the event Lessee shall fail to procure such insurance, or to deliver such policies or certificates, City may, at its option, procure the same for the account of Lessee, and the cost thereof shall be paid to City within five (5) days after delivery to Lessee of bills therefor.

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

18.5 No Limitation on Indemnities. Lessee's compliance with the provisions of this Section shall in no way relieve or decrease Lessee's indemnification obligations under Sections 17.2 and 22.2, or any of Lessee's other obligations or liabilities under this Lease.

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

18.7 Lessee's Personal Property. Lessee shall be responsible, at its expense, for separately insuring Lessee's Personal Property.

18.8 City's Self Insurance. Lessee acknowledges that City self-insures against casualty, property damage and public liability risks and agrees City shall not be required to carry any third party insurance with respect to the Premises or otherwise.

18.9 Waiver of Subrogation. Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance, City and Lessee each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance covering the Premises or other City property and their contents, or any portion thereof, for any loss or damage maintained by such other party with respect to the Premises, other City Property 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. If any policy of insurance relating to the Premises or other City property carried by Lessee does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Lessee shall obtain, if possible, from the insurer under such policy a waiver of all rights of subrogation the insurer might have against City or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy.

19. ACCESS BY CITY

19.1 Access to Premises by City.

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

To determine whether the Premises are in good condition and to inspect the Premises (including, without limitation, soil borings or other Hazardous Material Investigations);

To determine whether Lessee is in compliance with its obligations hereunder and to cure or attempt to cure any such default in accordance with the provisions of **Section 16.3** hereof;

To serve, post or keep posted any notices required or allowed under any of the provisions of this Lease;

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

To show it to any prospective purchasers, brokers, Encumbrancers or public officials, or, during the last year of the Term of this Lease, exhibiting the Premises to prospective tenants or other occupants, and to post any "for sale" or "for lease" signs in connection therewith.

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

(c) No Liability. City shall not be liable in any manner, and Lessee hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of City's entry onto the Premises, except damage resulting directly and exclusively from the gross negligence or willful misconduct of City or its Agents and not contributed to by the acts, omissions or negligence of Lessee, its Agents or Invitees.

(d) No Abatement. Lessee shall not be entitled to any abatement in Rent if City exercises any rights reserved in this Section.

(e) Minimize Disruption. City shall use its reasonable good faith efforts to conduct any activities on the Premises allowed under this Section in a manner that, to the extent practicable, will minimize any disruption to Lessee's use hereunder.

19.2 The Department Facilities and Utility Installations. Without limiting **Section 19.1** above, City shall have the right at all times, to enter upon the Premises upon forty eight (48) hours advance written or oral notice (except in cases of emergency as determined by City), to use, install, construct, repair, maintain, operate, replace, inspect, and remove the Department Facilities, if any, or any public park or utility facilities. City shall bear the expense of any such activities, unless the need is occasioned by the acts, omissions or negligence of Lessee, its Agents or Invitees. City shall not be responsible for any temporary loss or disruption of Lessee's use of the Premises occasioned by any such facility installations or other activities.

19.3 Roadways. City and its Agents shall have the right to enter upon and pass through and across the Premises on any existing or future roadways and as City desires.

19.4 Rights of Public. Lessee shall keep the Premises open to the public at all times consistent with the uses permitted hereunder, subject to the Rules and Regulations or as otherwise approved by the General Manager in writing.

20. ESTOPPEL CERTIFICATES

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

21. SURRENDER

21.1 Surrender of the Premises. Upon the Expiration Date or any earlier termination of this Lease pursuant hereto, Lessee shall surrender to City the Premises, in good condition, order and repair, free from debris and hazards, and free and clear of all liens, easements and other Encumbrances created or suffered by, through or under Lessee. On or before the Expiration Date or any earlier termination hereof, or later upon Landlord's request, Lessee shall, at its sole cost, remove any and all of Lessee's Personal Property from the Premises and demolish and remove any and all Improvements and Alterations from the Premises requested by Landlord to be removed (except for any Improvements or Alterations that City agrees are to remain part of the Premises pursuant to the provisions of **Section 8.2** above). In addition, Lessee shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any Improvements or Alterations. In connection therewith, Lessee shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Lessee's obligations under this Section shall survive the expiration or other termination of this Lease. Any items of Lessee's Personal Property remaining on or about the Premises after the Expiration Date of this Lease may, at City's option, be deemed abandoned and in such case City may dispose of such property in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by Law. If Lessee fails to surrender the

Premises to City on the Expiration Date or earlier termination of the Term as required by this Section, Lessee shall Indemnify City against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding Lessee resulting from Lessee's failure to surrender the Premises.

21.2 Automatic Reversion. Upon the Expiration Date or earlier termination of this Lease, the Premises shall automatically, and without further act or conveyance on the part of Lessee or City, become the property of City, free and clear of all liens and Encumbrances and without payment therefor by City and shall be surrendered to City upon such date. Upon or at any time after the date of termination of this Lease, if requested by City, Lessee shall promptly deliver to City, without charge, a quitclaim deed to the Premises suitable for recordation and any other instrument reasonably requested by City to evidence or otherwise effect the termination of Lessee's leasehold estate hereunder and to effect such transfer or vesting of title to the Premises or any permitted Improvements or Alterations that City agrees are to remain part of the Premises pursuant to the provisions of **Section 8.2** above.

22. HAZARDOUS MATERIALS

22.1 No Hazardous Materials. Lessee covenants and agrees that neither Lessee nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or any Improvements or transported to or from the Premises or any Improvements. Lessee shall immediately notify City if and when Lessee learns or has reason to believe there has been any Release of Hazardous Material in, on or about the Premises or any Improvements. City may from time to time request Lessee to provide adequate information for City to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable Environmental Laws, and Lessee shall promptly provide all such information. Without limiting **Section 19** hereof, City and its Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Lessee (except in the event of an emergency).

22.2 Lessee's Environmental Indemnity. If Lessee breaches any of its obligations contained in **Section 22.1** above, or, if any act or omission or negligence of Lessee or any of its Agents or Invitees results in any Release of Hazardous Material in, on, under or about the Premises (including any Improvements thereon) or any other City property, without limiting Lessee's general Indemnity contained in **Section 17.2** above, Lessee, on behalf of itself and its successors and assigns, shall Indemnify City and the Indemnified Parties, and each of them, from and against all Hazardous Materials Claims arising during or after the Term of this Lease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the Investigation and Remediation of Hazardous Material and with the restoration of the Premises or any other City property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and re-vegetation of the Premises or other City property. Without limiting the foregoing, if Lessee or any of Lessee's Agents or Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or any other City property, Lessee shall, immediately, at no expense to City, take any and all appropriate actions to return the Premises or other City property affected thereby to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Lessee shall provide City with written notice of and afford City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement,

cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

23. SECURITY DEPOSIT

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

24. GENERAL PROVISIONS

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

24.2 Americans with Disabilities Act. Lessee acknowledges that the Americans with Disabilities Act (the "ADA") requires that programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Lessee further acknowledges its obligation to comply with the ADA and any other federal, state or local disability rights legislation. Lessee warrants that it will fulfill that obligation, and that it will not discriminate against disabled persons in the provision of services, benefits or activities pursuant to this Lease. City shall bear all responsibility and cost for mandated physical changes to the Property resulting from disability access laws.

24.3 Authority. All rights, powers and privileges of the City under this Lease may be exercised, on behalf of the City, by the General Manager, or such other person designated by the City, except as otherwise required by applicable law.

24.4 Successors and Assigns. Each and all of the conditions and covenants of this Lease shall extend to and bind and inure to the benefit of the City and Lessee, and the legal representatives, successors and assigns of either or both of them.

24.5 Survival. Termination, expiration or cancellation of Lease shall not affect any provision of this Lease that states it shall survive termination, expiration or cancellation hereof.

24.6 Access to Property. The City and its duly authorized agents shall have access to the Property at all times for the purpose of (i) inspection and to make any repairs, additions or renovations as the City shall deem advisable, and (ii) for use by the City in case of emergency, as determined by the City in its sole discretion.

24.7 Lessee as Independent Contractor. The services to be rendered by Lessee pursuant to this Lease are as an independent contractor only, and nothing contained in this Lease shall be construed to create a partnership, joint venture, or a relationship of employment or agency.

24.8 Management Agreement Made in California. This Lease shall be deemed to be made in and shall be construed in accordance with the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Lease shall be in San Francisco.

24.9 Integrated Agreement; Modification. This Lease contains all the agreements of the parties hereto relating to the subject matter addressed herein, and cannot be amended or modified except by a written agreement mutually executed between each of the parties hereto.

24.10 Section Headings. The section headings contained herein are for convenience in reference and are not to be used to construe the intent of this Lease or any part thereof, nor to modify, amplify, or aid in the interpretation or construction of any of the provisions thereof.

24.11 Severability. In the event any covenant, term or condition herein contained is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect any other valid covenant, term or condition herein contained.

24.12 Time of Essence. Time is of the essence of each provision of this Lease.

24.13 Compliance with Laws. Lessee shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Lease, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

24.14 Services Provided by Attorneys. Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Lessee, will be paid unless the provider received advance written approval from the City Attorney.

24.15 Restrictions as to Employees. It is agreed that City shall not solicit any "Key Employee" of Lessee for employment with the City, without first obtaining the written consent of Lessee. It is further agreed that this restriction shall survive for a period of six (6) months following the expiration or termination of this Lease. For purposes hereof, a "Key Employee" of Lessee shall mean the lessee of the Property, the Property Superintendent, the Property Bookkeeper, the Property Head Professional, the Assistant Superintendent of the Property, or any executive officer of Lessee. Nothing herein shall be

construed as interfering with any Key Employee's ability to compete or to engage in a lawful profession, trade or business in violation of California Business and Professions Code section 16600.

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

24.17 Tropical Hardwood and Virgin Redwood Ban. The City urges companies not to import, purchase, obtain or use, for any purpose, any tropical hardwood or any tropical hardwood wood product, virgin redwood or virgin redwood wood product except as expressly permitted by the application of Sections 12I.3.b and 12I.4.b of the San Francisco Administrative Code.

24.18 Limitations on Contributions. Through execution of this Lease, Lessee acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, 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. Lessee 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. Lessee further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Lessee's board of directors; Lessee's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Lessee; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Lessee. Additionally, Lessee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Lessee further agrees to provide to City the names of each person, entity or committee described above.

24.19 Notification of Limitations on Contributions. San Francisco Campaign and Governmental Conduct Code (the "Conduct Code") Section 3.700 *et. seq.*, and San Francisco Ethics Commission Regulations 3.710(a)-1 - 3.730-1, *prohibit* the public officials who approved this contract from receiving (1) gifts, honoraria, emoluments or pecuniary benefits of a value in excess of \$50; (2) any employment for compensation; or (3) any campaign contributions for any elective office for a period of up to six years from individuals and entities who are "public benefit recipients" of the contract. Public benefit recipients of the contract are: (a) the individual, corporation, firm, partnership, association, or other person or entity that is a party to the contract; (b) an individual or entity that has a direct 10% equity, or direct 10% participation, or direct 10% revenue interest in that party at the time the public benefit is awarded; or (c) an individual who is a trustee, director, partner or officer of the contracting party at the time the public benefit is awarded. Lessee understands that any public official who approved this contract may not accept campaign contributions, gifts, or future employment from Lessee except as provided under the

Conduct Code. Lessee agrees to notify any other individuals or entities that may be deemed "public benefit recipients" under the Conduct Code because of this contract. Upon request, Lessee agrees to furnish, before this contract is entered into, such information as any public official approving this contract may require in order to ensure such official's compliance with the Conduct Code. Upon request, the City agrees to provide, before this contract is entered into, Lessee with a list of public officials who, under the Conduct Code, approved this contract. Failure of any public official who approved this contract to abide by the Conduct Code shall not constitute a breach by either the City or Lessee of this contract. Notwithstanding anything to the contrary in this contract, neither party shall have the right to terminate the contract due to any failure by the other party to provide the information described in this paragraph.

24.20 Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Lessee may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Lease. Lessee agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Lessee violates the provisions of this Section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Lease, and (ii) prohibit Lessee from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Lessee's use of profit as a violation of this Section.

24.21 Public Access to Meetings and Records. If Lessee receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Lessee shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Lease, Lessee agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Lessee further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. Lessee acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Lease. Lessee further acknowledges that such material breach of the Lease shall be grounds for the City to terminate and/or not renew the Lease, partially or in its entirety.

24.22 No Conflict of Interest. Lessee states that it is familiar with the provisions of Section C8.105 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it knows of no facts which would constitute a violation of such provisions. Lessee further certifies that it has made a complete disclosure to the City of all facts bearing on any possible interests, direct or indirect, which Lessee believes any officer or employee of the City presently has or will have in this Lease or in the performance thereof or in any portion of the profits thereof. Willful failure by Lessee to make such disclosure, if any, shall constitute grounds for the City's termination of this Lease.

24.23 Nondiscrimination; Penalties.

(a) **Lessee Shall Not Discriminate.** In the performance of this Lease, Lessee 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, height, weight, disability or Acquired Immune

Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Lessee, in any of Lessee's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Lessee.

(b) Subcontracts. Lessee shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-12B.2(k) and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Lessee's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) Non-Discrimination in Benefits. Lessee does not as of the date of this Lease and will not during the term of this Lease, in San Francisco or with respect to its operations under this Lease elsewhere within the United States, discriminate in the provision of 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(b) of the San Francisco Administrative Code.

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

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

24.24 Public Disclosure. Lessee understands and agrees that under the City's Sunshine Ordinance (SF Administrative Code, Chapter 67) and the State Public Records Law (Government Code Section 6250 *et seq.*) this Lease and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. 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 or other benefit until and unless that person or organization is awarded the contract or benefit. Lessee hereby authorizes the City to disclose any records, information and materials submitted to the City in connection with this Lease.

24.25 False Claims. Pursuant to San Francisco Administrative Code Section 6.57, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the cost, including attorney's fees, of a civil action brought to recover any of those penalties or damages and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have

submitted a false claim to the City if the contractor, subcontractor or consultant:
(a) knowingly presents or causes to be presented to any officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses or causes to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the City; (e) is beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of then false claim.

24.26 Employee Signature Authorization Ordinance. City has adopted an Employee Signature Authorization Ordinance (San Francisco Administrative Code Sections 23.50-23.56). That ordinance requires employers of employees in hotel or restaurant projects on City property with more than fifty (50) employees to be represented by a labor union to act as their exclusive bargaining representative. Lessee acknowledges and agrees that Lessee will comply with the requirements of such Ordinance to the extent applicable to Lessee's operations on the Property.

24.27 First Source Hiring Requirements.

(a) **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Lease as though fully set forth herein. Lessee shall comply fully with, and be bound by, all of the provisions that apply to this Lease under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Chapter 83.

(b) **First Source Hiring Agreement.** As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, Lessee shall enter into a first source hiring agreement ("Hiring Agreement") with the City, on or before the effective date of the contract or property contract. Lessee shall also enter into an Hiring Agreement with the City for any other work that it performs in the City. Such Hiring Agreement shall:

(i) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The Hiring Agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs may be certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

(ii) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening

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criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each Hiring Agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the Hiring Agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the Hiring Agreement.

(iii) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

(iv) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the Hiring Agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

(v) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's Hiring Agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(vi) Set the term of the requirements.

(vii) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

(viii) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

(ix) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

(c) **Hiring Decisions:** Lessee shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position

(d) **Exceptions:** Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

(e) **Liquidated Damages.** Lessee agrees:

(i) To be liable to the City for liquidated damages as provided in this Section;

(ii) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this Section;

(iii) That the Lessee's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the Lessee to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the Lessee from the first source hiring process, as determined by the FSHA during its first investigation of a Lessee, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the Lessee's failure to comply with its first source referral contractual obligations.

(iv) That the continued failure by a Lessee to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the Lessee's continued failure to comply with its first source referral contractual obligations;

(v) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this Section is based on the following data:

a) The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

b) In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least

the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

c) Therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of the Lessee to comply with its first source referral contractual obligations.

(vi) That the failure of Lessee to comply with this Chapter, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

(vii) Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

24.28 EIC Forms.

(a) Lessee shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty (30) days following the date on which this Lease becomes effective (unless Lessee has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Lessee; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Lease.

(b) Failure to comply with any requirement contained in subparagraph (a) above shall constitute a material breach by Lessee of the terms of this Lease. If within thirty (30) days after Lessee receives written notice of such a breach, Lessee fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Lessee fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Lease or under applicable law.

(c) Any Subcontract entered into by Lessee shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this Section.

(d) Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Section 120 of the San Francisco Administrative Code.

24.29 Supervision of Minors. Lessee, and any subcontractors, shall comply with California Penal Code section 11105.3 and request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in Welfare and Institution Code section 15660(a) of any person who applies for employment

or volunteer position with Contractor, or any subcontractor, in which he or she would have supervisory or disciplinary power over a minor under his or her care. If Lessee, or any subcontractor, is providing services at a City park, playground, recreational center or beach (separately and collectively, "Recreational Site"), Lessee shall not hire, and shall prevent its subcontractors from hiring, any person for employment or volunteer position to provide those services if that person has been convicted of any offense that was listed in former Penal Code section 11105.3 (h)(1) or 11105.3(h)(3). If Lessee, or any of its subcontractors, hires an employee or volunteer to provide services to minors at any location other than a Recreational Site, and that employee or volunteer has been convicted of an offense specified in Penal Code section 11105.3(c), then Lessee shall comply, and cause its subcontractors to comply with that section and provide written notice to the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer not less than ten (10) days prior to the day the employee or volunteer begins his or her duties or tasks. Lessee shall provide, or cause its subcontractors to provide City with a copy of any such notice at the same time that it provides notice to any parent or guardian. Lessee shall expressly require any of its subcontractors with supervisory or disciplinary power over a minor to comply with this Section of the Lease as a condition of its contract with the subcontractor. Lessee acknowledges and agrees that failure by Lessee or any of its subcontractors to comply with any provision of this Section of the Lease shall constitute an Event of Default. Lessee further acknowledges and agrees that such Event of Default shall be grounds for the City to terminate the Lease, partially or in its entirety, to recover from Lessee any amounts paid under this Lease, and to withhold any future payments to Lessee. The remedies provided in this Section shall not limited any other remedy available to the City hereunder, or in equity or law for an Event of Default, and each remedy may be exercised individually or in combination with any other available remedy. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

24.30 Prevailing Wages for Theatrical Workers. Pursuant to San Francisco Administrative Code Section 21.25-3, unless excepted, Contracts, Leases, Franchises, Permits, and Agreements awarded, let, issued or granted by the City and County of San Francisco for the use of property owned by the City and County of San Francisco shall require any Employee engaged in theatrical or technical services related to the presentation of a Show to be paid not less than the Prevailing Rate of Wages. Employees engaged in theatrical and technical services include, without limitation, those engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services. Capitalized terms in this Section that are not defined in this Lease shall have the meanings provided in Section 21.25-3.

Lessee agrees to comply with and be fully bound by, and to require its Subcontractors to comply with and be fully bound by, the provisions of Section 21.25-3, including, without limitation, the payment of any penalties for noncompliance and other remedies available to the City. The provisions of Section 21.25-3 are hereby incorporated by reference and made a part of this Lease. Lessee shall cooperate fully with the Labor Standards Enforcement Officer and any other City official or employee, or any of their respective agents, in the administration and enforcement of the requirements of Section 21.25-3, including, without limitation, any investigation of noncompliance by Lessee or its Subcontractors. Lessee agrees that the City may inspect and/or audit any workplace or job site involved in or related to the performance of this Lease, including, without limitation, interviewing Lessee's and any Subcontractor's employees and having immediate access to employee time sheets, payroll records, and paychecks for inspection.

Lessee may obtain a copy of the current Prevailing Rate of Wages from City by contacting its Office of Labor Standards Enforcement. Lessee acknowledges that the City's Board of Supervisors may amend such Prevailing Rate of Wages and agrees that Lessee and any

Subcontractors shall be bound by and shall fully comply with any such amendments by the Board of Supervisors.

24.31 Intellectual Property; Music Broadcasting Rights. Lessee shall be solely responsible for obtaining any necessary clearances or permissions for the use of intellectual property, including, but not limited to musical or other performance rights. (Note to Lessee: To obtain the appropriate music performance license, you may contact the BMI Licensing Executive toll free at 1-877-264-2137 Monday – Friday, 9-5 p.m. (Central Time) and the American Society of Composers, Authors and Publishers (“ASCAP”) at 1-800-505-4052 Monday – Friday, 9-5 p.m. (Eastern Time))

24.32 Public Transit Information. Lessee shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Lessee 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 Property and encouraging use of such facilities, all at Lessee’s sole expense.

24.33 Pesticide Prohibition. Lessee shall comply with the provisions of Chapter 39 of the San Francisco Administrative Code (the “Pesticide Ordinance”) which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, and (iii) require Lessee to submit an integrated pest management (“IPM”) plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Lessee may need to apply to the Property, (b) describes the steps Lessee will take to meet the City’s IPM Policy described in Section 39.1 of the Pesticide Ordinance, and (c) identifies, by name, title, address and telephone number, an individual to act as the Lessee’s primary IPM contact person with the City.

24.34 Preservative-treated Wood Containing Arsenic. Lessee may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the 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, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Lessee may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Lessee from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term “saltwater immersion” shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

24.35 No Tobacco Advertising. Lessee acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City, including the Garage. This 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 prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

24.36 No Smoking in City Parks. Lessee agrees to comply with Section 1009.81 of the San Francisco Health Code, which provides: "Smoking is prohibited on any unenclosed area of property in the City and County of San Francisco that is open to the public and under the jurisdiction of the Recreation and Park Commission or any other City department if the property is a park, square, garden, sport or playing field, pier, or other property used for recreational purposes.

24.37 Protection of Private Information. Lessee has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Lessee agrees that any failure to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract and bring a false claim action against Lessee pursuant to Chapter 6 or Chapter 21 of the Administrative Code.

24.38 Graffiti Removal. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti. Lessee shall remove all graffiti from the Property within forty eight (48) hours of the earlier of Lessee's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. The term "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 by way of example only and without limitation, 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 which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; 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 (California Civil Code Sections 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.). Any failure of Lessee to comply with this Section of this Lease shall constitute an Event of Default of this Lease.

24.39 Food Service Waste Reduction Requirements. Lessee agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Lease as though fully set forth. This provision is a material term of this Lease. By entering into this Lease, Lessee agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Lessee agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is 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 amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Lessee's failure to comply with this provision.

24.40 Execution in Counterparts. This Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

24.41 Miscellaneous. (a) No waiver of any of the provisions of this Lease shall be effective unless in writing and signed by an officer or other authorized representative of the City, and only to the extent expressly provided in such written waiver. No waiver shall be deemed a subsequent or continuing waiver of the same, or any other, provision of this Lease. (b) Except as expressly provided to the contrary, all approvals, consents and determinations to be made by the City hereunder may be made in the sole and absolute discretion of the General Manager. (c) This instrument (including the exhibit(s) hereto) contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. (d) This Lease shall be governed by, and subject to, the requirements of California law and City's Charter and Administrative Code. (e) Notwithstanding anything to the contrary contained in this Lease, Lessee acknowledges and agrees that no officer or employee of the City has authority to commit the City to this Lease unless and until the City's Recreation and Park Commission has passed a resolution approving this Lease, and it has been duly authorized and fully executed by all parties hereto.

24.42 Notices. Any notice given under this Lease shall be effective only if in writing and given by delivering the notice in person or by sending it first-class mail or certified mail with a return receipt requested or by overnight courier, return receipt requested, with postage prepaid, to: (a) Lessee, (i) at Lessee's address set forth in the Basic Lease Information, if sent prior to Lessee's taking possession of the Premises, or (ii) at the Premises if sent on or subsequent to Lessee's taking possession of the Premises, or (iii) at any place where Lessee or any Agent of Lessee may be found if sent subsequent to Lessee's vacating, abandoning or surrendering the Premises; or (b) City, at City's address set forth in the Basic Lease Information; or (c) to such other address as either City or Lessee may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first class or certified mail, one day after the date it is made if sent by overnight courier, or upon the date personal delivery is made. For convenience of the parties, copies of notices may also be given by telefacsimile to the telephone number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither party may give official or binding notice by facsimile. Lessee shall promptly provide City with copies of any and all notices received regarding any alleged violation of laws or insurance requirements or any alleged unsafe condition or practice.

24.43 Prohibition of the Sale of Lottery Tickets. The selling of any lottery tickets on the premises is expressly prohibited.

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

any other then-existing or subsequent breach thereof. Whenever this Lease requires or permits the giving by City of its consent or approval, the General Manager of the Department shall be authorized to provide such approval, except as otherwise provided by applicable law, including the Charter. Any amendments or modifications to this Lease, including, without limitation, amendments to or modifications to the exhibits to this Lease, shall be subject to the mutual written agreement of City and Lessee, and City's agreement may be made upon the sole approval of the General Manager of the Department; provided, however, material amendments or modifications to this Lease (i) increasing the Term, (ii) decreasing the Rent or charges payable by Lessee, (iii) changing the general use of the Premises, or (iv) any other amendment or modification which materially increases the City's liabilities or financial obligations under this Lease shall additionally require the approval of the City's Board of Supervisors. Notwithstanding the above, pursuant to **Section 3.2** above, the Department shall have the authority to amend this Lease to allow ParkWide to operate at additional park locations upon approval of the Commission.

26. QUALITY OF SERVICES AND PRODUCTS OFFERED. Lessee hereby agrees that any services offered for sale hereunder shall be of good quality and that the service shall be prompt, clean, courteous, and efficient. Department shall have the right to raise reasonable objections to the quality the service provided and Lessee shall have the obligation to address those objections by modifying the causes of those objections until corrected to the satisfaction of the Department.

27. PARTICIPATION IN CITY CUSTOMER SATISFACTION PROGRAM. Lessee hereby agrees to participate in any customer satisfaction program developed by the City, provided that the participation requirements of the Customer Satisfaction Program shall be reasonable.

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

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

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

- 31. SIGNS AND ADVERTISING.** Lessee hereby agrees not to erect or maintain, nor permit to be erected or maintained, upon any part of the Premises, any signs without obtaining Lessor's written consent in advance.
- 32. FORCE MAJEURE.** Neither party shall be liable for any delay or failure to perform due to Force Majeure. "Force Majeure" with respect to a delay in or prevention of performance shall mean (a) any strike, lockout or other labor or industrial disturbance (whether or not on the part of the employees of either party), civil disturbance, future order claiming jurisdiction, act of the public enemy, war, riot, sabotage, blockade, embargo, inability to secure customary materials, supplies or labor through ordinary sources by reason of regulation or order of any government or regulatory body; (b) any changes in any applicable laws or the interpretation thereof; or (c) any flood, washout, explosion, or (d) any other cause beyond the reasonable control of the party from whom performance is required.
- 33. HOLDING OVER.** Any holding over after the expiration of the Term with the express written consent of City shall be construed to automatically extend the Term of this Lease on a month-to-month basis on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term). Any holding over without City's consent shall constitute a default by Lessee and entitle City to exercise any or all of its remedies as provided herein, notwithstanding that City may elect to accept one or more payments of Rent, and whether or not such amounts are at the holdover rate specified below or the rate in effect at the end of the Term of this Lease. Any holding over after the expiration of the Term without the City's consent shall be at a monthly rental rate equal to one hundred fifty percent (150%) of the rate in effect at the end of the Term of this Lease.
- 34. AGREEMENT WITH SAN FRANCISCO ELECTRIC TOUR COMPANY.** Lessee acknowledges its intention to enter into an agreement with the San Francisco Tour Company for the installation of electrical service at the Music Concourse location in Golden Gate Park as more fully described in **Section 8.4** and **Exhibit H** to this Lease. Lessee further acknowledges that the Department is not a party to that agreement and shall not be responsible for such electrical work nor shall the Department in the event that Lessee and the San Francisco Electric Tour Company fail to reach an agreement for such work.
- 35. ABILITY OF COMMISSION TO REVOKE PARKWIDE'S AUTHORIZATION TO OPERATE AT UNION SQUARE.** Commencing on the date which is 9 months after Lessee commences operating at Union Square, and continuing throughout the term of this Lease (as extended, as applicable), the Commission, in its sole discretion, may, by written notice to Lessee, terminate this Lease with respect to the Union Square Site if the Commission, in its sole discretion, determines that the bike rental operation at Union Square presents a significant safety hazard to ParkWide customers or members of the general public. Effective on the date of such termination as stated in written notice from the Commission, (i) all of Lessee's rights with respect to the Union Square Site shall terminate, and (ii) the monthly Base Rent payable under this Lease as set forth in Section 5.2 shall be reduced to reflect the deletion of Union Square Site from the Premises, using the rental rate for the Union Square Site specified in Section 5.1 of this Lease.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LESSEE ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS

AUTHORITY TO COMMIT CITY HERETO UNLESS AND UNTIL A RESOLUTION OF THE COMMISSION SHALL HAVE BEEN DULY PASSED APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON PASSAGE OF SUCH A RESOLUTION, AND THIS LEASE SHALL NOT BE EFFECTIVE UNLESS AND UNTIL THE COMMISSION APPROVES THIS LEASE, IN ITS SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS.

City and Lessee have executed this Lease as of the date first written above.

LESSEE:

~~Park Wide Bike Rentals~~

PARK WIDE ACTIVITIES LLC

By: Jeanne M. Orillana

Its: Member

By: _____

Its: _____

CITY:

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

By: Philip Ginsburg

Philip Ginsburg, General Manager
Recreation and Park Department

**APPROVED BY
RECREATION AND PARK COMMISSION
PURSUANT TO RESOLUTION NO. 1101-011**

DATED: 1/20/11

Margaret McArthur

Margaret McArthur, Commission Liaison

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: Anita Wood

Anita Wood, Deputy City Attorney

Handwritten initials

Exhibit A- Premises Map

John F. Kennedy Drive at Hagiwara Tea Garden Drive in Golden Gate Park



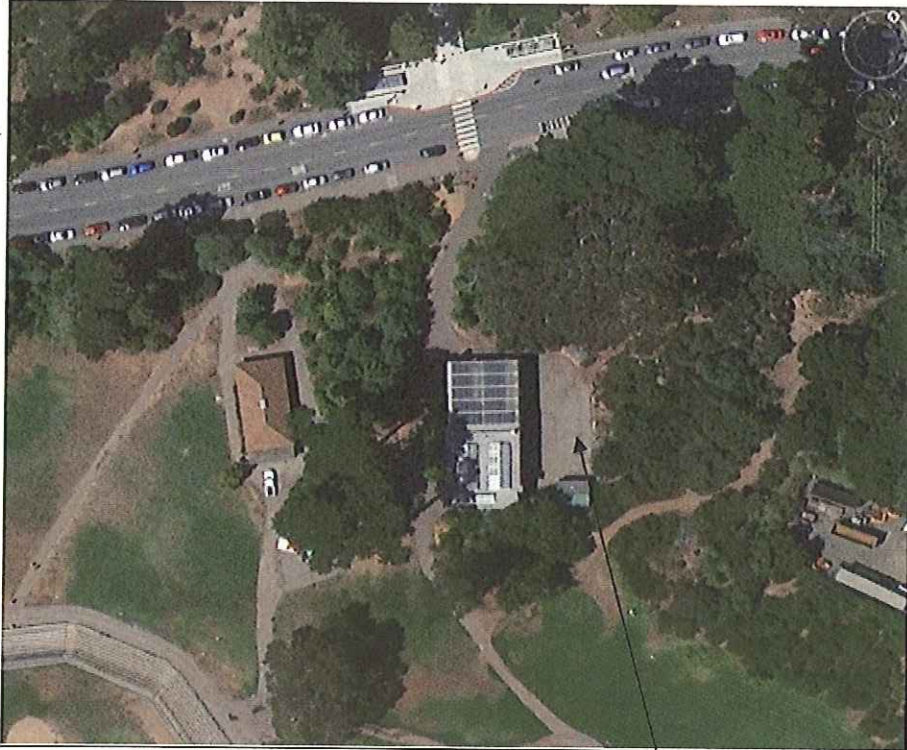
Park Wide Saturday location
(during street closures)

Park wide Sunday Location



North Side of John F. Kennedy Drive at Hagiwara Tea Garden Drive

JLW



Two (2) twenty (20) foot storage containers at the Handball Courts near Big Rec next to existing storage containers for the use of Park Wide for the JFK and Bandshell locations.

Behind the Bandshell in the Parking Lot in Golden Gate Park



Park Wide Location behind the Bandshell

Handwritten signature or initials



Park Wide Operation behind the Bandshell with Rendition of Kiosk



Park Wide storage containers to support Bandshell location (two (2) forty (40) foot containers)

WLO

Union Square Plaza

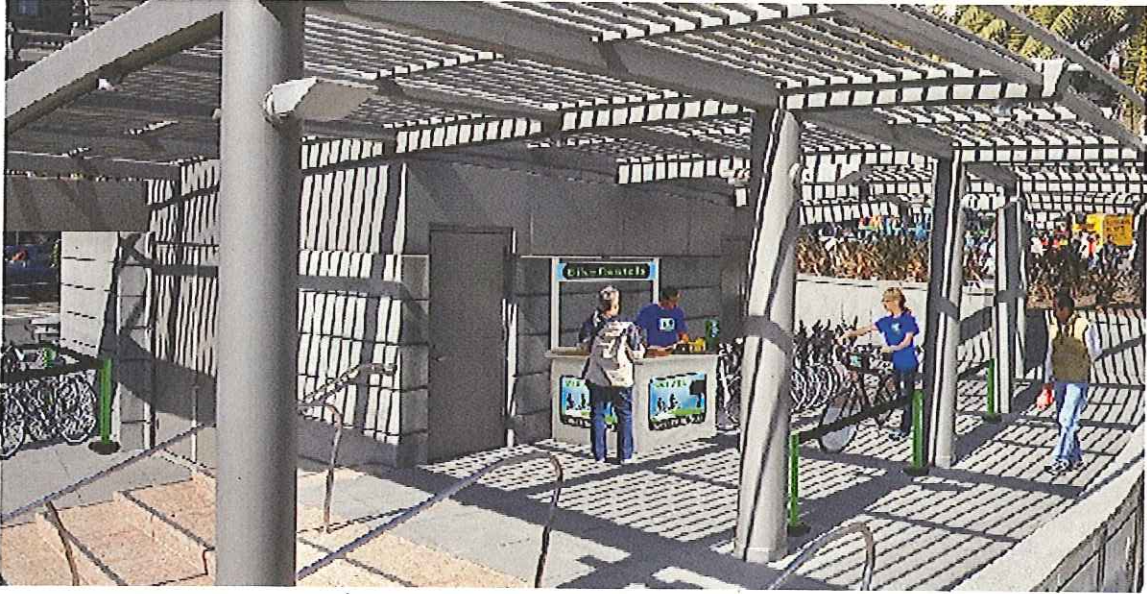


Park Wide |



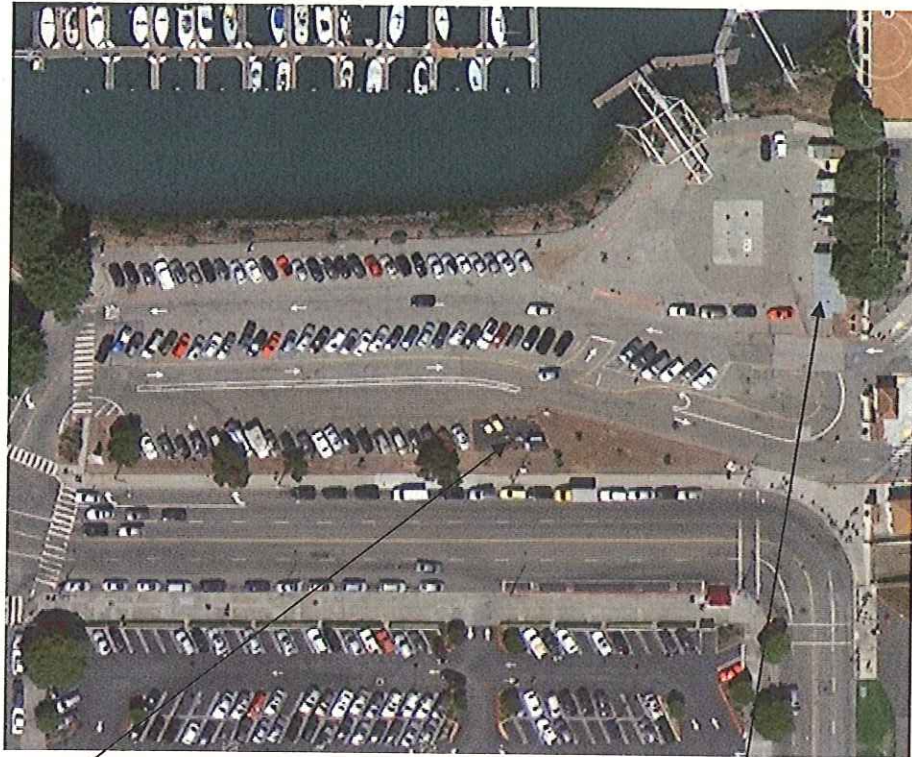
Park Wide on the Union Square Plaza

UPO



Park Wide Kiosk with Bike Display

Marina Green Location



Park Wide

Storage Containers



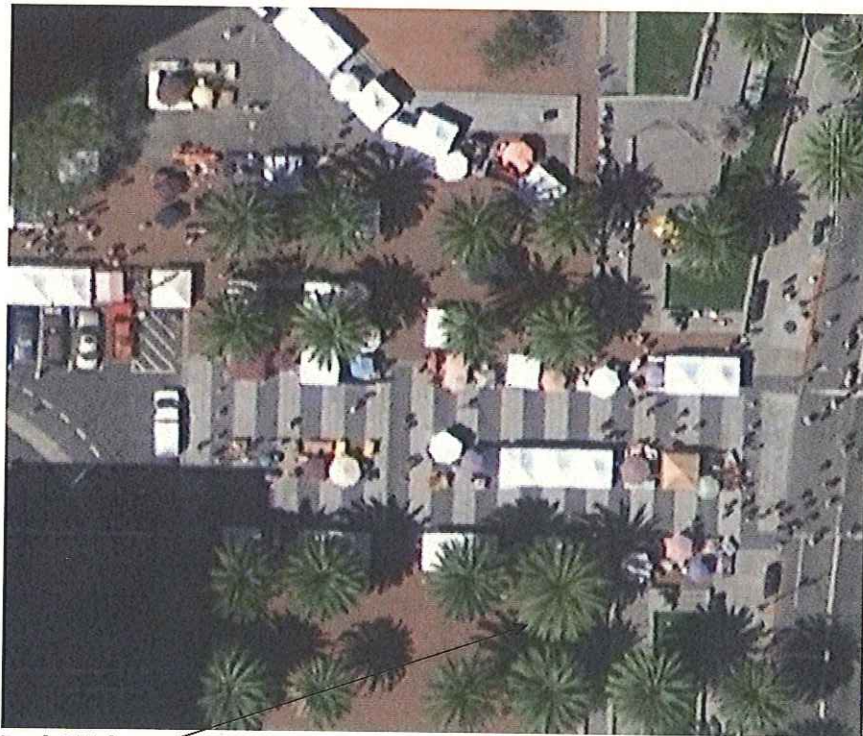
Park Wide Marina Green Operation

VO



Park Wide Storage Containers two (2) forty (40) foot containers to replace existing storage container footprint from previous bike rental operator.

Justin Herman Plaza Location



Park Wide

WWS



Park Wide Justin Herman Plaza Loading and Unloading



Park Wide Operations at Justin Herman Plaza

W

Exhibit B-Locations and Operations Plan

<u>SITES:</u>	<u>MG</u> (No water/No Electric)	<u>JHP</u>	<u>US</u>	<u>GGP Bandshell</u>	<u>GGP JFK Satellite</u>
<u>OPERATION</u>	barriers, safety cones movable tent or kiosk	barriers, safety cones, movable tent or kiosk	barriers, safety cones movable tent or kiosk	barriers, safety cones movable tent or kiosk	barriers, safety cones movable tent or kiosk
<u>COUNTER</u>	movable counter	movable counter	movable counter	movable counter	movable counter
<u>ELECTRICAL/ PGE</u>	cc machine, \$ register, compressor, phones	cc machine, \$ register, compressor, phones	cc machine, \$ register, compressor, phones	cc machine, \$ register, compressor, phones	N/A
<u>FLEET INCLUDES</u>	hybrids, mtn, tandem, surreys, kids, road	hybrids, mtn, tandem, kids, road	hybrids, mtn, tandem, kids, road	hybrids, mtn, tandem, surreys, kids, road	hybrids, mtn, tandem, surreys, kids, road
<u>VEHICLES</u>	not necessary, maybe Gem car	Truck & Trailer used at opening/closing only	Gem Car delivers garage to operation.	Gem Car delivers containers to operation	Gem Car delivers containers to operation
<u>STORAGE</u>	2 20' containers onsite	offsite rent paid separately	Garage	2 40' containers onsite 1 40' behind baseball	<< same operation << same operation
<u>BUSINESS HOURS</u>	change	change	change	change	change
<u>WATER USAGE</u>	yes	no	yes (if available)	yes	no
<u>SIGNAGE</u>	1. // to Marina Blvd 2. Ft Mason entrance 3. at site	1. facing ferry Bldg 2. facing Market 3. at site	1. on Powell @ display 2. on upper platform 3. at site	1. Directional at JFK 2. Directional at Music Concourse 3. at site	<< same operation << same operation 3. at site

WMD

Exhibit C- Department's Rules and Regulations

Please see following link for San Francisco Recreation and Park Department Park Code

<http://library.municode.com/index.aspx?clientId=14138&stateId=5&stateName=California>

WJW

Exhibit D- Rendition of Lessee's Gem Car and Truck and Trailer

GEM CAR

These vehicles represent a versatile and efficient way for Park Wide to get the job of bike deliveries done. The environmentally friendly GEM car harnesses clean energy and puts to work the power of silence. We can transport up to 10 bikes without leaving a heavy footprint on park property.



TRUCK & TRAILER

Our truck and trailer use is minimal and only necessary for early morning opening and evening closing at the Justin Herman Plaza operation and the JFK Drive location in Golden Gate Park, both with no onsite storage.



WRO

Exhibit E-Directional Hand Signals

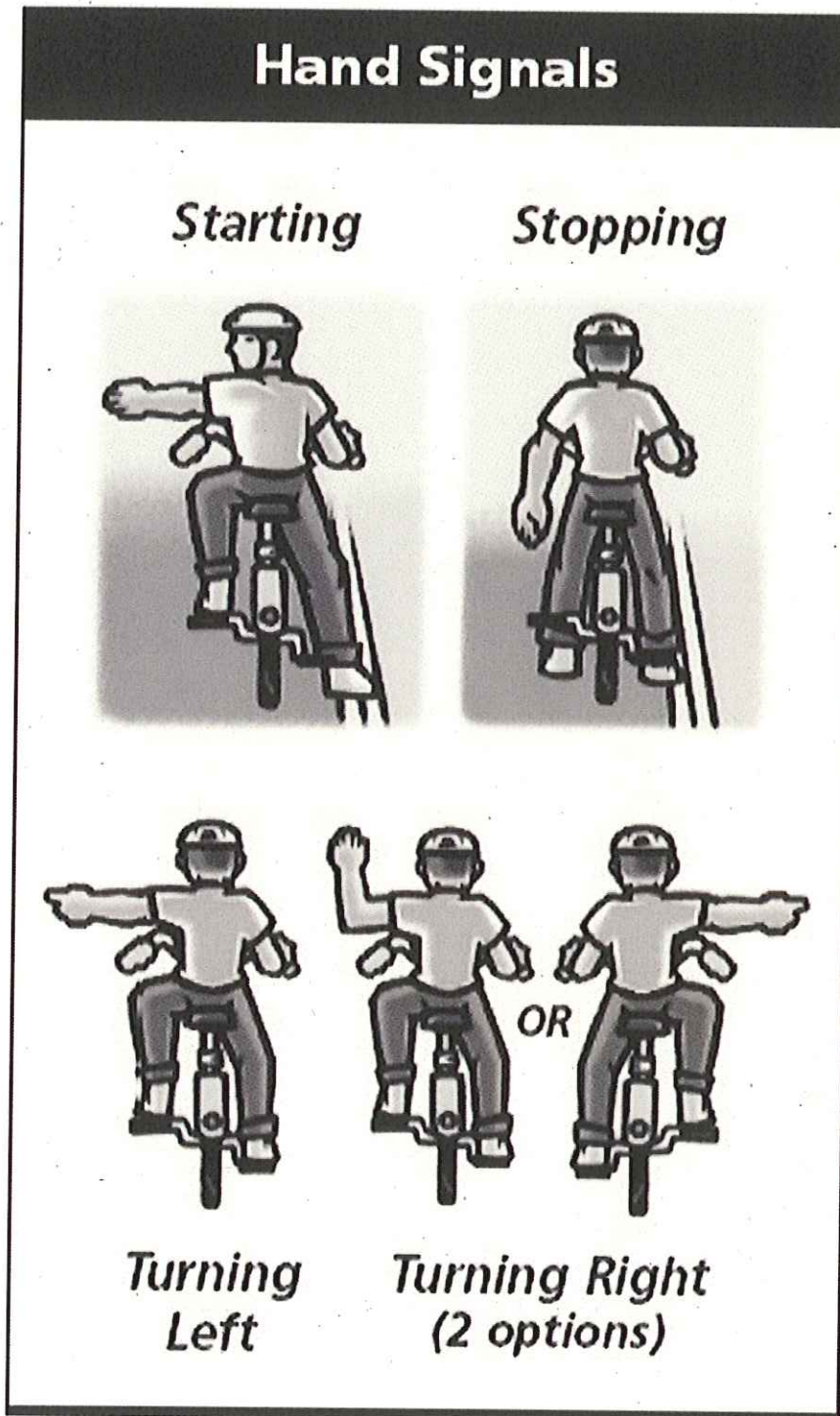


Exhibit F-Wavier

mo

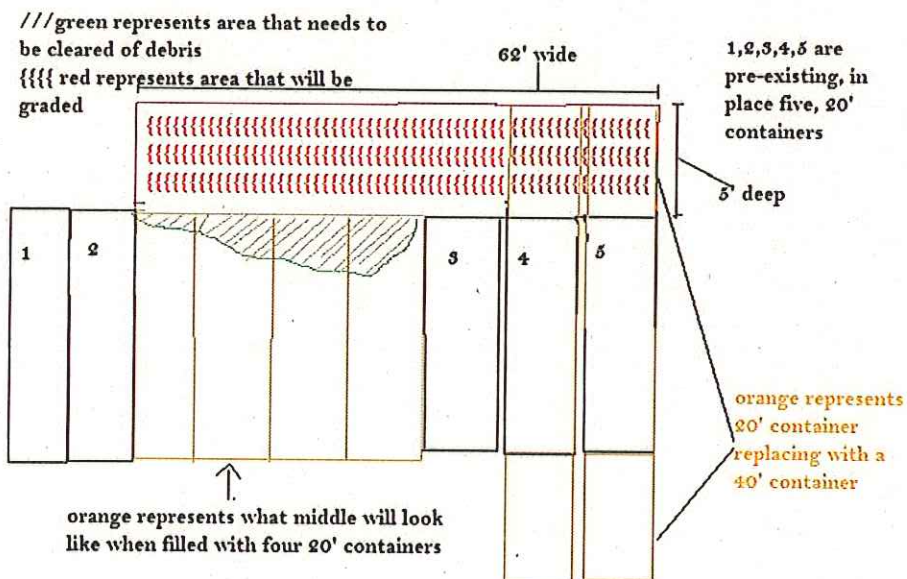
Exhibit G-Improvements

Lessee will grade the area behind the Bandshell parking lot to accommodate for storage containers for their use and the use of Segway rentals. With grading improvements shown below, four additional storage containers, two (2) twenty foot containers and two (2) forty foot containers, will be added to the existing five containers.

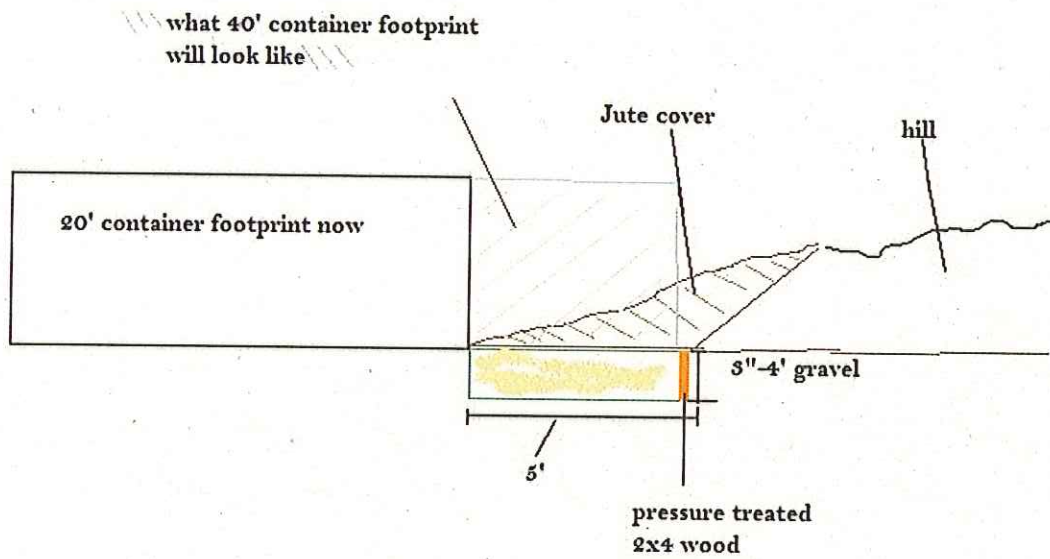


Four additional storage containers to be added.

Grading Specifics (below)



JD

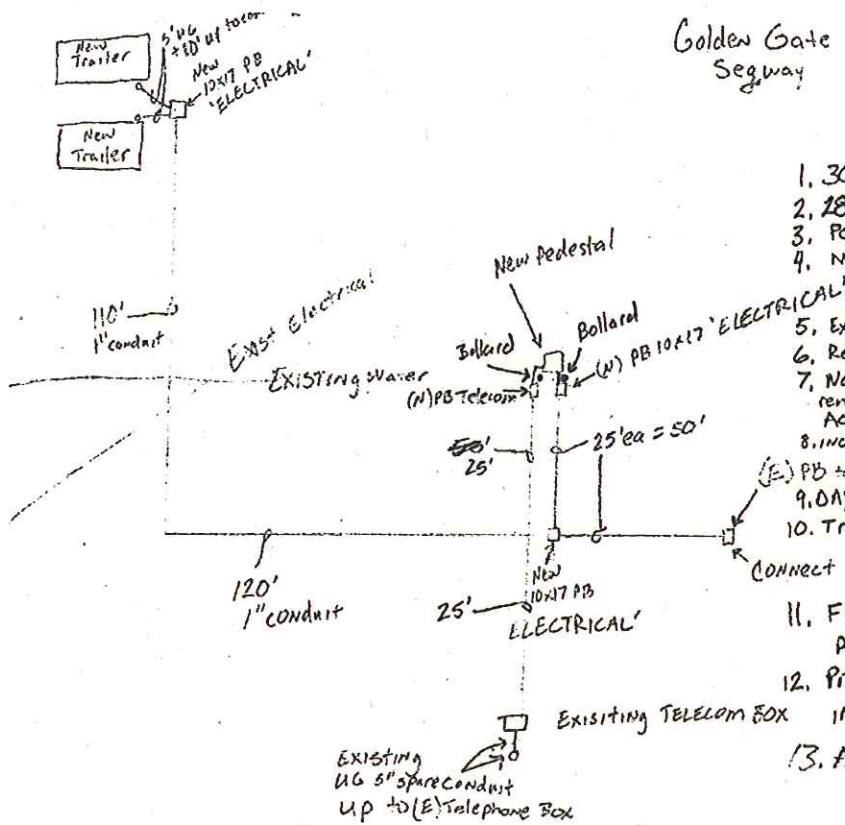


Grading construction will consist of the following:

- Chipping away the asphalt ramps at two containers
- Pulling back storage containers, cut the hill back five feet, smoothing the toe of the hill for even transition.
- Installing 2' X 4' header at the toe of the hill.
- Installing filter fabric and 3" to 4" gravel in new five foot area.
- Installing "Jute" netting on any bare soil areas.

Exhibit H-Electrical Improvements

Golden Gate Park
Segway



Scope

1. 30' - 18" wide trench & backfill
2. 280' - 12" wide trench & backfill
3. Pothole - 4 locations.
4. Meet utility locator
5. Excavate for (6) new 10x17 boxes
6. Remove (1) (E) PB
7. Work is in AC, include sawcut removal, offhaul, backfill & AC patch.
8. include rock to set boxes, (E) PB to be removed + replaced w/ new 10x17
9. DAY WORK
10. Trench plate or barricade
11. F&I install (2) bollards paint yellow
12. Provide PERMITS & INSPECTION.
13. ASSUME NATIVE BACKFILL

WLD

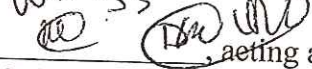
ACTION BY WRITTEN CONSENT
of the
MEMBERS
of
PARKWIDE ACTIVITIES LLC
a California limited liability company

August 17, 2011

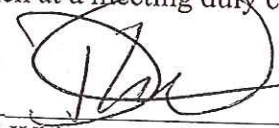
The undersigned, being all the members of the **PARKWIDE ACTIVITIES LLC**, a California limited liability company (the "*Company*"), hereby adopt the following resolutions without a meeting pursuant to Section 17104(i) of the General Corporation Law of California as of the date set forth above:

1. LEASE with CITY AND COUNTY OF SAN FRANCISCO

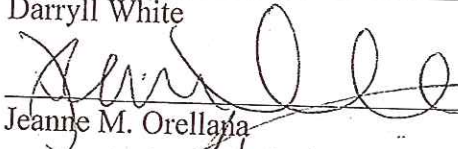
RESOLVED that that certain Lease proposed by and between the City and County of San Francisco (as Lessor) and the Company (as Lessee), a copy of which is attached hereto as Exhibit A (the "*Lease*") be and hereby is agreed and approved by the Company; and

RESOLVED that Jeanne Orellana ^{was SS} , acting alone, be and hereby is authorized and empowered in the name and on behalf of this Company to execute and deliver the Lease and ancillary agreements and instruments thereto and to take such further action on behalf of the Company as that individual may deem necessary or appropriate to effectuate the intent of the foregoing resolution.

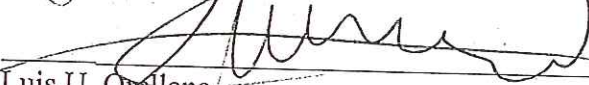
This ACTION BY WRITTEN CONSENT may be signed in counterparts and shall be filed with the minutes of the proceedings of the members of the Company, and the actions taken hereby shall have the same force and effect as if taken at a meeting duly called and held.



Darryll White



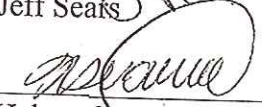
Jeanne M. Orellana



Luis U. Orellana



Jeff Sears



Helena Sears