

File No. 240731

Committee Item No. 1

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date July 17, 2024

Board of Supervisors Meeting Date \_\_\_\_\_

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/> | Motion                                       |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution                                   |
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| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Youth Commission Report                      |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Introduction Form                            |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/> | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Application                                  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Public Correspondence                        |

#### OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Original Lease 6/8/1994</u>  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Amendment No. 1 4/1/2004</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Lease 7/23/2015</u>          |
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Completed by: Brent Jalipa Date July 11, 2024

Completed by: Brent Jalipa Date \_\_\_\_\_

1 [Real Property Lease - Twin Peaks Petroleum, Inc. - 598 Portola Drive - \$156,600 Initial  
2 Annual Base Rent]

3 **Resolution approving and authorizing the Director of Property to enter into a real**  
4 **property lease with Twin Peaks Petroleum, Inc., a California corporation, doing**  
5 **business as Twin Peaks Auto Care, successor-in-interest to Michael Gharib, for**  
6 **approximately 14,499 square feet located at 598 Portola Drive, for an initial term of**  
7 **twenty years with one ten-year option to extend, at an initial base rent of \$156,600 with**  
8 **annual adjustments of three percent thereafter, effective upon approval of this**  
9 **Resolution by the Board of Supervisors and Mayor, and full execution of the Lease;**  
10 **requiring Tenant to complete certain improvements by December 31, 2025, with a**  
11 **waiver of rent up to three months; approving a finding that competitive bidding**  
12 **procedures required under San Francisco Administrative Code, Chapter 23, Section**  
13 **23.33 are impractical; approving a finding that the Premises is exempt surplus land**  
14 **under California Code, Section 54421(f)(1)(B); and authorizing the Director of Property**  
15 **to enter into amendments or modifications to the lease that do not materially increase**  
16 **the obligations or liabilities to the City and are necessary to effectuate the purposes of**  
17 **the lease or this Resolution.**

18  
19 WHEREAS, The Board of Supervisors passed and the Mayor signed Ordinance  
20 No. 279-94 on August 4, 1994, on file with the Clerk of the Board of Supervisors in File  
21 No. 65-94-11, authorizing a lease (“Original Lease”) of 14,499 square feet at 598 Portola  
22 Drive (“Premises”) between the City and County of San Francisco (“Landlord”) and Michael  
23 Gharib, dba Twin Peaks Mobil (“Tenant”) for use as a gasoline service station and related  
24 convenience store and garage; and  
25

1           WHEREAS, The Board of Supervisors passed and the Mayor signed Resolution  
2 No. 364-04 on June 21, 2004, on file with the Clerk of the Board of Supervisors in File  
3 No. 040636, authorizing an extension of the Original Lease through June 30, 2014 (“First  
4 Amendment to Lease,” collectively with the Original Lease, the “Original Lease”); and

5           WHEREAS, The Original Lease became a month-to-month at will lease on June 30,  
6 2014, and Tenant continued to occupy the Premises and conduct business as Twin Peaks  
7 Auto Care; and

8           WHEREAS, The Board of Supervisors passed and the Mayor signed Resolution  
9 No. 394-15 on October 29, 2015, on file with the Clerk of the Board of Supervisors in File  
10 No. 150895, authorizing a new lease of 14,499 square feet at the Premises with the Tenant,  
11 now “Twin Peaks Gas,” for a term of five years with one five-year option to extend the term;  
12 and

13           WHEREAS, On January 7, 2019, Tenant gave timely and proper written notice of his  
14 exercise of the five-year option to extend the term, which commenced on November 1, 2020;  
15 and

16           WHEREAS, Tenant is a local small business which owns the tanks, dispensers, gas  
17 lines and other fixtures and equipment on the Premises; and

18           WHEREAS, On August 3, 2016, Tenant received legacy business status and is on the  
19 Legacy Business Registry under Administrative Code, Section 2A.242(b)(2); and

20           WHEREAS, The City, through its Real Estate Division and with consultation from the  
21 Office of the City Attorney, and Tenant have negotiated the proposed Lease, which provides  
22 an initial Base Rent of \$156,600 per year or \$13,050 per month (\$10.80 per square foot per  
23 year) which is at the opined value for Market Rent based upon a third-party appraisal, with  
24 increases to Base Rent of three percent per year on each anniversary of the commencement  
25 of Lease; and

1           WHEREAS, For the safe operation of the Premises, and to comply with State Codes,  
2 Tenant shall be required to complete replacement of its underground tanks at its expense on  
3 or before December 31, 2025, or the Lease automatically terminates; and

4           WHEREAS, Base Rent may be waived for up to three months during the Tenant’s  
5 underground tank replacement project; and

6           WHEREAS, The City will grant Tenant an additional option to extend the term for 10  
7 years with rent to be at the then Market Rent (as defined in Section 23.2 of the San Francisco  
8 Administrative Code (“Code”), as of the exercise of the option as determined by an  
9 independent Appraisal, as set forth in Section 23.30 of the Code, and subject to three percent  
10 annual increases; and

11           WHEREAS, The Tenant shall be responsible for all utilities and services within the  
12 Premises; and

13           WHEREAS, Due to the Tenant’s long-term occupancy, ownership of the tanks,  
14 dispensaries and other related equipment and fixtures, and legacy business status,  
15 competitive bidding procedures were impractical; and

16           WHEREAS, The Premises is zoned “P – Public” and limited to those uses identified  
17 under Planning Code, Sections 211.1 or 211.2; and

18           WHEREAS, The Premises is owned in fee simple by City and County of San Francisco  
19 (“City”), under the jurisdiction of the Department of Public Health, and it is “exempt surplus  
20 land,” under the State’s Surplus Land Act, as defined in California Government Code, Section  
21 55421(f)(1)(B), because it is less than one-half acre in size and is not contiguous to land  
22 owned by a state or local agency that is used for open-space or low- and moderate-income  
23 housing purposes; now, therefore, be it

24           RESOLVED, That in accordance with the recommendation of the Director of Property,  
25 that the Director of Property on behalf of the City, as Landlord, be and is hereby authorized to

1 take all actions necessary to execute the Lease (a copy of which is on file with the Clerk of the  
2 Board of Supervisors in File No. 240731) at 598 Portola Drive in San Francisco, California;  
3 and, be it

4 FURTHER RESOLVED, That the Director of Property shall be authorized to enter into  
5 any additions, amendments or other modifications to the Lease that the Director of Property  
6 determines, in consultation with the City Attorney, are in the best interests of the City, do not  
7 materially increase the obligations or liabilities of the City, and are necessary or advisable to  
8 complete the transaction and effectuate the purpose and intent of this Resolution; and, be it

9 FURTHER RESOLVED, That the Lease contains language indemnifying and holding  
10 harmless the City from, and agreeing to defend the City against any and all claims, costs and  
11 expenses, including, without limitation, reasonable attorney's fees, incurred as a result of  
12 Tenant's use of the Premises, any default by the Tenant in the performance of any of its  
13 obligations under the Lease or any acts or omissions of Tenant or its agents, in, on or about  
14 the Premises or the property on which the Premises are located, except those claims, costs  
15 and expenses incurred exclusively as a result of active gross negligence or willful misconduct  
16 of City or its agents; and, be it

17 FURTHER RESOLVED, That the Competitive Bidding Procedures would be impractical  
18 in light of the existing zoning limitations and that the Tenant is a successful local small  
19 business which owns the tanks, dispensers, gas lines and other fixtures and equipment on the  
20 Premises, and if not the Tenant, would then remove said improvements from the Premises;  
21 and, be it

22 FURTHER RESOLVED, In consideration of the foregoing, that the Premises is surplus  
23 to the City's needs and not necessary for the Department of Public Health's use, and further  
24 declares it to be "exempt surplus land" under Government Code, Sections 54221(b)(1) and  
25 54221(f)(1)(B); and, be it



<p><b>Item 1</b> <b>File 24-0731</b></p>	<p><b>Department:</b> Real Estate Division (RED)</p>
<p><b>EXECUTIVE SUMMARY</b></p>	
<p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>The proposed resolution would approve a new lease at 598 Portola Drive between the City, as landlord, and Twin Peaks Petroleum, as tenant, for a term of 20 years, commencing upon approval of the Board of Supervisors and Mayor, with initial annual base rent of \$156,600 and three percent annual increases thereafter, and a ten-year option to extend the lease.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>A gasoline service station, with a convenience store and garage, has operated at 598 Portola Drive since 1972, when the Board of Supervisors originally approved a 15-year lease with Mobil Oil. Subsequent leases were also approved by the Board of Supervisors. In October 2020, the Board of Supervisors considered, but did not approve, a 25-year lease with the gas station owner (File 20-0965).</li> <li>The proposed lease has a 20-year initial term to allow the tenant to amortize the \$1.5 million cost of installing new underground storage tanks, as required by State law. Under Section 24 of the proposed lease, Twin Peaks Petroleum will have to replace the underground storage tanks by the end of 2025, otherwise the lease automatically terminates. Under the existing lease, the tenant must remove the tanks and other improvements when the lease ends. The proposed lease adds a requirement that the tenant is responsible for remediating any hazardous materials following removal of the tanks at the end of the lease. The lease also allows the tenant to repurpose the site for alternative fuel sales.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>The proposed lease would increase the annual rent paid by Twin Peaks Petroleum to the City by \$28,758 in the initial year, from \$127,842 to \$156,600. The rent would then increase by three percent annually. Over the initial 20-year term of the lease, the City would receive approximately \$4.2 million in base rent.</li> </ul> <p style="text-align: center;"><b>Policy Consideration</b></p> <ul style="list-style-type: none"> <li>The 598 Portola Drive site contains the only privately-operated gasoline station located on City-owned property. The lease of City property has continued for the past 52 years, or since 1972, without any competitive bidding.</li> <li>If the lease is terminated, according to the Director of Property, it would take approximately two to four years to find a new tenant and redevelop the site, leaving it vacant for that time. During that time, the City may have to fund security at the site.</li> </ul> <p style="text-align: center;"><b>Recommendation</b></p> <ul style="list-style-type: none"> <li>Approval of the proposed resolution is a policy matter for the Board of Supervisors.</li> </ul>	

## MANDATE STATEMENT

City Charter Section 9.118(c) states that any lease of real property for a period of ten or more years, including options to renew, or having anticipated revenue to the City of \$1,000,000 or more, is subject to Board of Supervisors approval.

Administrative Code Section 23.33 states that it is City policy that all leases of real property that are expected to produce more than \$2,500 per month in revenue be awarded in accordance with competitive bidding procedures, unless the Board of Supervisors find such procedures are impractical or impossible.

## BACKGROUND

The City originally acquired the property at 598 Portola Drive near Twin Peaks as part of the Laguna Honda site in the late 1800s. An approximately 15-acre portion of the Laguna Honda site was transferred to the Juvenile Probation Department in 1947 for development of the Youth Guidance Center, while the 598 Portola Drive property was retained by the Department of Public Health.

A gasoline service station, with a convenience store and garage, has operated at 598 Portola Drive since 1972, when the Board of Supervisors originally approved a 15-year lease with Mobil Oil (Resolution 466-72). In 1994, The Board of Supervisors approved a new 10-year lease with Twin Peaks Petroleum, Inc., the successor in interest to Mr. Michael Gharib, who had acquired the Mobil Oil franchise in 1985 (File 65-94-11).<sup>1</sup> The lease included a five-year option to extend, for a total term of 15 years through June 2009. In June 2004, the Board of Supervisors approved an amendment to the 1994 lease, increasing the option term to 10 years, and then exercised the 10-year extension through June 2014, to allow for the amortization of a State-mandated underground fuel tank replacement (File 04-0636). In October 2015, the Board of Supervisors approved a new five-year lease through October 2020, with a five-year option to extend through October 2025 (File 15-0895). In October 2020, the Board of Supervisors considered, but did not approve, a new 25-year lease with the gas station owner (File 20-0965). Other than the original 1972 lease, the leases were all awarded on a sole-source basis.

The Real Estate Division (RED) has negotiated a new 20-year lease with Twin Peaks Petroleum, with a ten-year option to extend, detailed below.

## DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve a new lease at 598 Portola Drive between the City, as landlord, and Twin Peaks Petroleum, as tenant, for a term of 20 years, commencing upon approval of the Board of Supervisors and Mayor, with initial annual base rent of \$156,600 and three percent annual increases thereafter, and a ten-year option to extend the lease. The proposed resolution would also (1) find the competitive bidding procedures required by Chapter

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<sup>1</sup> Records could not be located to account for the seven-year period between expiration of the 1972 lease in 1987 and the authorization of a new lease in 1994.



23.33 of the Administrative Code are impractical, and (2) specifically approve the portion of the lease that would indemnify and hold the City harmless for claims and costs incurred by the tenant’s use of the property as a gas station.

The proposed base rent is consistent with an independent appraisal that was completed in May 2024.<sup>2</sup> Of note, the proposed rent of \$156,600 is less than the \$200,200 lease that was not approved by the Board of Supervisors in October 2020. Since that time, commercial rents have declined citywide.

The key provisions of the existing lease and proposed lease are shown in Table 1 below.

**Exhibit 1: Key Terms of Existing and Proposed Leases**

	<b>Existing Lease</b>	<b>Proposed New Lease</b>
<b>Lease Term</b>	Ten years, from November 2015 through October 2025	20 years, following Board and Mayor approval
<b>Premises</b>	14,499 square feet	14,499 square feet
<b>Options to Extend</b>	No further options to extend	One 10-year option
<b>Initial Annual Base Rent</b>	\$110,920 (currently \$127,842 or \$8.85 per square foot)	\$156,600 (or \$10.80 per square foot)
<b>Rent Adjustment</b>	3% annually	3% annually, Base Rent Reset if Option to Extend is Exercised
<b>Tenant Improvement Allowance</b>	None	None
<b>Utilities and Services</b>	Paid by tenant	Paid by tenant
<b>Underground Storage Tanks</b>	Tenant to remove tanks at lease end, as well as all other improvements	Tenant must replace tanks by December 31, 2025; Tenant to remove tanks at lease end as well as all other improvements; Tenant is responsible for hazardous material remediation following tank removal

Source: Existing and Proposed Leases

**Underground Storage Tank Replacement**

The proposed lease has a 20-year initial term to allow the tenant to amortize the cost of installing new underground storage tanks, as required by State law.<sup>3</sup> According to vendor quotes provided by the gas station owner to the City, the total cost to acquire and install the new tanks is approximately \$1.5 million. Under Section 24 of the proposed lease, Twin Peaks Petroleum will have to replace the underground storage tanks by the end of 2025, otherwise the lease

<sup>2</sup> An appraisal was not required by Administrative Code Section 23.30 because the Real Estate Division determined that the market rate of the site was less than \$45 per square foot. The initial base rent in the proposed lease is \$10.80 per square foot.

<sup>3</sup> Senate Bill (SB) 445 (Stats. 2014, Ch. 547)

automatically terminates. The proposed lease adds a requirement that the tenant is responsible for remediating any hazardous materials following removal of the tanks at the end of the lease.

The prior lease was amended in 2004 to provide for the tenant to replace the underground fuel tank as required by the State and to extend the lease term to amortize the costs of the underground fuel storage tank replacement. According to Real Estate’s discussions with the tenant, the underground fuel tank replacement schedule was extended by the State and now must be replaced by December 31, 2025 in accordance with State requirements.

The site and underground storage tanks are inspected by the San Francisco Department of Public Health, Hazardous Materials and Waste Program. The most recent inspection was on July 18, 2023. The inspection found “minor” violations of State law and required the gas station owner to electronically submit documentation to the State Environmental Reporting System.

The lease also allows the tenant to repurpose the site for alternative fuel sales.

**FISCAL IMPACT**

The proposed lease would increase the annual rent paid by Twin Peaks Petroleum to the City by \$28,758 in the initial year, from \$127,842 to \$156,600. The rent would then increase by three percent annually. Over the initial 20-year term of the lease, the City would receive approximately \$4.2 million in base rent.

**POLICY CONSIDERATION**

**Proposed Sole-Source Lease**

The 598 Portola Drive site contains the only privately-operated gasoline station located on City-owned property. In addition, this lease of City property as a gasoline station, convenience store, and service garage has continued for the past 52 years, or since 1972, without any competitive bidding since the original establishment of the station in 1972 under an initial 15-year lease. Furthermore, the proposed new 20-year lease with one ten-year extension option would be awarded without undergoing a competitive bidding process.

In accordance with Administrative Code Section 23.33, all leases of City real property resulting in more than \$2,500 per month in revenue must be awarded in accordance with competitive bidding procedures, unless such bidding procedures are impractical or impossible. According to the proposed resolution, a competitive bidding process is impractical because the tenant owns all of the equipment at the site.

**Use of City Property**

As noted in the Budget and Legislative Analyst’s 2017 *Performance Audit of the City’s Real Estate Division*, the City does not have an explicit policy for the use of public property for private purposes. As noted in the audit report, “The City does have a policy, codified in Administrative Code Section 23.A, to prioritize the use of surplus City property for development of affordable housing. However, the City has missed opportunities to use City property to better serve the City’s policy priorities.” The audit report noted that “At the time of the lease expiration (for 598 Portola Drive) in June 2014, the City missed the opportunity to reconsider the current property’s

use as a gas station and pursue a mixed-use development that would better conform to the City's housing goals.”

**Risk of Vacant Space**

If the lease is terminated, according to the Director of Property, it would take approximately two to four years to find a new tenant and redevelop the site, leaving it vacant for that time. If the property is sold, the City would have to subdivide the property to create a new parcel. Since the Board last considered leasing this property in 2020, the city's population and commercial rents have both declined, which could make finding a new tenant more difficult at this time.

As we discuss in our report in File 24-0704, the City is funding 24-hour security at a vacant City-owned property at 1515 South Van Ness. The City may also need to do so at this property if it is vacant.

**Policy Decision**

Because the proposed lease was not award as part of a competitive process and other vendors and uses have not been fully considered for the property, the Budget and Legislative Analyst considers approval of the proposed resolution to be a policy matter for the Board of Supervisors.

**RECOMMENDATION**

Approval of the proposed resolution is a policy matter for the Board of Supervisors.

SERVICE STATION SITE LEASE

between

CITY AND COUNTY OF SAN FRANCISCO,  
as Landlord

and

TWIN PEAKS PETROLEUM, INC.,  
a California corporation

dba Twin Peaks Auto Care,

as Tenant

For the lease of  
598 Portola Drive  
San Francisco, California

June 13, 2024

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## SERVICE STATION SITE LEASE

THIS SERVICE STATION SITE LEASE (this “Lease”), dated for reference purposes only as of May 1, 2024, is between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“City”), and TWIN PEAKS PETROLEUM, INC., a California corporation, dba Twin Peaks Auto Care (“Tenant”).

City and Tenant hereby covenant and agree as follows:

### 1. BASIC LEASE INFORMATION

The following is a summary of basic lease information (the “Basic Lease Information”). Each item below incorporates all of the terms in this Lease related to that item. If there is any conflict between the information in this Section and any more specific provision of this Lease, the more specific provision will control.

Lease Reference Date:	June 13, 2024
Landlord:	CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation
Tenant:	TWIN PEAKS PETROLEUM, INC., a California corporation, dba Twin Peaks Auto Care
Real Property ( <u>Section 2.1</u> ):	Portion of Lot 7, Block 2842, San Francisco, California, commonly known as 598 Portola Drive
Rentable Area ( <u>Section 2.1</u> ):	Approximately 14,499 square feet as depicted on attached as <b>Exhibit A</b>
Term ( <u>Section 3.13.1</u> ):	Twenty (20) years, commencing on the Commencement Date, as defined in <u>Section 3.1</u> , and ending on the date immediately preceding the twenty (20th) anniversary of the Commencement Date (the “Expiration Date”).
Extension Option ( <u>Section 25.1</u> ):	Tenant has the option to extend the term of this Lease for one ten (10) year extension period, commencing on the date immediately following the Expiration Date, on the terms and conditions set forth in <u>Section 25.1</u> , and including that Tenant <u>may sell alternative clean fuels consistent with then existing City policies.</u>
Base Rent ( <u>Section 4.1</u> ):	Annual Base Rent: \$156,600 (\$10.80 per sq. ft./year)

Claudia.gorham@sfgov.org

Alternate Contact for City:

Jeff Suess  
[Jeff.suess@sfgov.org](mailto:Jeff.suess@sfgov.org)  
415.554.9850

Tenant's Notice Address (Section 26.1):

Michael Gharib  
598 Portola Drive  
San Francisco, California 94131  
Tel No.: 415-648-4709  
M.Gharib: [c4gharib@yahoo.com](mailto:c4gharib@yahoo.com)

Key Contact for Tenant:

Michael Gharib

Telephone No.:

415-648-4709

Alternate Contact for Tenant:

\_\_\_\_\_

Telephone No.:

\_\_\_\_\_

Brokers (Section 26.8):

None

Other Noteworthy Provisions:  
Underground Storage Tanks (Section 24.4)

Tenant must have completed the removal of the existing underground Tanks and replace with new code compliant tanks on or before December 31, 2025. Tenant's failure to have completed the removal of the underground fuel tanks on or before December 31, 2025, will cause this Lease to automatically terminate at 11:59 p.m. on December 31, 2025 (unless written approval from the applicable permitting agencies for a specific extension has been granted). Tenant must remove the Tanks (as defined in Section 24.4) from the Property at the expiration or termination of the Lease.

## 2. PROPERTY; AS IS CONDITION

### 2.1. Leased Property

City owns real property currently designated as a portion of Assessor's Parcel Number 2842-007 in San Francisco, California (the "City Parcel"). Subject to the provisions of this Lease, City leases to Tenant and Tenant leases from City a portion of the City Parcel commonly known as 598 Portola Drive and depicted on the attached Exhibit A (the "Land"), together with and all improvements that are not Trade Fixtures (defined below) (including without limitation all Buildings, driveways, parking areas, curbs, walks, walls, stairs, now located or later constructed



## **2.4. Energy Consumption Disclosure**

Tenant consents to Tenant's utility service providers disclosing energy use data for the Property to City for use under California Public Resources Code Section 25402.10, as implemented under California Code of Regulations Sections 1680–1685, and San Francisco Environment Code Chapter 20, as each may be amended from time to time (“**Energy Consumption Reporting Laws**”), and for such data to be publicly disclosed under the Energy Consumption Reporting Laws.

## **3. TERM**

### **3.1. Lease Term**

The Property is leased for a term (the “**Term**”) commencing on the Effective Date (defined in Section 26.26 below) (the “**Commencement Date**”). The Term will end on the expiration date specified in the Basic Lease Information, unless sooner terminated or extended as provided in this Lease.

### **3.2. Confirmation of Commencement Date and Expiration Date**

The dates that the Term commences and terminates under this Lease are, respectively, the “**Commencement Date**” and the “**Expiration Date**.” Following the Commencement Date, Tenant will deliver to City a notice substantially in the form attached as **Exhibit B**, confirming the actual Commencement Date, but Tenant's failure to do so will not affect the commencement of the Term.

### **3.3. Termination of 2015 Lease; Survival of Indemnities**

Landlord and Tenant acknowledge that Tenant is presently in possession of the Property under the Service Station Site Lease between City and Tenant dated for reference purposes as of July 23, 2015 (the “**2015 Lease**”). Notwithstanding any provisions of the 2015 Lease to the contrary, the 2015 Lease will terminate as of the Effective Date of this Lease; provided, however, that Tenant will not be relieved on any of its obligations under the 2015 Lease accruing before that termination of the 2015 Lease, and Tenant's indemnification obligations under the 2015 Lease will survive the termination of the 2015 Lease with regard to events occurring before the termination, and the provisions of the Section 3.3 of the 2015 Lease will survive the termination of the 2015 Lease.

## **4. RENT**

### **4.1. Base Rent**

Throughout the Term beginning on the Commencement Date, Tenant will pay to City the annual Base Rent specified in the Basic Lease Information, which will increase three percent (3%) annually under Section 4.2 (Adjustments in Base Rent) (the “**Base Rent**”). The Base Rent will be paid to City in advance, without prior demand and without any deduction, setoff, or counterclaim whatsoever, in equal consecutive monthly payments on or before the first day of the Term and on or before the first day of each month thereafter. All sums payable by Tenant to City must be paid in cash or by good funds to the City and County of San Francisco in care of the Director of Property at the primary address for City specified in the Basic Lease Information, or such other place as City may designate in writing. If Tenant pays by personal or business check and the check is not honored, then City may require Tenant to make all future payments in cash or by cashier's check.

approved by City in writing and that are associated and related to the above stated uses. Tenant acknowledges that the prohibition on the change in use under this Section is expressly authorized by California Civil Code Section 1997.230 and is fully enforceable.

### **5.2. No Unlawful Uses, Nuisances or Waste**

Without limiting the foregoing, Tenant may not use, occupy, or permit the use or occupancy of any of the Property in a manner that would violate any Legal Requirements or for any illegal purpose, or permit any offensive, noisy, or hazardous use or any waste on or about the Property, but the foregoing does not prohibit the Permitted Use of the Property. Tenant will take all precautions to eliminate any nuisances or hazards relating to its activities on or about the Property.

## **6. TENANT IMPROVEMENTS**

### **6.1. Tenant Improvement Work**

(a) Tenant has informed City of its intention to replace the Tanks before December 31, 2025 (“**Tenant Improvement Work**” or “**Tenant Improvements**”). Before beginning construction on the Tenant Improvements, Tenant will provide the Director of Property the plans and specifications prepared by Tenant’s consultants, engineers, and architect for removal of the existing tanks, removal and appropriate disposal of any contaminated concrete, asphalt, soil, or other materials, and the construction and installation of the Tenant Improvements (the plans and specifications are referred to as the “**Plans**”) for City’s approval, which approval may not be unreasonably withheld or delayed. Tenant is responsible, at no cost to City, for (a) performing the Tenant Improvement Work in accordance with the approved Plans and the standards contained in Section 7.1 (Tenant’s Alterations) below and (b) obtaining all permits and licenses required in connection with the Tenant Improvements. No Tenant Improvement Work may commence on the Property unless after the Effective Date of this Lease. Tenant may not make any material change to the approved Plans or consent to any change order during the course of construction without first obtaining City’s written approval, which approval may not be unreasonably withheld or delayed. On completion of the Tenant Improvements, Tenant will provide City a copy of the final as-built plans and specifications. Tenant acknowledges that City’s approval under this Section 6.1 shall be in its proprietary capacity as owner of the Property and not in City’s regulatory capacity. No approval by City or any of its Agents of the Plans, any changes, or of any Alterations under this Lease will be deemed to constitute approval of any federal, state, or local regulatory authority with jurisdiction over the Property or Tenant’s use of the Property, and nothing in this Lease limits Tenant’s obligation to obtain all needed regulatory approvals at no cost to City.

(b) Upon receipt of written notice of the date of the full closure (subject to the exception in Section 6.1(c)) of business at the Property (including the convenience store, gas station (all dispensers) and any and all other revenue sources on the Property) to perform the Tenant Improvement Work (underground storage tank replacement), City will waive Tenant’s Base Rent (not Additional Charges) while the business is fully closed for the performance of the Tenant Improvement Work, not to exceed three (3) months (“**Tenant Improvement Abatement Period**”). Notwithstanding any contrary provision contained herein, under no circumstances will the Tenant Improvement Abatement Period exceed three (3) months.

(c) Notwithstanding the provisions of Section 6.1(b), Tenant may, at Tenant’s sole discretion, maintain the vehicle repair facility and convenience store in operation during the

Subcontractor in accordance with San Francisco Administrative Code Section 23.61. Tenant's failure to comply with its obligations under this Section will constitute a material breach of this Lease. A Contractor's or Subcontractor's failure to comply with this Section will enable City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party. For the current Prevailing Rate of Wages, see [www.sfgov.org/olse](http://www.sfgov.org/olse) or call City's Office of Labor Standards Enforcement at 415-554-6235.

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

## 7. ALTERATIONS

### 7.1. Tenant's Alterations

(a) **General.** Tenant will not make or permit any alterations, installations, additions, or improvements, structural or otherwise (collectively, "**Alterations**") (i) in, to or about the Property (ii) to the Buildings or (iii) to the heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security, and other mechanical, electrical, or communications systems of the Buildings or at the Property ("**Systems**"), without City's prior written consent in each instance. All Alterations will be done at Tenant's expense in accordance with plans and specifications approved by City, only by duly licensed and bonded contractors or mechanics approved by City, and subject to any conditions that City may reasonably impose. With respect to any Alterations that would be visible from the exterior of any Buildings, Tenant will obtain the prior written approval of City's Arts Commission to the extent the Arts Commission has jurisdiction over the design of the proposed alterations under City's Charter Section 5.103. If the cost of any Alterations is in excess of Five Thousand Dollars (\$5,000), then Tenant will pay to City an administrative fee equal to ten percent (10%) of the total "hard" costs of the work to compensate City for its review costs. Notwithstanding anything to the contrary in this Lease, City will not require an administrative fee for the Tenant Improvements of the underground storage tanks under Section 6.1.

(b) **Asbestos.** Without limiting Section 24.2 (No Hazardous Materials) below, if it is determined that asbestos-containing materials ("**ACM**") exist in or about the Property, Tenant will ensure that all Alterations and any asbestos-related work, as defined in California Health & Safety Code Section 25914.1(b), is performed in compliance with all Legal Requirements relating to asbestos, including California Occupational Safety and Health (OSHA) regulations found in Title 8 of the California Code of Regulations, Sections 1502 and 1529. Additionally, Tenant will distribute notifications to all employees and contractors as required under California Health & Safety Code Section 25915 et seq. informing them of the existence of ACM and that moving, drilling, boring, or otherwise disturbing ACM may present a health risk and should not be attempted by an unqualified employee. No Alterations affecting ACM-containing areas or any asbestos related work may be performed without City's prior written consent in each instance.

Tenant will pay any taxes or other impositions levied or assessed on Tenant's Personal Property, at least ten (10) days before delinquency, and, on request, deliver satisfactory evidence of that payment to City.

## **8. TENANT'S REPAIRS AND MAINTENANCE**

At no expense to City, Tenant will maintain (including replacements as necessary) the Property and all improvements, Buildings, interior and exterior plumbing, electrical wiring, fixtures, equipment, and Trade Fixtures in good repair and working order and in a clean, secure, safe, and sanitary condition. Tenant will promptly make all repairs and replacements: **(a)** at no cost to City, **(b)** by licensed contractors or qualified mechanics approved by City, **(c)** so that the repairs and replacements will be at least equal in quality, value, and utility to the original work or installation at the time of the repair or replacement, and **(d)** in accordance with all applicable Legal Requirements. Tenant hereby waives all rights to make repairs at City's expense under Sections 1941 and 1942 of the California Civil Code or under any similar Legal Requirements. Tenant will give to City at least fifteen (15) days' prior written notice of commencement of any repair, replacement, or construction on the Property. Replacements costing over \$5,000 will be considered an Alteration and Article 7 above will apply. For the avoidance of doubt, Landlord has no repair, maintenance, replacement, or rebuilding obligations for the Property; all repairs, maintenance, replacements, or rebuilding of any kind are the obligations of Tenant as provided under the terms and conditions of this Lease.

## **9. LIENS AND ENCUMBRANCES**

### **9.1. Liens**

Tenant will keep the Property free from any liens arising out of any work performed, material furnished, or obligations incurred by or for Tenant. If, within fifteen (15) days after the imposition of any lien, Tenant does not cause the lien to be released of record by payment or posting a bond, then, in addition to all other remedies, City may, but is not obligated to, cause the lien to be released in any way it deems proper, including payment of the claim giving rise to the lien. All sums paid by City and all expenses incurred by it in connection with releasing the lien (including reasonable attorneys' fees) will be payable by Tenant to City on demand. City may post on the Property any notices that City may deem proper for the protection of City, the Property, and the Building from mechanics' and material supplier's liens. Tenant will indemnify, defend, and hold City and its Agents harmless from and against any claims for mechanic's, material supplier's, or other liens in connection with any Alterations, repairs, or construction on the Property, or materials furnished or obligations incurred by or for Tenant.

### **9.2. Encumbrances**

Tenant may not create, permit, or suffer any liens or encumbrances affecting any portion of the Property or City's interest in the Property or under this Lease.

## **10. UTILITIES AND SERVICES**

### **10.1. Utilities and Services**

At no cost to City, Tenant will be responsible for making all arrangements for and pay, as the same become due, all charges, costs, bills and expenses for water, gas, electricity, sewer, telephone, cable, internet, and all other services and utilities of whatever kind, furnished to or used

effect, collectively “**Legal Requirements**”) relating to the Property or the use or occupancy of the Property and with any and all recorded covenants, conditions, and restrictions affecting all or any portion of the Property, whether in effect at the time of the execution of this Lease or adopted or recorded at any time later and whether or not they were considered by the parties in negotiating this Lease. It is Tenant’s obligation, at no cost to City, to cause the Property and Tenant’s uses thereof to be conducted in compliance with the Americans With Disabilities Act, 42 U.S.C. Section 12101 et seq. and any other applicable disability access Legal Requirements. Any Alteration made by or on behalf of Tenant under the provisions of this Section will comply with the provisions of Section 8 (Tenant’s Repairs) above. Tenant’s obligation to comply with all Legal Requirements is a material part of the bargained-for consideration under this Lease. Tenant’s obligation under this Section includes its responsibility to make substantial or structural repairs and Alterations to the Property (including, but not limited to, Buildings, Systems, and any of the Tenant Improvements or any of Tenant’s Alterations), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term, the relative benefit of the repairs to Tenant or City, the degree to which the curative action may interfere with Tenant’s use or enjoyment of the Property, the likelihood that the parties contemplated the particular Legal Requirements involved, and whether the Legal Requirements involved are related to Tenant’s particular use of the Property.

### **11.2. Regulatory Approvals**

(a) **Responsible Party.** Tenant’s use of the Property and construction of the Tenant Improvements permitted hereunder may require authorizations, approvals, or permits from governmental regulatory agencies with jurisdiction over the Property and/or use. Tenant is solely responsible for obtaining all regulatory approvals. Tenant may not seek any regulatory approval without first obtaining City’s written consent which may not be unreasonably withheld. Tenant will bear all costs associated with applying for and obtaining any regulatory approval and is solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval; provided, however, any condition that could affect use or occupancy of the Property or City’s interest in the Property will first be approved by City in its sole discretion. Tenant will immediately pay and discharge any fines or penalties levied as a result of Tenant’s failure to comply with the terms and conditions of any regulatory approval, and City will have no liability, monetary or otherwise, for any fines or penalties. Tenant will Indemnify City and the other Indemnified Parties (defined in Section 18.2 (Tenant’s Indemnity) below) against all Claims arising in connection with Tenant’s failure to obtain or failure by Tenant, its Agents, or its Invitees to comply with the terms and conditions of any regulatory approval.

(b) **City Acting as Owner of Real Property.** City is entering into this Lease in its capacity as a property owner with a proprietary interest in the Property and not as a regulatory agency with police powers. Nothing in this Lease will limit in any way Tenant’s obligation to obtain any required approvals from City officials, departments, boards, agencies, commissions, or other body having jurisdiction over the Property or use. By entering into this Lease, City is not modifying or limiting Tenant’s obligation to cause the Property to be used and occupied in accordance with all applicable Legal Requirements.

### **11.3. Compliance with City’s Risk Management Requirements**

Tenant will not do anything, or permit anything to be done, in or about the Property that would be prohibited by or increase rates under a standard form fire insurance policy for the

causing the damage or destruction to the extent attributable to the Rent payable to City under this Lease for the duration of the damage or destruction.

(d) If Tenant elects to restore the improvements, all of the provisions of Sections 6 and 7 apply.

(e) Notwithstanding anything to the contrary in this Lease, City will have no obligation to repair the Property, or any portion of it, including, but not limited to any Buildings or improvements at any time. City will never be required to repair any damage to Tenant's Personal Property, Trade Fixtures, or any Tenant Improvements or Alterations installed or made on the Property.

#### **14.2. Obligations Upon Election to Terminate**

If Tenant elects to terminate this Lease pursuant to Section 14.1 above, Tenant will raze the remainder of the improvements on the Property, remove all Buildings and all Trade Fixtures, including, but not limited to, underground and above ground tanks, Tanks, dispensers, canopies, underground gas lines, and fixtures, and surrender the Property to the City vacant of all improvements, fixtures, and Personal Property and otherwise in the condition required by this Lease.

#### **14.3. Use of Insurance Proceeds**

(a) Restoration of Demolition and Removal. All Property related insurance proceeds paid to Tenant by reason of damage to or destruction of any improvements on the Property, if any, must be used by Tenant for the repair or rebuilding of such improvements or for demolition and removal of such improvements, except otherwise approved and agreed to in writing by the City.

(b) Payment to Trustee. At City's election, any insurer paying compensation under any Property related insurance carried in connection with the Property will pay the proceeds to a trustee (which will be a bank or trust company having an office in San Francisco, designated by City within thirty (30) days after receipt of the Casualty Notice by City). However, the trustee will pay to Tenant, from time to time as the work of restoration or demolition and removal progresses, in amounts designated by certification by architects licensed to do business in the State, showing the application for those amounts as payment for the restoration or, in the case of demolition and removal, by certification of a licensed, bonded general contractor approved or certified by the applicable regulating agencies.

(c) Excess to Be Paid to Tenant. Provided that no Event of Default then exists, any proceeds in excess of the amount needed to complete the restoration or demolition received from insurance remaining with the trustee after the completion of such restoration or completion of the demolition and removal as required by this Article will be paid to Tenant.

#### **14.4. No Release of Tenant's Obligations**

No damage to or destruction of the Property or improvements or any part thereof by fire or any other cause shall permit Tenant to surrender this Lease or relieve Tenant from any obligations, including but not limited to, the obligation to pay Rent, except as otherwise expressly provided in this Lease.

if Tenant agrees to, and does, pay full Rent, without abatement, and otherwise agrees to, and does, fully perform all of its obligations under this Lease.

(b) Either party electing to terminate under the provisions of this Section 15 will do so by giving written notice to the other party before or within thirty (30) days after the Date of Taking, and this Lease will terminate on the later of the thirtieth (30th) day after the written notice is given or the Date of Taking.

#### **15.5. Termination of Lease; Rent and Award**

On termination of this Lease in its entirety under Section 15.3 (Total Taking; Automatic Termination), or under an election under Section 15.4 (Partial Taking, Election to Terminate) above, then: (a) Tenant's obligation to pay Rent will continue only up to date of termination, and (b) City will be entitled to the entire Award (including any portion of the Award made for the value of the leasehold estate created by this Lease) except for that portion of the Award specifically allocated to any Improvements Pertaining to the Realty. Tenant will have no claim against City for the value of any unexpired Term, but Tenant may make a separate claim with the condemnor for Tenant's relocation expenses, the interruption of or damage to Tenant's business, and damage to movable Tenant's Personal Property, and Tenant will be entitled to that separate Award.

#### **15.6. Partial Taking; Continuation of Lease**

If there is a partial Taking of the Property and this Lease is not terminated in its entirety under Section 15.4 (Partial Taking; Election to Terminate), then this Lease will terminate as to the portion of the Property taken, but will remain in full force and effect as to the portion not taken, and the rights and obligations of the parties will be as follows: (a) Base Rent will be reduced by an amount that is in the same ratio to the Base Rent as the area of the Property taken bears to the area of the Property before the Date of Taking; provided, that in no event will the monthly Base Rent be reduced to less than seventy-five percent (75%) of the monthly Base Rent immediately before the Date of Taking, and (b) City will be entitled to the entire Award (including any portion of the Award made for the value of the leasehold estate created by this Lease) except for that portion of the Award specifically allocated to any Improvements Pertaining to the Realty or Tenant's Trade Fixtures. Tenant will have no claim against City for the value of any unexpired Term, but Tenant may make a separate claim with the condemnor for Tenant's relocation expenses, the interruption of or damage to Tenant's business, and damage to movable Tenant's Personal Property damaged or taken within that portion of the Property taken, and Tenant will be entitled to that separate Award.

#### **15.7. Temporary Takings**

Notwithstanding anything to contrary in this Section, if there is a Taking of all or any part of the Property for less than sixty (60) consecutive days, then (a) this Lease will not be affected by the temporary Taking; (b) Tenant will continue to pay Rent and perform all of the terms, conditions, and covenants of this Lease; (c) Tenant will be entitled to receive that portion of any Award for the use or occupancy of the Property up to the total Rent owing by Tenant for the period of the Taking; and (d) City will be entitled to receive the balance, if any, of the Award.

amount proportionate to the portion of the Property subject to a Sublease) will be paid to City, after Tenant has recovered any reasonable brokers' commissions, the reasonable cost of any leasehold improvements that Tenant has incurred in connection with the Sublease or Assignment, and additional expenses borne by Tenant arising directly from the Sublease or Assignment (including but not limited to, additional permits or governmental, utility, or other transfer fees), if any. Tenant will provide City with any information regarding the proposed Transferee and the Assignment or Sublease as City may reasonably request. City will not unreasonably withhold its approval of any proposed Transferee. If Tenant does not enter into the Assignment or Sublease within ninety (90) days, then Tenant will submit a new Notice of Proposed Transfer for any Assignment or Sublease.

(c) Notwithstanding the foregoing, if any Event of Default by Tenant has occurred and is continuing at the time of Tenant's Notice of Proposed Transfer (or if any event occurs that, with the giving of notice or the passage of time or both, would constitute an Event of Default), then City may elect by notice to Tenant to refuse to consent to Tenant's proposed Transfer and pursue any of its right or remedies or at law or in equity.

#### **16.4. Intentionally Omitted.**

#### **16.5. Effect of Sublease or Assignment**

No Sublease or Assignment by Tenant or any consent by City will relieve Tenant, or any guarantor, of any obligation to be performed by Tenant under this Lease. Any Sublease or Assignment not in compliance with this Section will be void and, at City's option, will constitute a material default by Tenant under this Lease. City's acceptance of any Base Rent or other payments from a proposed Transferee will not constitute City's consent to any Sublease or Assignment or a recognition of any Transferee, or City's waiver of any failure of Tenant or other transferor to comply with this Section. If there is an Assignment or Sublease, whether in violation of or in compliance with this Section, and a Transferee or any successor of Tenant defaults in the performance or observance of any of the terms of this Lease or any Sublease or Assignment agreement, City may proceed directly against Tenant without the necessity of exhausting remedies against the Transferee or successor.

#### **16.6. Assumption by Transferee**

Each Transferee (other than City) will assume all obligations of Tenant under this Lease and will be liable jointly and severally with Tenant for the payment of the Rent, and for the performance of all of Tenant's obligations under this Lease. No Assignment will be binding on City unless Tenant or Transferee has delivered to City a counterpart of the Assignment and an instrument in recordable form that contains a covenant of assumption by the Transferee satisfactory in form and substance to City. Transferee's failure or refusal under an Assignment to execute the instrument of assumption, however, will not release the Transferee from its liability under this Lease, as set forth above. Tenant will reimburse City on demand for any reasonable costs that may be incurred by City in connection with any proposed Sublease or Assignment, including the costs of making investigations as to the acceptability of the proposed Transferee and legal costs incurred in connection with the granting of any requested consent, which amount shall be up to \$3,000.00 and supported by documentation.



(a) City may terminate Tenant's right to possession of the Property at any time by written notice to Tenant. Tenant expressly acknowledges that in the absence of a written notice from City, no other act of City, including its re-entry into the Property, its efforts to relet the Property, its reletting of the Property for Tenant's account, its storage of Tenant's Personal Property and trade fixtures, its acceptance of keys to the Property from Tenant, its appointment of a receiver, or its exercise of any other rights and remedies under this Section or otherwise under Legal Requirements, will constitute an acceptance of Tenant's surrender of the Property or constitute a termination of this Lease or of Tenant's right to possession of the Property.

(b) On a written termination of Tenant's right to possession of the Property, this Lease will terminate and City will be entitled to recover damages from Tenant as provided in California Civil Code Section 1951.2 or any other applicable existing or future Legal Requirement providing for recovery of damages for a breach, including the following:

(i) The reasonable cost of recovering the Property; plus

(ii) The reasonable cost of removing Tenant's Alterations, trade fixtures, and improvements; plus

(iii) All unpaid Rent due or earned under this Lease before the date of termination, less the proceeds of any reletting or any rental received from subtenants before the date of termination, together with interest at the Interest Rate, on those amounts from the date the Rent is due and payable until the date of the award of damages; plus

(iv) The amount by which the Rent which would be payable by Tenant under this Lease, as reasonably estimated by City, from the date of termination until the date of the award of damages, exceeds the amount of the rental loss that Tenant proves could have been reasonably avoided, together with interest at the Interest Rate on those amounts from the date the Rent is due and payable until the date of the award of damages; plus

(v) The amount by which the Rent which would be payable by Tenant under this Lease, as reasonably estimated by City, for the remainder of the Term, after the date of the award of damages exceeds the amount the rental loss that Tenant proves could have been reasonably avoided, discounted at the discount rate published by the Federal Reserve bank of San Francisco for member banks at the time of the award plus one percent (1%); plus

(vi) Other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable Legal Requirements, including any other amount necessary to compensate City for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease that, in the ordinary course of things, would be likely to result therefrom.

(c) City has the remedy described in California Civil Code Section 1951.4 (a landlord may continue the lease in effect after the tenant's breach and abandonment and recover rent as it becomes due, if the tenant has the right to sublet and assign subject only to reasonable limitations), and may continue this Lease in full force and effect and may enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due. After the occurrence of an Event of Default, City may enter the Property without terminating this Lease and sublet all or any part of the Property for Tenant's account to any person, for a term (which may be a period beyond the remaining Term), at rents, and on other terms and conditions that City deems advisable. If City sublets, rents received by City from the subletting will be applied (i) first, to the

#### **17.4. City's Right to Cure Tenant's Defaults**

If Tenant defaults in the performance of any of its obligations under this Lease, then, at City's sole option, City may (but shall not have the obligation to) remedy the default for Tenant's account and at Tenant's expense by providing Tenant with three (3) business days' prior written or oral notice of City's intention to cure the default (except that no prior notice will be required in the event of an emergency as determined by City). No City action to cure Tenant's default will be construed as a waiver of Tenant's default or any of City's rights or remedies, and nothing in this Section implies any duty on City to do any act that Tenant is obligated to perform. Tenant will pay to City on thirty (30) days' written demand, as Additional Charges, all costs, damages, expenses, or liabilities incurred by City, including reasonable attorneys' fees, in remedying or attempting to remedy the default so long as the City provides documents reasonably supporting such Additional Charges. Tenant's obligations under this Section will survive the expiration or termination of this Lease.

### **18. WAIVER OF CLAIMS; INDEMNIFICATION**

#### **18.1. Limitation on City's Liability; Waiver of Claims**

City will not be responsible for or liable to Tenant, and Tenant hereby assumes the risk of, and waives and releases City and its Agents from all Claims for any injury, loss, or damage to any person or property in or on the Property by or from any cause whatsoever including: **(a)** any act or omission of persons occupying adjoining premises or any part of the Building adjacent to or connected with the Property; **(b)** theft; **(c)** explosion, fire, steam, oil, electricity, water, gas, rain, pollution, or contamination; **(d)** stopped, leaking, or defective Systems; **(e)** Building defects; and **(f)** any other acts, omissions, or causes. Nothing in this Section will relieve City from liability caused solely and directly by the active gross negligence or willful misconduct of City or its Agents, but City will not be liable under any circumstances for any consequential, incidental, or punitive damages.

#### **18.2. Tenant's Indemnity**

Tenant, on behalf of itself and its successors and assigns, will indemnify, defend, and hold harmless ("**Indemnify**") City, including all of its boards, commissions, departments, agencies, and other subdivisions, and all of its and their Agents, and their respective heirs, legal representatives, successors, and assigns (individually and collectively, the "**Indemnified Parties**"), and each of them, from and against all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties, and expenses, including direct and vicarious liability of every kind (collectively, "**Claims**"), incurred in connection with or arising in whole or in part from: **(a)** any accident, injury to or death of a person (including Tenant's employees), or loss of or damage to property, howsoever or by whomsoever caused, occurring in or on the Property; **(b)** any default by Tenant in the observation or performance of any of the terms, covenants, or conditions of this Lease to be observed or performed on Tenant's part; **(c)** the use or occupancy or manner of use or occupancy of the Property by Tenant, its Agents, its Invitees, or any person or entity claiming through or under any of them; **(d)** the condition of the Property; **(e)** any construction or other work undertaken by Tenant on the Property whether before or during the Term; or **(f)** any acts, omissions, or negligence of Tenant, its Agents, or its Invitees, in, on, or on the Property, all regardless of the active or passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that the Indemnity is void or otherwise unenforceable under applicable Legal Requirements and further except only those

(vii) Business interruption insurance insuring that the Rent will be paid to City for a period of at least one (1) year if Tenant is unable to operate its business at the Property. Business Interruption Insurance will also cover business interruptions due to failures or interruptions in telecommunications services, strikes, employee lockouts, riots, or other civil commotion. To calculate Rent during any interruption of business, the Rent for the twelve (12)-month period immediately preceding the incident causing the business interruption will be used.

(viii) Other insurance as is generally required by commercial owners of similar businesses and Property similar in size and location and uses, as may change from time to time.

(ix) Licensed professionals (i.e., architects, engineers, certified public accountants, etc.) will provide professional liability insurance with limits not less than \$1,000,000 each claim with respect to negligent acts, errors, or omissions in connection with professional services to be provided under this Lease or to the Premises, provided the requirements of Section 19.1(d) will not apply to such insurance.

(b) If any of the required insurance is provided under a claims-made form, Tenant will maintain the coverage continuously throughout the Term and, without lapse, for a period of three (3) years beyond the expiration or termination of this Lease, to the effect that, if occurrences during the Term give rise to claims made after expiration or termination of this Lease, those claims will be covered by the claims-made policies. Tenant's obligations under this Section will survive the expiration or termination of this Lease.

(c) If any of the required insurance is 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 the general annual aggregate limit, the general aggregate limit will be double the occurrence or claims limits specified above.

(d) All liability insurance policies will be endorsed to provide the following:

(i) Name as additional insured the City and County of San Francisco, its officers, agents, and employees.

(ii) That the 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.

(e) Each insurance policy required under Section 19.1 (a) above will be issued by an insurance company licensed in the State of California and with a general policyholders' rating of "A-" or better and a financial size ranking of "Class VIII" or higher in the most recent edition of Best's Insurance Guide.

(f) All insurance policies required to be maintained by Tenant will be endorsed to provide thirty (30) days' prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to both Tenant and City. If Tenant's insurer refuses to offer this endorsement, Tenant will promptly provide the thirty (30) day's prior written notice of cancellation, intended non-renewal, or reduction in coverage to City. Notice to City will be mailed to the addresses for City set forth in the Basic Lease Information.

endorsements from applicable insurance carriers issuing policies relating to the Building or the Property; provided, the failure to obtain the endorsement will not affect the above waiver.

## **20. ACCESS BY CITY**

City reserves for itself and any of its designated Agents the right to enter the Property as follows: **(a)** on a regular basis without advance notice to supply any necessary or agreed-upon service provided by City under this Lease; **(b)** on an occasional basis, at all reasonable times after giving Tenant reasonable 24 hours' advance written or oral notice, to show the Premises to prospective tenants or other interested parties; to post notices of non-responsibility; to conduct any environmental audit of Tenant's use of the Property; to repair, alter, or improve any of the Property; and for any other lawful purpose; and **(c)** on an emergency basis without notice whenever City believes that emergency access is required. City will have the right to use any means that it deems proper to open doors in an emergency to obtain access to any part of any improvement or Structure on the Property, and that entry will not be construed or deemed to be a forcible or unlawful entry into or a detainer of the Property, or an eviction, actual or constructive, of Tenant from the Property or any portion of the Property. Tenant will not alter any lock or install any new or additional locking devices without City's prior written consent. All locks installed in the Property will be keyed to the Building master key system, and City will at all times have a key with which to unlock all doors in the Property (excluding Tenant's vaults, safes, or special security areas, if any, designated by Tenant in writing to City).

## **21. CERTIFICATES**

### **21.1. Tenant's Estoppel Certificates**

At any time and from time to time on not less than ten (10) days' prior notice from City, Tenant will execute and deliver to City or to any party designated by City a certificate stating: **(a)** that Tenant has accepted the Property, **(b)** the Commencement Date and Expiration Date of this Lease, **(c)** 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), **(d)** whether or not there are then existing any defenses against the enforcement of any of Tenant's obligations under this Lease (and if so, specifying the same), **(e)** whether or not there are any defaults then existing under this Lease (and if so specifying the same), **(f)** the dates, if any, to which the Base Rent and Additional Charges have been paid, and **(g)** any other information that may be required.

### **21.2. City's Certificates**

At any time and from time to time on not less than ten (10) days' prior notice from Tenant, City will execute and deliver to Tenant or to any party designated by Tenant a certificate stating: **(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)** whether or not there are any known defaults then existing under this Lease (and if so specifying the same), and **(d)** the dates, if any, to which the Base Rent and Additional Charges have been paid.

### **23.2. Personal Property**

At City's option, any items of Tenant's Personal Property remaining in the Property after the Expiration Date or sooner termination of this Lease may be deemed abandoned and disposed of in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by Legal Requirements.

### **23.3. Survival of Tenant's Obligations**

Tenant's obligations under this Section shall survive the Expiration Date or other termination of this Lease.

### **23.4. Quitclaim Deed**

Concurrently with the surrender of the Property, Tenant will, if requested by City, execute, acknowledge and deliver to City a quitclaim deed to the Property and any other instrument reasonably requested by City to evidence or otherwise effect the termination of Tenant's leasehold estate and to effect such transfer or vesting of title to any improvements or equipment that remain part of the Property. The terms of this Section shall survive the expiration or sooner termination of this Lease.

## **24. HAZARDOUS MATERIALS**

### **24.1. Definitions**

As used in this Lease:

(a) **"Environmental Laws"** means all present or future Legal Requirements relating to Hazardous Material (including its use, handling, transportation, production, disposal, sampling, testing, underground storage tank removal, discharge, or storage), or to health and safety, industrial hygiene, or the environment, including soil, air, and groundwater conditions.

(b) **"Hazardous Material"** means any material that, because of its quantity, concentration, or physical or chemical characteristics, is at any time, now or later, deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health, welfare, or safety or to the environment. Hazardous Material includes any material or substance defined as a "hazardous substance," "pollutant," or "contaminant" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("**CERCLA**"), also commonly known as the "**Superfund**" law), as amended, (42 U.S.C. Section 9601 et seq.) or under Section 25316 of the California Health & Safety Code; any "hazardous waste" listed under Section 25140 of the California Health & Safety Code; and petroleum, including crude oil or any fraction thereof, natural gas, or natural gas liquids.

(c) **"Investigate"** and **"Investigation"** means undertaking any activities to determine the nature and extent of Hazardous Material that may be located in, on, under, or about the Property or that has been, are being or threaten to be Released into the environment; **"Remediate"** and **"Remediation"** means to clean up, remove, contain, treat, stabilize, monitor, or otherwise control the Hazardous Material.

(d) **"Release"** when used with respect to Hazardous Material includes any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting,

this obligation arises at the time the claim is tendered to Tenant by City and continues at all times thereafter. Tenant will afford City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, or other compromise or proceeding involving Hazardous Material.

#### **24.4. Underground Storage Tanks**

(a) Ownership of Tanks. Tenant acknowledges and agrees that, notwithstanding any other provision in this Lease to the contrary, all underground gasoline storage tanks, underground gas lines to the gasoline dispensers, and gasoline dispensers located within the Property (collectively the “**Tanks**”) are the property of Tenant, are considered trade fixtures under this Lease, and that City has no ownership or operational interest in them. Tenant acknowledges and agrees that Tenant is the “owner and operator” of the Tanks for the purpose of applicable Legal Requirements. Tenant must maintain and operate the Tanks in accordance with all applicable Environmental Laws. On request by City, Tenant will provide City with a copy of the evidence maintained by Tenant to obtain certification of financial responsibility as required by any local or state agency or governmental authority having jurisdiction over the Tanks, and upon request, Tenant will provide City with any required updates to such evidence and certification of financial responsibility upon any change in the mechanism used to obtain such certification. Tenant shall forward to City any and all notices of violation regarding or relating to the operation and maintenance of the Tanks, related infrastructure, and gas station.

(b) Replacement of Tanks. Tenant shall have completed the replacement of any and all Tanks, and associated infrastructure, as required, from the Property in accordance with all applicable Federal, State and local laws, codes and guidelines including any Environmental Laws on or before December 31, 2025, and Remediate any Releases of Hazardous Materials relating to the use of the Tanks, in accordance with all Environmental Laws. Upon the replacement of the Tanks, Tenant is required to repave over the areas where the replacement occurred with similar ground cover/paving as was removed and that meets any and all regulatory requirements from City, State, Federal as applicable; provided that Tenant complies with all procedures required by the agencies monitoring the replacement including any and all mitigation requirements. Any and all post replacement testing and sampling, if any, shall be conducted in compliance with applicable laws.

(c) Removal of Tanks. Unless waived in writing by City, on the expiration or earlier termination of this Lease, or, if City has approved a written request for additional time for performance of Tenant’s obligations as set forth in Section 23.1, by the end of such approved additional period, or other date mutually agreed upon in writing by City and Tenant, Tenant will remove the Tanks and associated infrastructure, as required, from the Property in accordance with all Environmental Laws, and Remediate any Releases of Hazardous Materials relating to the use of the Tanks, in accordance with all Environmental Laws. Upon the removal of the Tanks under this Section 24.4 (c), Tenant will not be required to repave over the areas where the removal occurred, provided, that Tenant complies with all procedures required by the agencies monitoring the removal including any and all mitigation requirements, and repaving is not a required mitigation measure. If Tenant’s removal of the Tanks be delayed due to circumstances beyond Tenant’s control, or should Investigation or Remediation be mandated after or during removal of

outstanding either at the time Tenant exercises the Extension Option or at any time before the first day of the Extension Term (or if any event has occurred that, with the giving of notice or the passage of time or both, would constitute an Event of Default), then City may elect by notice to Tenant to reject Tenant's exercise of the Extension Option, in which case, the Extension Option will be null and void. City may also void Tenant's Extension Option if Tenant has assigned its interest under this Lease without City's prior written approval or sublets more than fifty percent (50%) of the Property.

(b) **Base Rent and Other Terms.** If Tenant elects to exercise the Extension Option, then the lease for the Extension Term will cover the entire Property and be on all of the terms, covenants, and conditions of this Lease, except that Base Rent will be adjusted to the then Market Rent (as defined in Section 23.2 of the San Francisco Administrative Code ("Code"): "the most probable rent that a Real Property should bring in a competitive and open market reflecting all conditions and restrictions of the lease agreement") as determined by an independent Appraisal, as set forth in Section 23.30 of the Code, with a date of valuation that is not earlier than nine (9) months before the date legislation for the proposed Extension is submitted to the Board of Supervisors. On Tenant's timely and proper exercise of the Extension Option, and City does not reject Tenant's exercise, then all references in this Lease to the Term will mean and include the Extension Term and all references to Base Rent mean and refer to the Base Rent as determined under this Section.

## **25.2. Tenant Pays All Expenses**

Except as expressly stated to the contrary in this Lease, the parties intend that and Tenant will pay all costs and expenses of every kind related to the Property during the Term, including, but not limited to those relating to Tenant's operation, maintenance, repair, use, and occupancy of the Property, including all improvements, Buildings, equipment, fixtures, on, in, under and within the Property during the Term. For the sake of illustration only and without limitation, the costs and expenses include the total cost and expenses in connection with managing, operating, maintaining, and repairing the Property, including: (a) the cost of all utilities, (b) the cost of repairs and all related labor and material costs, and the cost of general maintenance, cleaning, and service contracts and the cost of all supplies, tools, and equipment in connection with those contracts, (c) insurance premiums and deductibles for all insurance policies carried on the Property or in connection with the use or occupancy of the Property, (d) wages, salaries, payroll taxes, and other labor costs and employee benefits, (e) management fees, if any, (f) cost of personal property, (g) fees, charges, and other costs of all independent contractors engaged by Tenant, (h) accounting, consulting, and legal expenses, (i) permits, certificates, and licenses required in connection with the Property, (j) any and all assessments levied against or charged to the Property under any covenants, conditions, and restrictions, easements, or access and maintenance agreements, (k) all taxes and assessments of every kind an nature, and (l) any other expenses of any kind whatsoever incurred in connection with managing, operating, maintaining, or repairing the Property.

## **26. GENERALLY APPLICABLE PROVISIONS**

### **26.1. Notices**

Any notice given under this Lease will be effective only if in writing and delivered in person or by sending it first-class mail or certified mail with a return receipt requested or by overnight courier, with postage prepaid, to: (a) Tenant, (i) at Tenant's address set forth in the Basic

#### **26.4. Authority**

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

#### **26.5. Parties and Their Agents; Approvals**

The words "City" and "Tenant" include the plural as well as the singular. If there is more than one entity that comprises Tenant, Tenant's obligations and liabilities under this Lease are joint and several. The term "Agents" when used with respect to either party includes the agents, employees, officers, contractors, and representatives of the party, and the term "Invitees" when used with respect to Tenant includes the clients, customers, invitees, guests, licensees, assignees, or subtenants of Tenant. All approvals, consents, or other determinations permitted or required by City will be made by or through City's Director of Property unless otherwise provided in this Lease, subject to applicable Legal Requirements.

#### **26.6. Interpretation of Lease**

The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and in no way define or limit the scope or intent of any provision of this Lease. Provisions in this Lease relating to number of days are calendar days, unless otherwise specified, but if the last day of any period to give notice, reply to a notice, or to undertake any other action occurs on a Saturday, Sunday, or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice will be the next succeeding business day. Use of the word "including" or similar words will not be construed to limit any general term, statement, or other matter in this Lease, whether or not language of non-limitation, such as "without limitation" or similar words, are used.

#### **26.7. Successors and Assigns**

Subject to the provisions of this Lease relating to Assignment and Subletting, the terms, covenants, and conditions contained in this Lease will bind and benefit City and Tenant and their successors and assigns; provided, however, that on any sale, assignment, or transfer by City (or by any subsequent landlord) of its interest in the Property as owner or lessee, including any transfer by operation of law, City (or any subsequent landlord) will be relieved from all obligations and liabilities arising under this Lease after the sale, assignment, or transfer.

#### **26.8. Brokers**

Neither party has had any contact or dealings regarding leasing the Property to Tenant, or any communication in connection that leasing, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated in this Lease except as identified in the Basic Lease Information, whose commission, if any is due, will be paid under a separate written agreement between the broker and the party through which the broker contracted. If any broker or finder perfects a claim for a commission or finder's fee based on a contact, dealings, or communication, then the party through whom the broker or finder makes a claim will be responsible for the commission or fee and will Indemnify



librarians, and others not admitted to the bar but performing services under the supervision of an attorney. The term "court costs and attorneys' fees" also includes all fees and expenses incurred with respect to appeals, mediation, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which the fees and costs were incurred. For the purposes of this Lease, reasonable fees of attorneys of City's Office of the City Attorney will be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

### **26.13. Holding Over**

(a) Except as set forth in Section 23.1, if Tenant retains possession of any portion of the Property after the expiration or the earlier termination of this Lease, then unless City expressly agrees to the holdover in writing, Tenant will pay City, on a month-to-month basis, Base Rent equal to two hundred percent (200%) of the latest Base Rent payable by Tenant before the expiration or termination of the Lease, together with an amount estimated by City for the monthly Additional Charges, and will otherwise be on the terms and conditions specified in this Lease so far as applicable (except for those pertaining to the Term and the Extension Option). Any failure by Tenant to surrender, discontinue using, or, if required by City, any failure to remove any property or equipment following written demand by City, will constitute continuing possession for purposes of this Section. Tenant acknowledges that the foregoing provisions do not serve as permission for the Tenant to hold over, or serve to extend the Term. Any holding over without City's consent will constitute a default by Tenant and entitle City to exercise any or all of its remedies, notwithstanding that City may elect to accept one or more payments of Rent, and whether or not the amounts are at the holdover rate specified above or the rate in effect at the end of the Term.

(b) Any holding over after the expiration of the Term with City's express written consent will be construed to automatically extend the Term on a month-to-month basis at a Base Rent equal to one hundred fifty percent (150%) of the latest Base Rent payable by Tenant before the expiration, together with an amount estimated by City for the monthly Additional Charges, and will otherwise be on the terms and conditions specified in this Lease so far as applicable (except for those pertaining to the Term and any Extension Options).

(c) Tenant's obligations under this Section will survive the expiration or termination of this Lease.

### **26.14. Time of Essence**

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

### **26.15. Cumulative Remedies**

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

### **26.23. Non-Liability of City Officials, Employees, and Agents**

No elected or appointed board, commission, member, officer, employee, or other Agent of City will be personally liable to Tenant or its successors and assigns for any City default or breach or for any amount that may become due to Tenant or its successors and assigns, or for any City obligation under this Lease.

### **26.24. 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 will be considered the drafter of this Lease, and no presumption or rule that an ambiguity will be construed against the party drafting the clause will apply to the interpretation or enforcement of this Lease.

### **26.25. Counterparts**

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

### **26.26. Effective Date**

This Lease will be effective on the date on that date the (a) City's Board of Supervisors and the Mayor, in their sole and absolute discretion, adopt a resolution approving this Lease in accordance with all applicable Legal Requirements and (b) this Lease is duly executed and delivered by the parties (the "Effective Date").

## **27. CITY REQUIREMENTS**

### **27.1. Public Transit Information**

At its sole expense, Tenant will establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Tenant employed on the Property, including the distribution of written materials to personnel explaining the convenience and availability of public transportation facilities adjacent or near the Property and encouraging use of them.

### **27.2. Taxes, Assessments, Licenses, Permit Fees, and Liens**

(a) Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and Tenant may be subject to the payment of property taxes levied on its possessory interest.

(b) Tenant will pay to the proper authority on or before when due all taxes of any kind, including special assessments, if any, and possessory interest taxes, lawfully assessed on the leasehold interest created by this Lease and to pay all other taxes, excises, licenses, permit charges, and assessments based on Tenant's use of the Property and imposed on Tenant by Legal Requirements, all of which will be paid when they become due and payable and before delinquency.

(c) Tenant will not allow or suffer a lien for any taxes, assessments or other charges to be imposed on the Property or on any equipment or property located in the Property without promptly discharging the lien, provided that Tenant, if it desires, may have reasonable

(d) **CMD Form.** As a condition to this Lease, Tenant will execute the City's Declaration: Nondiscrimination in Contracts and Benefits form with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division ("CMD"). Tenant represents that before execution of this Lease, (i) Tenant executed and submitted to the CMD required form with supporting documentation, and (ii) the CMD approved the form.

(e) **Incorporation of Labor and Employment Code Provisions by Reference.** The provisions of Articles 131 and 132 of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Lease as though fully set forth in this Lease. Tenant will comply fully with and be bound by all of the provisions that apply to this Lease under those Articles of the Labor and Employment Code, including the remedies provided in those Chapters. Without limiting the foregoing, Tenant understands that under Section 131.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50) for each person for each calendar day during which the person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

#### **27.4. No Relocation Assistance; Waiver of Claims**

Tenant acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and Tenant fully RELEASES AND DISCHARGES forever any and all Claims against, and covenants not to sue, City, its departments, commissions, officers, directors, and employees, and all persons acting by, through or under each of them, under any Legal Requirements, including any and all claims for relocation benefits or assistance from City under federal and state relocation assistance Legal Requirements (including California Government Code Section 7260 et seq.), except as otherwise specifically provided in this Lease with respect to a Taking.

#### **27.5. MacBride Principles—Northern Ireland**

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

#### **27.6. Tropical Hardwood and Virgin Redwood Ban; Preservative-Treated Wood Containing Arsenic**

City urges companies not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Tenant will not provide any items to the construction of Tenant Improvements or the Alterations, or otherwise in the performance of this Lease, that are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. If Tenant fails to comply with any of the provisions of Chapter 8 of the San Francisco Environment Code, Tenant will be liable for liquidated damages for each violation in any amount equal to Tenant's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater. Tenant may not purchase preservative-treated wood products containing

organization is awarded the contract, lease, agreement, or benefit. Information provided that is covered by this Section will be made available to the public on request.

**27.10. Conflicts of Interest**

Through its execution of this Lease, Tenant acknowledges that it is familiar with the provisions of Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and California Government Code Section 87100 et seq. and Section 1090 et seq., and certifies that it does not know of any facts that would constitute a violation of those provisions, and agrees that if Tenant becomes aware of any violation during the Term, Tenant will immediately notify City.

**27.11. Charter Provisions**

This Lease is governed by and subject to the provisions of City's Charter.

**27.12. Drug-Free Workplace**

Tenant acknowledges that under the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession, or use of a controlled substance under federal Legal Requirements is prohibited on City premises. Any violation of this prohibition by Tenant, its Agents, or assigns will be a material breach of this Lease.

**27.13. Prohibition of Tobacco, Electronic Cigarettes, and E-Cigarettes Sales and Advertising**

No advertising or sale of cigarettes or tobacco products is allowed on the Property. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. In addition, Tenant acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as each capitalized term is defined in San Francisco Health Code Section 19K.1), Electronic Cigarettes (as defined in San Francisco Health Code Section 19N.2) or E-Cigarettes (as defined in San Francisco Health Code Section 19N.2) is allowed on the Property and this prohibition must be included in all subleases or other agreements allowing any use of the Property. The prohibition against Sales, Manufacture, and Distribution of Tobacco Products does not apply to persons who are affiliated with an accredited academic institution where the Sales, Manufacture, or Distribution of Tobacco Products is conducted as part of academic research.

**27.14. Prohibition of Alcoholic Beverage Advertising**

No advertising of alcoholic beverages is allowed on the Property. For purposes of this section, "alcoholic beverage" is defined as set forth in California Business and Professions Code Section 23004, and does not include cleaning solutions, medical supplies, and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product.

**27.15. Requiring Health Benefits for Covered Employees**

(a) Unless exempt, Tenant will comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance ("HCAO"), as set forth in San Francisco Labor and Employment Code Article 121, including the remedies provided, and implementing regulations, as they may be amended from time to time. The provisions of Article 121 are

(k) City may conduct random audits of Tenant to ascertain its compliance with HCAO. Tenant will cooperate with City when it conducts the audits.

(l) If Tenant is exempt from the HCAO when this Lease is executed because its amount is less than Twenty-Five Thousand Dollars (\$25,000), but Tenant later enters into an agreement or agreements that cause Tenant's aggregate amount of all agreements with City to reach Seventy-Five Thousand Dollars (\$75,000), then all the agreements will be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Tenant and the Contracting Department to be equal to or greater than Seventy-Five Thousand Dollars (\$75,000) in the fiscal year.

#### **27.16. Notification of Prohibition on Contributions**

By executing this Lease, Tenant acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who leases, or seeks to lease, to or from any department of the City any land or building from making any campaign contribution to (a) a City elected official if the lease must be approved by that official, (b) a candidate for that City elective office, or (c) a committee controlled by that elected official or a candidate for that office, at any time from the submission of a proposal for the lease until the later of either the termination of negotiations for the lease or twelve (12) months after the date the City approves the lease. Tenant acknowledges that the foregoing restriction applies only if the lease or a combination or series of leases or other contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of one hundred thousand dollars (\$100,000) or more. Tenant further acknowledges that (i) the prohibition on contributions applies to each prospective party to the lease; any person with an ownership interest of more than ten percent (10%) in Tenant; any subtenant listed in the lease; and any committee that is sponsored or controlled by Tenant; and (ii) within thirty (30) days of the submission of a proposal for the Lease, the City department with whom Tenant is leasing is obligated to submit to the Ethics Commission the parties to the lease and any subtenant. Additionally, Tenant certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the lease, and has provided the names of the persons required to be informed to the City department with whom it is leasing.

#### **27.17. Resource-Efficient City Buildings**

Tenant acknowledges that City has enacted San Francisco Environment Code Sections 700 to 713 relating to green building requirements for the design, construction, and operation of buildings owned or leased by City. Tenant will comply with all applicable provisions of those code sections.

#### **27.18. Food Service and Packaging Waste Reduction Ordinance**

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

the Property occur. The notice will be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Property or other workplace at which it is posted.

(g) Tenant and subtenants understand and agree that on any failure to comply with the requirements of Article 142, City will have the right to pursue any rights or remedies available under Article 142 or this Lease, including a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant, or other person as to whom a violation occurred or continued, or termination of this Lease in whole or in part.

(h) If Tenant has any questions about the applicability of Article 142, it may contact City's Real Estate Division for additional information. City's Real Estate Division may consult with the Director of City's Office of Contract Administration who may also grant a waiver, as set forth in Article 142.

#### **27.21. Vending Machines; Nutritional Standards**

Tenant may not install or permit any vending machine on the Property without the prior written consent of the Director of Property. Any permitted vending machine will comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code Section 4.9-1(c), as may be amended from time to time (the "**Nutritional Standards Requirements**"). Tenant will incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Property or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section 27.21 will be a material breach of this Lease. Without limiting Landlord's other rights and remedies under this Lease, Landlord will have the right to require the immediate removal of any vending machine on the Property that is not permitted or that violates the Nutritional Standards Requirements.

#### **27.22. All-Gender Toilet Facilities**

If applicable, Tenant will comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of a Building where extensive renovations are made. An "all-gender toilet facility" means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures, and "extensive renovations" means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by Administrative Code Section 4.1-3. If Tenant has any question about applicability or compliance, Tenant should contact the Director of Property for guidance.

#### **27.23. Tenant's Compliance with City Business and Tax Regulations Code**

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

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

**TENANT:**

TWIN PEAKS PETROLEUM, INC.,  
a California corporation, dba Twin Peaks Auto Care

By: M. GHARIB  
Michael Gharib  
Its: President and Chief Financial Officer

**CITY:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
ANDRICO Q. PENICK  
Director of Property

APPROVED AS TO FORM:

DAVID CHIU,  
City Attorney

By: \_\_\_\_\_  
Vincent Brown  
Deputy City Attorney

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

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TWIN PEAKS PETROLEUM, INC.,  
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a municipal corporation

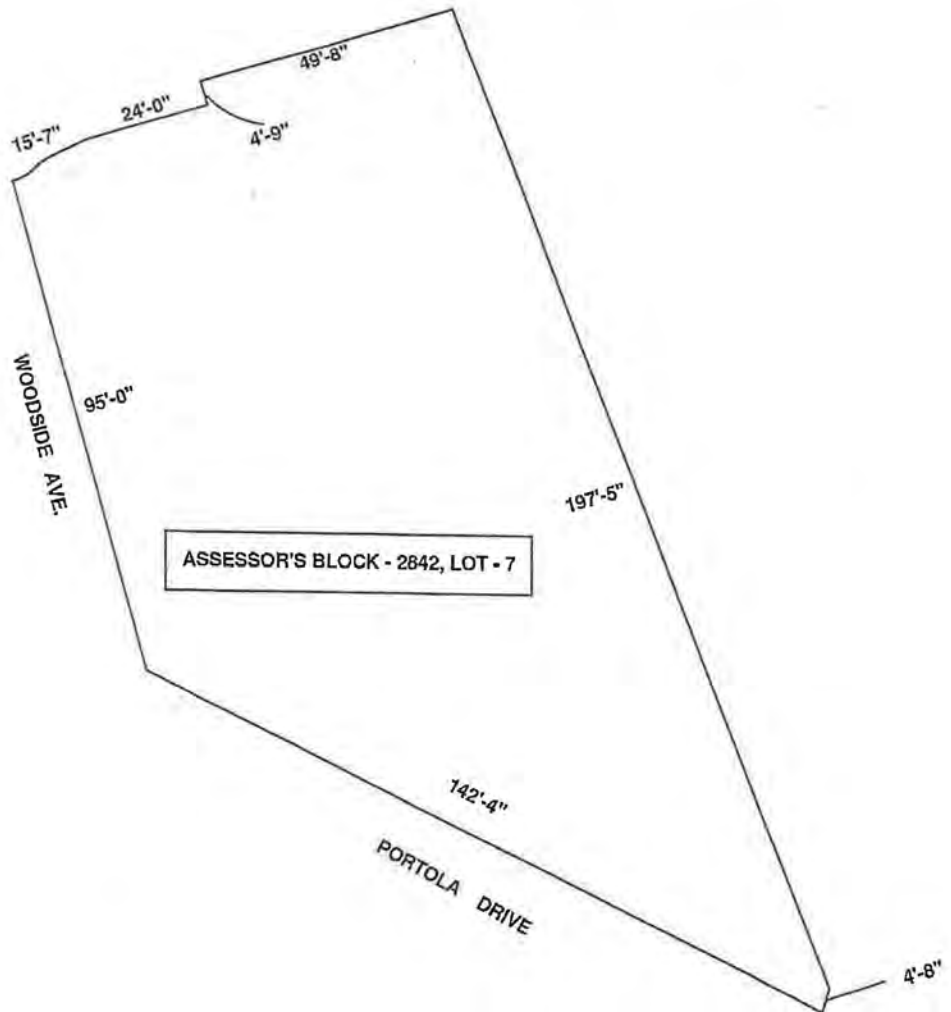
By: \_\_\_\_\_  
ANDRICO Q. PENICK  
Director of Property

APPROVED AS TO FORM:

DAVID CHIU,  
City Attorney

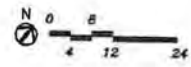
By: \_\_\_\_\_  
Vincent Brown  
Deputy City Attorney





ASSESSOR'S BLOCK - 2842, LOT - 7

TOTAL - 14,499 s.f.



33 WAREHOUSES AVENUE, SUITE 400  
 SAN FRANCISCO, CA 94102  
 PHONE: 415.554.8800  
 FAX: 415.554.8710  
 Email: RealEstate@CA.gov

GAS STATION  
 SITE  
 595 PORTOLA DR.  
 SAN FRANCISCO, CA

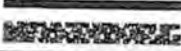
REVISION			
NO.	DATE	BY	DESCRIPTION



ISSUE NO: \_\_\_\_\_  
 DATE ISSUED: \_\_\_\_\_  
 SCALE: 1/8" = 1'-0"  
 DRAWN BY: JOELMAN  
 CHECKED BY: C. VENEZAS  
 PROJECT NUMBER: 015

SITE PLAN

TITLE: S-1



**EXHIBIT B**

**NOTICE OF COMMENCEMENT DATE**

[Date]

Mr. Andrico Q. Penick  
Director of Property  
Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102

RE: Acknowledgement of Commencement Date, Lease Between Twin Peaks Petroleum, Inc., (Tenant), and the City and County of San Francisco (Landlord), for the Property located at 598 Portola Drive, San Francisco

Dear Mr. Penick:

This letter will confirm that for all purposes of the Lease, the Commencement Date (as defined in Section 3.2 of the Lease) is \_\_\_\_\_, 202 .

Please acknowledge your acceptance of this letter by signing and returning a copy of this letter.

Very truly yours,

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

Accepted and Agreed:

By: \_\_\_\_\_  
Andrico Q. Penick  
Director of Property

Dated: \_\_\_\_\_

SERVICE STATION SITE LEASE

between

CITY AND COUNTY OF SAN FRANCISCO,  
as Landlord

and

MICHAEL GHARIB,  
d/b/a Twin Peaks Mobil  
as Tenant

For the lease of  
598 Portola Drive  
San Francisco, California

June 8, 1994

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SERVICE STATION SITE LEASE

THIS SERVICE STATION SITE LEASE (this "Lease"), dated for reference purposes only as of June 8, 1994, is between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Landlord"), and MICHAEL GHARIB d/b/a Twin Peaks Mobil ("Tenant").

City and Tenant hereby covenant and 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 in this Lease pertaining to such item. In the event of any conflict between the information in this Section and any more specific provision of this Lease, the more specific provision shall control.

Lease Reference Date:	June 8, 1994
Landlord:	CITY AND COUNTY OF SAN FRANCISCO
Tenant:	MICHAEL GHARIB d/b/a Twin Peaks Mobil
Real Property (Section 2.1):	Portion of Lot 7, Block 2842 San Francisco, California
Area of Real Property (Section 2.1):	Approximately 15,000 sq. ft.
Term (Section 3.1):	Estimated commencement date: Aug. 1, 1994; Expiration date: June 30, 2004
Extension Option: (Article 23)	One five-year option to extend term subject to one-year Option Notice.
Base Rent (Section 4.1):	\$3,000 per month during Lease Years 1 through 5 (\$ .20 per sq. ft.)  \$4,000 per month during Lease Years 6 through 10 (\$ .27 per sq. ft.)

Adjustment  
Dates (Section 4.2):

Base Rent shall be adjusted on the first day of Lease Years 6 through 10 to reflect changes in CPI, such adjustments not to exceed 6% or be less than 3% per Lease Year.

Additional Rent  
(Section 4.3)

\$.0189 per gallon of gasoline delivered per month, to the extent exceeding \$3,000 per month for Lease Years 1 through 5.

\$.0283 per gallon of gasoline delivered per month, to the extent exceeding \$4,000 per month for Lease Years 6 through 10.

Use (Section 5.1):

Gasoline Service Station

Utilities and Services  
(Article 10):

Tenant responsible for all utilities and services.

Security  
Deposit (Article 21):

\$10,000

Notice Address of City  
(Section 24.1):

Real Estate Department  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102  
Attn: Director of Property  
Fax No.: (415) 554-9216

and to:

Office of the City Attorney  
Fox Plaza  
1390 Market Street, 6th Floor  
San Francisco, CA 94102  
Attn: Larry Wayte,  
Deputy City Attorney  
Fax No.: (415) 554-3808

Key Contact for City:

Claudine O. Venegas

Telephone No.:

(415) 554-9872

Address for Tenant  
(Section 24.1):

Michael Gharib  
598 Portola Drive  
San Francisco, CA 94131  
(415) 665-2250

2 PROPERTY; AS IS CONDITION ✓

2.1 Leased Property. Subject to the provisions of this Lease, City leases to Tenant and Tenant leases from City the following described real property situated in the City and County of San Francisco, State of California as depicted on Exhibit A attached hereto, and all improvements located thereon (including without limitation all buildings, structures, fixtures, apparatus, equipment, systems and appliances used in connection with any of the foregoing, signs, driveways, parking areas, curbs, walks, fences, walls, stairs, poles, landscaping, and any and all other improvements now located or hereafter constructed on the property during the Term of this Lease):

COMMENCING at the point of intersection of the northerly line of Portola Drive with the Northeasterly line of Woodside Avenue and running thence easterly along said line of Portola Drive 157.219 feet; thence deflecting 144°00' to the left and running northwesterly 215.172 feet; thence deflecting 76°50'38" to the left and running southwesterly 84.036 feet, more or less, to a point on the said northeasterly line of Woodside Avenue; thence southeasterly along said line of Woodside Avenue 109.436 feet to the point of commencement.

BEING a portion of Assessor's Block 2842, as more fully described in Exhibit "A" attached hereto and made a part hereof, for the term and subject to the terms, covenants, agreements and conditions hereinafter set forth, to each and all of which Lessor and Lessee hereby mutually agree.

The area of the real property is specified in the Basic Lease Information and shall be conclusive for all purposes hereof. The real property and all other improvements on and appurtenances to such land are referred to collectively herein as the "Property."

✓ 2.2 As Is Condition. TENANT ACKNOWLEDGES AND AGREES THAT THE PROPERTY IS BEING LEASED AND ACCEPTED IN ITS "AS IS" CONDITION, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, AND SUBJECT TO ALL APPLICABLE LAWS, RULES AND ORDINANCES GOVERNING ITS USE, OCCUPANCY AND POSSESSION. TENANT REPRESENTS AND WARRANTS TO CITY THAT TENANT HAS INVESTIGATED AND INSPECTED, EITHER INDEPENDENTLY OR THROUGH AGENTS OF TENANT'S OWN CHOOSING, THE CONDITION OF THE PROPERTY AND THE SUITABILITY OF THE PROPERTY FOR TENANT'S INTENDED USE. TENANT HAS DETERMINED, BASED SOLELY ON ITS OWN INVESTIGATION, THAT THE PROPERTY IS SUITABLE FOR TENANT'S BUSINESS AND INTENDED USE. TENANT ACKNOWLEDGES AND AGREES THAT NEITHER CITY NOR ANY OF ITS AGENTS HAVE MADE, AND CITY HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE RENTABLE AREA OF THE PROPERTY, THE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY, THE PRESENT

OR FUTURE SUITABILITY OF THE PROPERTY FOR TENANT'S BUSINESS, OR ANY OTHER MATTER WHATSOEVER RELATING TO THE PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

3      TERM ✓

3.1 Lease Term. The Property is leased for a term (the "Term") commencing on the date specified in the Basic Lease Information as the estimated commencement date (the "Estimated Commencement Date"), or such earlier date upon which City delivers and Tenant accepts possession of the Property, subject to the provisions of Section 3.2, Delay in Delivery of Possession, and Section 3.3, Delays Caused by Tenant, below. The Term of this Lease shall end on the expiration date specified in the Basic Lease Information, unless sooner terminated pursuant to the provisions of this Lease. This Lease is subject to the Extension Option set forth in Section 23.1, Option to Extend Term. City shall deliver the Property to Tenant on the Commencement Date in its then existing as is condition as further provided above, with no alterations being made by City. The dates on which the Term commences and terminates pursuant hereto are referred to respectively as the "Commencement Date" and the "Expiration Date."

**The term Lease Year, when used in this Lease, shall mean a 12-month period commencing on the Commencement Date and each anniversary date thereof during the Term.**

3.2 Delay in Delivery of Possession. If City is unable to deliver possession of the Property to Tenant on or before the Estimated Commencement Date, then the validity of this Lease shall not be affected thereby and City shall not be liable to Tenant for any Claims (as defined in Article 17 below) resulting therefrom, and Tenant waives all provisions of any laws to the contrary. In such case, the Term and regular payments of Base Rent and Additional Charges shall not commence until City delivers possession of the Property. If the Term commences later or earlier than the Estimated Commencement Date, this Lease shall nevertheless expire on the Expiration Date, unless sooner terminated pursuant to the provisions hereof.

3.3 Delays Caused by Tenant. Notwithstanding anything to the contrary above, if City's inability to deliver possession of the Property on the Estimated Commencement Date results from Tenant's or its Agents' acts or omissions, then Base Rent and Additional Charges payable by Tenant hereunder shall commence on the date when City would have delivered possession of the Property but for such acts or omissions.



4 RENT

4.1 Base Rent. Beginning on the Commencement Date, Tenant shall pay to City the monthly Base Rent specified in the Basic Lease Information, provided that such sum shall be subject to escalation pursuant to Section 4.2, Adjustments in Base Rent (the "Base Rent"). The Base Rent shall be paid to City in advance, without prior demand and without any deduction, setoff or counterclaim whatsoever, in equal consecutive monthly payments on or before the first day of the Term and on or before the first day of each month thereafter. All sums payable by Tenant to City hereunder shall be paid in cash or by good check to the City and County of San Francisco in care of the Director of Property at the primary address for City specified in the Basic Lease Information, or such other place as City may designate in writing. If the Commencement Date occurs on a day other than the first day of a calendar month, or the Expiration Date occurs on a day other than the last day of a calendar month, then the Base Rent for such fractional month shall be prorated based on a thirty (30) day month. Within five (5) days after the parties execute this Lease, Tenant shall pay to City the Base Rent for the first full month.

4.2 Adjustments in Base Rent. On each date specified in the Basic Lease Information for adjustment of the Base Rent (an "Adjustment Date"), the Base Rent payable hereunder shall be adjusted as follows:

The Consumer Price Index Urban Wage Earners and Clerical Workers (base years 1982-1984 = 100) for San Francisco-Oakland-San Jose area published by the United States Department of Labor, Bureau of Labor Statistics ("Index") published most immediately preceding the Adjustment 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 Beginning Index, the Base Rent payable on and after the Adjustment 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 Beginning Index. In no event shall the monthly Base Rent on or after the Adjustment Date be less than 3% or more than 6% of the monthly Base Rent in effect immediately prior to the Adjustment Date.

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.

4.3 Additional Rent. In addition to the Base Rent, Tenant shall pay to City additional rent ("Additional Rent") under the following terms and conditions:

(a) Definitions. For purposes of this Section, the following terms shall have the following meanings:

"Additional Rent Amount" shall mean, for any calendar month, the amount by which the Monthly Gross Fuel Delivery Factor for such month exceeds (a) \$3,000.00 for Lease Years 1 through 5 of the initial Term, and (b) \$4,000.00 for Lease Years 6 through 10 of the initial Term.

"Monthly Gross Fuel Deliveries" shall mean the total number of gallons of fuel delivered to the Service Station during a calendar month from wholesale distributors of such fuel that are intended for retail resale by Tenant to the public.

"Monthly Gross Fuel Delivery Factor" shall mean the Monthly Gross Fuel Deliveries amount for any month multiplied by one hundred and eighty-nine one hundredths cents (\$.0189) for Lease Years one (1) through five (5), and two and eighty-three one hundredth cents (\$.0283) for Lease Years six (6) through ten (10).

"Service Station" shall mean the retail gasoline service station operated by Tenant on the Property pursuant to the terms of this Lease.

(b) Additional Rent Payment. On or before the twentieth day of each month during the Term of the this Lease (commencing with the second full calendar month of the Term) Tenant shall pay to City the Additional Rent Amount, if any, for the preceding month, as determined by Tenant based on fuel delivery manifests kept by Tenant in a commercially reasonable manner during the course of business.

(c) Statement of Gross Fuel Deliveries. Whether or not Additional Rent is paid by Tenant for a given month, Tenant shall furnish to City a statement of Tenant's Monthly Gross Fuel Deliveries within twenty (20) days after the end of each month of the term for the preceding month. Each statement shall be signed and certified to be correct by Tenant or its authorized representative. Tenant shall keep at the Property full and accurate books of account, records, receipts, delivery manifests and other pertinent data showing its Monthly Gross Fuel Deliveries. Such books of account, records, cash receipts and other pertinent data shall be kept for a period of two (2) years after the end of each month in a secure place in the City and

County of San Francisco. The receipt by City of any statement, or any payment of Additional Rent for any month, shall not bind City as to the correctness of the statement or payment.

(d) Audits. City shall be entitled during the Term and within two (2) years after expiration or termination of this Lease to inspect and examine all of Tenant's books of account, records, receipts, manifests and other pertinent data, so City can ascertain Tenant's Monthly Gross Fuel Deliveries. Tenant shall cooperate fully with City in making the inspection. City shall also be entitled, once during each calendar year and once after expiration or termination of this Lease, to an independent audit of data to determine Tenant's Monthly Gross Fuel Deliveries, by a certified public accountant to be designated by City. The audit shall be limited to the determination of Monthly Gross Fuel Deliveries during the Term and shall be conducted during usual business hours at the Property or at such other reasonable place as Tenant shall make the books and records available. If the audit shows that there is a deficiency in the payment of any Additional Rent, the deficiency shall become immediately due and payable. The costs of the audit shall be paid by City unless the audit shows that Tenant understated Monthly Gross Fuel Deliveries by more than five percent (5%) for any month during the Term, in which case Tenant shall pay all City's costs of the audit. Except as may be required by federal, state or local law, City shall keep any information gained from such statements, inspections, or audits confidential and shall not disclose it other than to carry out the purposes of this Lease.

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

✓ 4.5 Late Charges. If Tenant fails to pay any Rent or any portion of Rent within five (5) days following the due date, such unpaid amount shall be subject to a late payment charge equal to six percent (6%) of the unpaid amount in each instance. The late payment charge has been agreed upon by City and Tenant, 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 Tenant, 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 shall be paid to City together with such unpaid amount.

✓ 4.6 Default Interest. Any Rent, if not paid within five (5) days following the due date, 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 Tenant nor on any amounts on which late charges are paid by Tenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Tenant.

## 5 ✓ USE

✓ 5.1 Permitted Use. Tenant shall use and continuously occupy the Property during the Term solely for the operation of a retail gasoline station, oil service station, including the sale of merchandise generally sold at service stations, and for no other purpose.

✓ 5.2 No Unlawful Uses, Nuisances or Waste. Without limiting the foregoing, Tenant shall not use, occupy or permit the use or occupancy of any of the Property in any unlawful manner or for any illegal purpose, or permit any offensive, noisy or hazardous use or any waste on or about the Property. Tenant shall take all precautions to eliminate any nuisances or hazards relating to its activities on or about the Property.

## 6 ✓ ALTERATIONS

✓ 6.1 Tenant's Alterations. Tenant shall not make or permit any alterations, installations, additions or improvements, structural or otherwise (collectively, "Alterations"), in, to or about the Property, without City's prior written consent in each instance. All Alterations shall be done at Tenant's expense in accordance with plans and specifications approved by City, only by duly licensed and bonded contractors or mechanics approved by City, and subject to any conditions that City may reasonably impose. City may require Tenant, at Tenant's expense, to obtain the prior written approval of City's Art Commission for any such Alterations.

✓ 6.2 Title to Improvements. Except for Tenant's Personal Property (as described in the next section), or as may be specifically provided to the contrary in any approved plans for Alterations, all appurtenances, fixtures, improvements, equipment, additions, and other property attached or affixed to or installed in or on the Property at the Commencement Date or during the Term, including, without limitation, any Alterations,

shall be and remain City's property. Tenant may not remove any such property at any time during or after the Term unless City so requests as further provided in Section 22, Surrender, below.

6.3 Tenant's Personal Property. All furniture, trade fixtures, office equipment and articles of movable personal property installed in the Property by or for the account of Tenant, without expense to City, and that can be removed without structural or other damage to the Property (collectively, "Tenant's Personal Property") shall be and remain Tenant's property. Tenant may remove its Personal Property at any time during the Term, subject to the provisions of Section 22, Surrender, below. Tenant shall pay any taxes or other impositions levied or assessed upon Tenant's Personal Property, at least ten (10) days prior to delinquency, and shall deliver satisfactory evidence of such payment to City upon request.

## 7 ✓ REPAIRS AND MAINTENANCE

Tenant shall maintain, at its sole expense, the Property and all improvements, fixtures, plumbing, wiring, utilities and equipment located thereon, in good repair and working order and in a clean, secure, safe and sanitary condition. Tenant shall promptly make all repairs and replacements: (a) at its sole expense, (b) by licensed contractors or qualified mechanics approved by City, and (c) so that the same shall be at least equal in quality, value and utility to the original work or installation. Tenant hereby waives all rights to make repairs at City's expense under Sections 1941 and 1942 of the California Civil Code or under any similar law, statute or ordinance now or hereafter in effect.

## 8 ✓ HAZARDOUS MATERIALS

8.1 Definitions. As used herein, the following terms shall have the meanings set forth below:

(a) "Environmental Laws" shall mean any present or future federal, state, local or administrative law, rule, regulation, order or requirement relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage), or to health and safety, industrial hygiene or the environment, including, without limitation, soil, air and groundwater conditions.

(b) "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health, welfare or safety or to the environment. Hazardous Material includes, without limitation,

any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.) or pursuant to Section 25316 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.

(c) "Investigate and Remediate" ("Investigation" and "Remediation") shall mean the undertaking of any activities to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Property or that has been, are being or threaten to be Released into the environment, and to clean up, remove, contain, treat, stabilize, monitor or otherwise control such Hazardous Material.

(d) "Release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside the Property, or in, on, under or about any part of the Property or into the environment.

8.2 No Hazardous Materials. Tenant covenants and agrees that neither Tenant nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Property, or transported to or from the Property, with the sole exception that Tenant may keep, use and transport to and from the Property such substances, and in such reasonable amounts, as are customarily used in the operation of a gasoline service station so long as such storage and use are in compliance with all applicable Environmental Laws at all times. Tenant shall immediately notify City if and when Tenant learns or has reason to believe a Release of Hazardous Material on or about the Property has occurred that may require any Investigation or Remediation.

8.3 Tenant's Environmental Indemnity. If Tenant breaches any of its obligations contained in this Article, or, if any act or omission of Tenant, its Agents or Invitees, results in any Release of Hazardous Material in, on, under or about the Property, then, without limiting any other indemnity contained in this Lease, Tenant shall, on behalf of itself and its successors and assigns, indemnify, defend and hold harmless ("Indemnify") City, its employees, officers, agents and their respective heirs, legal representatives, successors and assigns (individually and collectively, the "Indemnified Parties"), and each of them, from and against any and all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, including, without limitation, direct and vicarious

liability of every kind (collectively, "Claims") (including, without limitation, damages for decrease in value of the Property, the loss or restriction of the use of rentable or usable space or of any amenity of the Property and sums paid in settlement of claims, attorneys' fees, consultants' fees and experts' fees and costs) arising during or after the term of this Lease and relating to such Release. The foregoing Indemnity includes, without limitation, costs incurred in connection with activities undertaken to Investigate and Remediate Hazardous Material and to restore the Property to its prior condition, fines and penalties imposed by regulatory agencies, and any natural resource damages. Without limiting the foregoing, if Tenant or any of its Agents or Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Property, Tenant shall immediately and at no expense to City take any and all appropriate actions to return the Property affected thereby to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Tenant shall afford City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, or other compromise or proceeding involving Hazardous Material.

#### 8.4 Underground Storage Tanks.

(a) Ownership of Tanks. Tenant hereby acknowledges and agrees that, notwithstanding any other provision in this Lease to the contrary, all underground gasoline storage tanks located within the Property (the "Tanks") are the property of Tenant, and that City has no ownership or operational interest therein. Tenant hereby acknowledges and agrees that Tenant is the "owner and operator" of the Tanks for the purpose of applicable local, state and federal law. Tenant shall maintain and operate the Tanks in accordance with all Environmental Laws. Upon request by City, Tenant shall provide City with a photocopy of the evidence maintained by Tenant to obtain certification of financial responsibility as required by any local or state agency or governmental authority having jurisdiction over the Tanks, and upon request, Tenant shall provide City with any required updates to such evidence and certification of financial responsibility upon any change in the mechanism used to obtain such certification.

(b) Replacement of Tanks. Prior to June 9, 1998, Tenant shall remove all gasoline storage Tanks in the Property and replace such Tanks with new storage tanks of a design reasonably acceptable to City, all in accordance with all applicable Environmental Laws. After the removal of the existing Tanks from the Property pursuant to this paragraph, and prior to the installation of the replacement tanks, Tenant shall test all soils under and around the Tank removal area for Releases of

Hazardous Materials, and shall promptly Remediate any Releases according to a work plan approved by City. **Tenant agrees and acknowledges that Tenant's failure to comply with the provisions of this paragraph on a timely basis shall constitute a material default under this Lease, and City shall have the right to exercise any and all applicable remedies as described in Section 16 below.**

(c) Removal of Tanks. Upon the expiration or earlier termination of this Permit, unless waived in writing by City, Tenant shall remove any and all underground storage tanks from the Property in accordance with all Environmental Laws, and shall Remediate any Releases of Hazardous Materials relating to the use of such Tanks in accordance with all Environmental Laws.

(d) Collection from BP Indemnification. Tenant hereby assigns to City, and grants to City a security interest in, all of Tenant's rights of enforcement and collection under that certain indemnification of Tenant by BP (the "BP Indemnification") contained in Section 10(e) of that certain Offer to Purchase a Leasehold between Tenant and BP Exploration & Oil Inc. ("BP"), dated January 10, 1994. Tenant further agrees that any amounts or services collected from BP under the BP Indemnification shall be applied to the Remediation of Releases of Hazardous Materials on the Property. Notwithstanding the assignment to City of Tenant's rights under the BP Indemnification, Tenant hereby agrees that, in the event any Release of Hazardous Materials is found to have occurred in, on, under or around the Property, Tenant shall make every effort to determine the extent to which such Release is attributable to the use of the Property by BP or any of its predecessors in interest or affiliates. To the extent any such Release is determined by Tenant or City to have occurred during the use of the Property by BP or any of its predecessors in interest or affiliates, Tenant shall make every effort to enforce the BP Indemnification and collect any amounts rightfully owing to Tenant thereunder.

**The provisions of this Article 8 shall survive any expiration or termination of this Lease.**

## 9 LIENS AND ENCUMBRANCES

9.1 Liens. Tenant shall keep the Property free from any liens arising out of any work performed, material furnished or obligations incurred by or for Tenant. In the event Tenant 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, the right, but not the obligation, to cause the lien 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



incurred by it in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to City by Tenant upon demand. City shall have the right to post on the Property any notices that City may deem proper for the protection of City and the Property from mechanics' and materialmen's liens. Tenant shall give to City at least fifteen (15) days' prior written notice of commencement of any repair or construction on the Property.

9.2 Encumbrances. Tenant shall not create, permit or suffer any liens or encumbrances affecting any portion of the Property or City's interest therein or under this Lease.

#### 10 UTILITIES AND SERVICES

Tenant shall make all arrangements for and pay, as the same become due, all charges, costs, bills and expenses for water, gas electricity, sewer, telephone and all other services and utilities, of whatever kind, furnished to or used by the Tenant or by any other party in connection with the use, occupancy, maintenance or operation of the Property or any part thereof.

#### 11 COMPLIANCE WITH LAWS AND RISK MANAGEMENT REQUIREMENTS

11.1 Compliance with Laws. Tenant shall comply, at its sole expense, with all present or future laws, orders, regulations and requirements of all governmental authorities relating to the Property or the use or occupancy thereof, including, without limitation, the Americans with Disabilities Act. Tenant shall not be required to make any structural Alterations in order to comply with such laws unless such Alterations shall be occasioned, in whole or in part, directly or indirectly, by any Alterations, Tenant's use of the Property, or any act or omission of Tenant, its Agents or Invitees. Any work or installation made by or on behalf of Tenant pursuant to the provisions of this Section shall comply with the provisions of Section 7, Maintenance and Repairs, above.

Tenant understands and agrees that City is entering into this Lease in its capacity as a property owner with a proprietary interest in the Property and not as a regulatory agency with police powers. Nothing in this Lease shall limit in any way Tenant's obligation to obtain any required regulatory approvals from City departments, boards or commissions having jurisdiction over the Property. By entering into this Lease, City is in no way modifying or limiting Tenant's obligation to cause the Property to be used and occupied in accordance with all laws, orders, regulations and requirements of governmental authorities as provided above.

11.2 Compliance with City's Risk Management Requirements. Tenant shall not do anything, or permit anything to be done, in

or about the Property which would be prohibited by or increase the rates under a standard form fire insurance policy or subject City to potential premises liability. Tenant shall faithfully observe, at its expense, any and all requirements of City's Risk Manager with respect to Tenant's use and occupancy of the Property, so long as such requirements do not unreasonably interfere with Tenant's use of the Property.

## 12 SUBORDINATION

This Lease is and shall be subordinate to any reciprocal easement agreement, ground lease, facilities lease or other underlying lease and the lien of any mortgage or deed of trust, that may now exist or hereafter be executed affecting the Property, or any part thereof, or City's interest therein. Notwithstanding the foregoing, City or the holder shall have the right to subordinate any such interests to this Lease. If any ground lease or underlying lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant shall attorn to the successor-in-interest to City, at the option of such successor-in-interest. The provisions of this Article shall be self-operative and no further instrument shall be required. Tenant agrees, however, to execute and deliver, upon demand by City and in the form requested by City, any additional documents evidencing the priority or subordination of this Lease.

## 13 INABILITY TO PERFORM

If City is unable to perform or is delayed in performing any of City's obligations under this Lease, by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, protests, riots, demonstrations, inability to obtain utilities or materials or by any other reason beyond City's reasonable control, no such inability or delay shall constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of Rent or relieve Tenant from any of its obligations under this Lease, or impose any liability upon City or its Agents by reason of inconvenience, annoyance, interruption, injury or loss to or interference with Tenant's business or use and occupancy or quiet enjoyment of the Property or any loss or damage occasioned thereby. Tenant hereby waives and releases any right to terminate this Lease under Section 1932, subdivision 1 of the California Civil Code or any similar law, statute or ordinance now or hereafter in effect.

## 14 EMINENT DOMAIN

### 14.1 Definitions.

(a) "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.

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

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

14.2 General. If during the Term or during the period between the execution of this Lease and the Commencement Date, there is any Taking of all or any part of the Property or any interest in this Lease, the rights and obligations of the parties hereunder shall be determined pursuant to this Section. City and Tenant intend that the provisions hereof govern fully in the event of a Taking and accordingly, the parties each hereby waive 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.

14.3 Total Taking; Automatic Termination. If there is a total Taking of the Property, then this Lease shall terminate as of the Date of Taking.

14.4 Partial Taking; Election to Terminate.

(a) If there is a Taking of any portion (but less than all) of the Property, 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 Property untenable or unsuitable for continued use by Tenant, (B) the condition rendering the Property untenable or unsuitable either is not curable or is curable but City is unwilling or unable to cure such condition, and (C) Tenant elects to terminate; or (ii) if City elects to terminate, except that this Lease shall not terminate if Tenant agrees to, and does, pay full Rent and Additional Charges, without abatement, and otherwise agrees to, and does, fully perform all of its obligations hereunder.

(b) If there is a partial Taking of a substantial portion of the Property, City shall have the right to terminate this Lease in its entirety.

(c) Either party electing to terminate under the provisions of this Section 14 shall do so by giving the other party 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.

✓ 14.5 Rent; Award. Upon termination of this Lease pursuant to an election under Section 14.4 above, then: (i) Tenant'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 14.6 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 Tenant shall have no claim against City for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property.

✓ 14.6 Partial Taking; Continuation of Lease. If there is a partial Taking of the Property under circumstances where this Lease is not terminated in its entirety under Section 14.4 above, then this Lease shall terminate as to the portion of the Property so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the parties shall be as follows: (a) Base Rent shall be reduced by an amount that is in the same ratio to the Base Rent as the area of the Property taken bears to the area of the Property prior to the Date of Taking; provided, however, in no event shall the monthly Base Rent be reduced to less than seventy-five percent (75%) of the monthly Base Rent immediately prior to the Date of Taking, and (b) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease), and Tenant shall have no claim against City for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property.

✓ 14.7 Temporary Takings. Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to all or any part of the Property for a limited period of time not in excess of one hundred eighty (180) consecutive days, this Lease shall remain unaffected thereby, and Tenant shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, Tenant shall be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Property during the

Term up to the total Rent owing by Tenant 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. Tenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Tenant), voluntarily or by operation of law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Property or its leasehold estate hereunder (collectively, an "Assignment"), or permit any portion of the Property to be occupied by anyone other than itself, or sublet any portion of the Property (collectively, "Sublease"), without City's prior written consent in each instance, as provided hereinbelow.

15.2 Notice of Proposed Transfer. If Tenant desires to enter into an Assignment or a Sublease, it shall give written notice (a "Notice of Proposed Transfer") to City of its intention to do so. The Notice of Proposed Transfer shall state the terms and conditions of the proposed Assignment or Sublease.

15.3 City's Response. Within twenty (20) business days after City's receipt of the Notice of Proposed Transfer (the "Response Period"), City may elect, by written notice to Tenant, to: (a) sublease the portion of the Property specified in the Notice of Proposed Transfer on the terms and conditions set forth in such notice, except as otherwise provided in Section 15.4, Sublease or Recapture Space, or (b) terminate this Lease as to the portion (including all) of the Property that is specified in the Notice of Proposed Transfer, with a proportionate reduction in Base Rent (a "Recapture").

If City declines to exercise either of its options provided above, then Tenant shall have ninety (90) days following the earlier of (i) City's notice that it will not elect either such option or (ii) the expiration of the Response Period, to enter into such Assignment or Sublease, subject to City's prior written approval of the proposed assignee or subtenant (collectively, "Transferee"). However, the greater of \$5,000 or fifty percent (50%) of any rent or other consideration realized by Tenant under any such Assignment or Sublease in excess of the Base Rent and Additional Charges payable hereunder (or the amount thereof proportionate to the portion of the Property subject to such Sublease or Recapture) shall be paid to City, after Tenant has recovered any reasonable brokers' commissions and the reasonable cost of any improvements that Tenant has incurred in connection with such Sublease or Recapture. Tenant shall provide City with such information regarding the proposed Transferee as City may

reasonably request. City agrees that it will not unreasonably withhold its approval of any proposed Transferee.

If after City declines to exercise any of the foregoing options Tenant desires to enter into such Assignment or Sublease (i) on terms and conditions materially more favorable to Tenant than those contained in the Notice of Proposed Transfer or (ii) with a Transferee that is currently a tenant or other occupant of the Building, then Tenant shall give City a new Notice of Proposed Transfer, which notice shall state the terms and conditions of such Assignment or Sublease and identify the proposed Transferee, and City shall again be entitled to elect one of the options provided in clauses (a) and (b) at any time within twenty (20) business days after City's receipt of such new Notice of Proposed Transfer.

In the event City elects either of the options provided in clauses (a) or (b), City shall be entitled to enter into a lease, sublease or assignment agreement with respect to the Property (or portion thereof specified in such new Notice of Proposed Transfer) with the proposed Transferee identified in Tenant's notice.

Notwithstanding the foregoing, if any event of default by Tenant is outstanding hereunder at the time of Tenant's Notice of Proposed Transfer (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 Tenant to refuse to consent to Tenant's proposed Transfer and pursue any of its right or remedies hereunder or at law or in equity.

15.4 Sublease or Recapture Space. If City elects to Sublease or Recapture from Tenant as described in Section 16.3, City's Response, the following shall apply:

(a) In the case of a Sublease, (i) City shall have the right to use the portion of the Property covered by the Notice of Proposed Transfer (the "Sublease Space") for any legal purpose, (ii) the rent payable by City to Tenant shall be the lesser of (A) the amount in the Notice of Proposed Transfer or (B) the Base Rent payable by Tenant under this Lease at the time of the Sublease (or the amount thereof proportionate to the Sublease Space if for less than the entire Property), (iii) City may make alterations and improvements to the Sublease Space and may remove any such alterations or improvements, in whole or in part, prior to or upon the expiration of the Sublease, provided that City shall repair any damage or injury to the Sublease Space caused by such removal, (iv) City shall have the right to further sublease or assign the Sublease Space to any party, without the consent of Tenant, and (v) Tenant shall pay to City on demand any costs incurred by City in physically separating the Sublease Space (if

less than the entire Property) from the balance of the Property and in complying with any applicable laws or regulations relating to such separation.

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

15.5 Effect of Sublease or Assignment. No Sublease or Assignment by Tenant nor any consent by City thereto shall relieve Tenant, or any guarantor, of any obligation to be performed by Tenant under this Lease. Any Sublease or Assignment not in compliance with this Article shall be void and, at City's option, shall constitute a material default by Tenant under this Lease. The acceptance of any Base 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 Tenant or other transferor to comply with this Article.

15.6 Assumption by Transferee. Each Transferee (other than City) shall assume all obligations of Tenant under this Lease and shall be liable jointly and severally with Tenant for the payment of the Base Rent and Additional Charges, and for the performance of all the terms, covenants and conditions to be performed on Tenant's part hereunder. No Assignment shall be binding on City unless Tenant or Transferee has delivered to City a counterpart of the Assignment and an instrument in recordable form that contains a covenant of assumption by such Transferee satisfactory in form and substance to City. However, the failure or refusal of such Transferee to execute such instrument of assumption shall not release such Transferee from its liability as set forth above. Tenant shall reimburse City on demand for any reasonable costs that may be incurred by City in connection with any proposed Sublease or Assignment, including, without limitation, the costs of making investigations as to the acceptability of the proposed Transferee and legal costs incurred in connection with the granting of any requested consent.

16 DEFAULT; REMEDIES

16.1 Events of Default. Any of the following shall constitute an event of default by Tenant hereunder:

(a) a failure to pay Base Rent, Additional Rent or Additional Charges when due, and such failure continues for three (3) days after written notice by City. However, City shall not be required to provide such notice more than twice during any twelve (12) month period, and any such failure by Tenant after Tenant has received two (2) such notices in such 12-month period shall constitute a default by Tenant hereunder without any further action by City or opportunity of Tenant to cure except as may be required by Section 1161 of the California Code of Civil Procedure.

(b) a failure to comply with any other covenant, condition or representation made under this Lease and such failure continues for fifteen (15) days after the date of written notice by City, provided that if such default is not capable of cure within such 15-day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such 15-day period and thereafter diligently prosecutes the same to completion within sixty (60) days after the receipt of notice of default from City. City shall not be required to provide such notice more than twice in any twelve (12) month period and after the second notice in any calendar year, any subsequent failure by Tenant during such 12-month period shall constitute an event of default hereunder;

(c) a vacation or abandonment of the Property for a continuous period in excess of five (5) business days; or

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

16.2 Remedies. Upon the occurrence of an event of default by Tenant, City shall have the following rights and remedies in addition to all other rights and remedies available to City at law or in equity:

(1) The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Tenant's right to possession of the Property and to recover the



worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Tenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. City's efforts to mitigate the damages caused by Tenant's breach of this Lease shall not waive City's rights to recover damages upon termination.

(2) The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), allowing City to continue this Lease in effect and to enforce all its rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as City does not terminate Tenant's right to possession, if Tenant has the right to sublet or assign, subject only to reasonable limitations. For purposes hereof, none of the following shall constitute a termination of Tenant's right of possession: acts of maintenance or preservation; efforts to relet the Property or the appointment of a receiver upon City's initiative to protect its interest under this Lease; or withholding consent to an Assignment or Sublease, or terminating an Assignment or Sublease, if the withholding or termination does not violate the rights of Tenant specified in subdivision (b) of California Civil Code Section 1951.4. If City exercises its remedy under California Civil Code Section 1951.4, City may from time to time sublet the Property 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 may in its sole discretion deem advisable, with the right to make alterations and repairs to the Property. Upon each such subletting, Tenant shall be liable for Base Rent and Additional Charges due hereunder, as well as the cost of such subletting and such alterations and repairs incurred by City and the amount, if any, by which Rent 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 Rent for the Property for such period pursuant to such subletting. No action taken by City pursuant to this subsection shall be deemed a waiver of any default by Tenant, and City may at any time elect to terminate this Lease for such previous default.

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

16.3 City's Right to Cure Tenant's Defaults. If Tenant defaults in the performance of any of its obligations under this Lease, then City may remedy such default for Tenant's account and at Tenant's expense by providing Tenant with three (3) days' prior written or oral notice of City's intention to cure such default (except that no such prior notice shall be required in

the event of an emergency as determined by City). Such action by City shall not be construed as a waiver of such default or any rights or remedies of City, and nothing herein shall imply any duty of City to do any act that Tenant is obligated to perform. Tenant shall pay to City upon demand, as additional rent, all costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such default. Tenant's obligations under this Section shall survive the termination of this Lease.

## 17 INDEMNIFICATION

17.1 Limitation on City's Liability. City shall not be responsible for or liable to Tenant, and Tenant hereby assumes the risk of, and waives and releases City and its Agents from all Claims (as defined below) for, any injury, loss or damage to any person or property in or about the Property by or from any cause whatsoever including, without limitation, (i) any act or omission of persons occupying adjoining premises or any part of the Property, (ii) theft, (iii) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (iv) stopped, leaking or defective building systems, (v) building defects, and (vi) any other acts, omissions or causes. Nothing herein shall relieve City from liability caused solely by the gross negligence or willful misconduct of City or its Agents, but City shall not be liable under any circumstances for consequential or punitive damages.

17.2 Tenant's Indemnity. Tenant, on behalf of itself and its successors and assigns, shall indemnify, defend and hold harmless ("Indemnify") City, its Agents and their respective heirs, legal representatives, successors and assigns (individually and collectively, the "Indemnified Parties"), and each of them, from and against any and all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, including, without limitation, direct and vicarious liability of every kind (collectively, "Claims"), incurred in connection with or arising in whole or in part from: (a) any accident, injury to or death of a person, including, without limitation, employees of Tenant, or loss of or damage to property, howsoever or by whomsoever caused, occurring in or about the Property; (b) any default by Tenant in the observation or performance of any of the terms, covenants or conditions of this Lease to be observed or performed on Tenant's part; (c) the use or occupancy or manner of use or occupancy of the Property by Tenant, its Agents or Invitees or any person or entity claiming through or under any of them; (d) the condition of the Property; (e) any construction or other work undertaken by Tenant on the Property whether before or during the Term of this Lease; or (f) any acts, omissions or negligence of Tenant, its Agents or Invitees, in, on or about the Property; all regardless of the

active or passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that such Indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Lease and further except only such Claims as are caused exclusively by the willful misconduct or gross negligence of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any Claim. Tenant's obligations under this Section shall survive the termination of the Lease.

18 INSURANCE

18.1 Tenant's Insurance.

(a) Tenant, at its sole cost, shall procure and keep in effect at all times during the Term insurance as follows:

(1) Comprehensive or commercial general liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, explosion, collapse and underground (XCU), broad-form property damage, sudden and accidental pollution, fire damage legal liability (of not less than Two Hundred Fifty Thousand Dollars (\$250,000)), personal injury, products liability and completed operations.

(2) Rental interruption insurance in the amount of twelve (12) months' Base Rent, naming the City and County of San Francisco as the insured.

(3) Worker's Compensation Insurance with Employer's Liability Limits not less than \$1,000,000 each accident.

(4) 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 Tenant uses automobiles in connection with its use of the Property and sudden and accidental pollution.

(5) Liability insurance for gradual pollution or contamination, with limits not less than \$1,000,000 each occurrence.

(b) Should any of the required insurance be provided under a claims-made form, Tenant shall maintain such coverage continuously throughout the Term and, without lapse, for a period of three (3) years beyond the expiration or termination of this

Lease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Lease, such claims shall be covered by such claims-made policies.

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

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

(1) Name as additional insured the City and County of San Francisco, its officers, agents and employees.

(2) 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 other 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.

(e) 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.

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

(g) Upon City's request, Tenant and City shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability

insurance in an amount or coverage materially greater than the amount or coverage then being carried by Tenant for risks comparable to those associated with the Property, then the amounts or coverage carried by Tenant shall be increased to conform to such general commercial practice.

(h) Tenant's compliance with the provisions of this Section shall in no way relieve or decrease Tenant's liability under Section 17.2, Tenant's Indemnity, or any other provision of this Lease.

(i) Notwithstanding anything to the contrary in this Lease, this Lease shall terminate immediately, without notice to Tenant, upon the lapse of any required insurance coverage.

18.2 Tenant's Personal Property. Tenant shall be responsible, at its expense, for separately insuring Tenant's Personal Property.

18.3 City's Self Insurance. Tenant acknowledges that City self-insures against casualty, property damage and public liability risks and agrees that City may at its sole election, but shall not be required to, carry any third party insurance with respect to the Property or otherwise.

18.4 Waiver of Subrogation. Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance, City and Tenant each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance covering the Building or the contents, or any portion thereof, for any loss or damage maintained by such other party with respect to the 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 Property carried by Tenant does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Tenant 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

City reserves for itself and any of its designated Agents, the right to enter the Property as follows: (i) on a regular basis without advance notice to supply any necessary or agreed-upon service to be provided by City hereunder; (ii) on an occasional basis, at all reasonable times after giving Tenant reasonable advance written or oral notice, to show the Property

to prospective tenants or other interested parties, to post notices of non-responsibility, to conduct any environmental audit of Tenant's use of the Property, to repair, alter or improve any part of the improvements on the Property, and for any other lawful purpose; and (iii) on an emergency basis without notice whenever City believes that emergency access is required. City shall have the right to use any means that it deems proper to open doors in an emergency in order to obtain access to any part of the Property, and any such entry shall not be construed or deemed to be a forcible or unlawful entry into or a detainer of, the Property, or an eviction, actual or constructive, of Tenant from the Property or any portion thereof. Tenant shall not alter any lock or install any new or additional locking devices without the prior written consent of City.

## 20 TENANT'S CERTIFICATES

Tenant, at any time and from time to time upon not less than ten (10) days' prior notice from City, shall execute and deliver to City or to any party designated by City a certificate stating: (a) that Tenant has accepted the Property, (b) the Commencement Date and Expiration Date of this Lease, (c) 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), (d) whether or not there are then existing any defenses against the enforcement of any of Tenant's obligations hereunder (and if so, specifying the same), (e) whether or not there are any defaults then existing under this Lease (and if so specifying the same), (f) the dates, if any, to which the Base Rent, Additional Rent and Additional Charges have been paid, and (g) any other information that may be required.

## 21 SECURITY DEPOSIT

Upon execution of this Lease, Tenant shall deposit the sum specified as the security deposit in the Basic Lease Information (the "Security Deposit") to secure Tenant's faithful performance of all terms, covenants and conditions of this Lease. Tenant 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 Property caused by Tenant, its Agents or Invitees, or any failure of Tenant to perform any other terms, covenants or conditions contained herein, without waiving any of City's other rights and remedies hereunder or at law or in equity and without any obligation. Should City use any portion of the Security Deposit to cure any default by Tenant hereunder, Tenant shall immediately replenish the security deposit to the original amount. If the Base Rent is increased pursuant to any of the provisions of this Lease, Tenant 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 Tenant shall not be entitled to interest on the Security Deposit. The amount of the Security Deposit shall in no way limit the liabilities of Tenant under any provision of this Lease.

## 22 SURRENDER OF PROPERTY

Subject to the provisions of Articles 6 and 8 above, upon the Expiration Date or other termination of the Term of this Lease, Tenant shall peaceably quit and surrender to City the Property together with all improvements and Alterations approved by City in good order and condition, except for normal wear and tear after Tenant's having made the last necessary repair required on its part under this Lease, and further except for any portion of the Property condemned and any damage and destruction for which Tenant is not responsible hereunder. The Property shall be surrendered free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this Lease and any other encumbrances created by City. Immediately before the Expiration Date or other termination of this Lease, Tenant shall remove all of Tenant's Personal Property as provided in this Lease, and repair any damage resulting from the removal. Any items of Tenant's Personal Property remaining on the Property after the Expiration Date or sooner termination of this Lease may, at City's option, be deemed abandoned and disposed of in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by law.

Concurrently with the surrender of the Property, Tenant shall, if requested by City, execute, acknowledge and deliver to City a quitclaim deed to the Property and any other instrument reasonably requested by City to evidence or otherwise effect the termination of Tenant's leasehold estate hereunder and to effect such transfer or vesting of title to the improvements or other equipment which remain part of the Property.

## 23 EXTENSION OPTION

23.1 Option to Extend Term. City grants to Tenant a one-time option to extend the Term of this Lease as to the entire Property (the "Extension Option") for an additional five (5) years (the "Extension Term") commencing upon the Expiration Date upon the following terms and conditions. Tenant may exercise the Extension Option at any time during the Term but if it determines to do so it must give written notice to City thereof not less than one (1) year prior to the Expiration Date. Any such notice by Tenant shall be irrevocable by Tenant. If any event of default by Tenant is outstanding hereunder either at the time of Tenant's exercise of the Extension Option or at any time prior to the first day of the Extension Term (or if any event shall have occurred which with the giving of notice or the passage of time

or both would constitute such a default), then City may elect by notice to Tenant to reject Tenant's exercise of the Extension Option, whereupon the Extension Option shall be null and void. City shall also have the right to void Tenant's Extension Option if Tenant has assigned its interest hereunder or sublet more than fifty percent (50%) of the Property.

23.2 Base Rent and Other Terms. If Tenant elects to exercise the Extension Option, then the lease for the Extension Term shall cover the entire Property and shall be upon all of the terms, covenants and conditions of this Lease, except that Base Rent hereunder shall be adjusted to the Prevailing Market Rate as follows:

(a) No later than one hundred twenty (120) days prior to commencement of the Extension Term, City shall notify Tenant in writing of City's determination made in good faith of the Prevailing Market Rate for the Property to be used to calculate the Base Rent for the Extension Term. As used herein, the term "Prevailing Market Rate" for the Property shall mean the rental and all other monetary payments and escalations, including, without limitation, consumer price indexing, that City could obtain from a third party desiring to lease the Property for the Extension Term taking into account the age of the buildings, the size, location of the Property, the quality of construction of the improvements, the services provided under the terms of this Lease, the rental then being obtained for new leases of space comparable to the Property in the same locality, and all other factors that would be relevant to a third party desiring to lease the Property for the Extension Term in determining the rental such party would be willing to pay.

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

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



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

(e) City and Tenant shall by mutual agreement select a single appraiser within thirty (30) days after the end of such consultation period. If the parties are unable to reach agreement on selection of the appraiser within such period, then the appraiser shall be appointed by the presiding judge of the Superior Court of San Francisco.

(f) Upon the selection of such appraiser, City and Tenant shall each submit the figure it determined to be the Prevailing Market Rate of the Property, together with any opinions of value, appraisals or other relevant written information concerning the Prevailing Market Rate such party wishes to provide. Upon considering such information provided by the parties and any other information the appraiser deems appropriate, the appraiser shall, by written notice to the parties within thirty (30) days of his or her selection, chose either the figure provided by City or the figure provided by Tenant as the Prevailing Market Rate (the appraiser may not select any other figure). Such determination shall be binding on the parties for purposes hereof.

(g) The appraiser specified herein shall be a member of the American Institute of Real Estate Appraisers (MAI) or a licensed commercial real estate broker] with not less than five (5) years' experience appraising leases of commercial properties similar to the Property in the Woodside-Portola Drive area of San Francisco. The appraiser shall not have had any prior dealings with City or Tenant with respect to the matter to be determined hereunder. City and Tenant shall each pay one-half of the cost of the appraiser plus one-half of any other costs incurred by in the arbitration (excluding its own attorneys' and experts' costs).

If, either by agreement of the parties or by the arbitration procedure provided herein, the Prevailing Market Rate is not finally determined by the commencement of the Extension Term, then Tenant shall pay the Prevailing Market Rate determined by Landlord until such time as the Prevailing Market Rate is finally determined by agreement of the parties or by arbitration, at which time City shall refund any excess amount to Tenant or Tenant shall pay any shortage to City, as the case may be.

## 24 GENERAL PROVISIONS

24.1 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 Express Mail, return receipt requested, with postage prepaid, to: (a) Tenant (i) at Tenant's address set forth in the Basic Lease Information, if sent prior to Tenant's taking possession of the Property, or (ii) at the Property if sent on or subsequent to Tenant's taking possession of the Property, or (iii) at any place where Tenant or any Agent of Tenant may be found if sent subsequent to Tenant's vacating, abandoning or surrendering the Property; or (b) City at City's address set forth in the Basic Lease Information; or (c) to such other address as either City or Tenant may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days 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 Express Mail, 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.

24.2 No Implied Waiver. No failure by City to insist upon the strict performance of any obligation of Tenant under this Lease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial Base Rent or Additional Charges during the continuance of any such breach, and no acceptance of the keys to or possession of the Property prior to the expiration of the Term by any Agent of City, shall constitute a waiver of such breach or of City's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Lease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. Any consent by City hereunder shall not relieve Tenant of any obligation to secure the consent of City in any other or future instance under the terms of this Lease.

24.3 Amendments. Neither this Lease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by both parties hereto.

24.4 Authority. If Tenant signs as a corporation or a partnership, each of the persons executing this Lease on behalf

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

24.5 Parties and Their Agents; Approvals. The words "City" and "Tenant" as used herein shall include the plural as well as the singular. If there is more than one Tenant, the obligations and liabilities under this Lease imposed on Tenant shall be joint and several. As used herein, the term "Agents" when used with respect to either party shall include the agents, employees, officers, contractors and representatives of such party, and the term "Invitees" when used with respect to Tenant shall include the clients, customers, invitees, guests, licensees, assignees or subtenants of Tenant. All approvals, consents or other determinations permitted or required by City hereunder shall be made by or through City's Director of Property unless otherwise provided in this Lease, subject to applicable law. Tenant acknowledges that in granting any approvals or consents or in making any other determinations under this Lease, City is acting solely in its corporate or proprietary capacity as landlord and not in its municipal capacity.

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

24.7 Successors and Assigns. Subject to the provisions of this Lease relating to Assignment and Subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of City and Tenant and, except as otherwise

provided herein, their personal representatives and successors and assigns; provided, however, that upon any sale, assignment or transfer by City named herein (or by any subsequent landlord) of its interest in the Building as owner or lessee, including any transfer by operation of law, City (or any subsequent landlord) shall be relieved from all subsequent obligations and liabilities arising under this Lease subsequent to such sale, assignment or transfer.

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

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

24.10 Governing Law. This Lease shall be construed and enforced in accordance with the laws of the State of California.

24.11 Entire Agreement. This instrument, including the exhibits hereto, which are made a part of this Lease, contains the entire agreement between the parties and all prior written or oral negotiations, understandings and agreements are merged herein. The parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts hereof and changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease. Tenant hereby acknowledges that neither City nor City's Agents have made any representations or warranties with respect to the Property or this Lease except as expressly set forth herein, and

no rights, easements or licenses are or shall be acquired by Tenant by implication or otherwise unless expressly set forth herein.

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

24.13 Holding Over. Any holding over after the expiration of the Term with the express consent of City shall be construed to automatically extend the Term of this Lease on a month-to-month basis at a Base Rent equal to one hundred fifty percent (150%) of the latest Base Rent payable by Tenant hereunder prior to such expiration, together with an amount estimated by City for the monthly Additional Charges payable under this Lease, and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term and any Renewal Options). Any holding over without City's consent shall constitute a default by Tenant 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. Tenant's access to the premises after expiration or any earlier termination of the term of this lease pursuant to the provisions set forth herein shall not constitute "Holding Over" under this Section.

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

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

24.16 Survival of Indemnities. Termination of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to

the other party under this Lease, nor shall it affect any provision of this Lease that expressly states it shall survive termination hereof.

24.17 Signs. Tenant may at its own cost and expense erect or post signs on the leased premises which are appropriate to the specified use of the premises. City reserves the right to review the placement, design and plan for any such sign prior to its erection or posting and agrees that approval thereof shall not be withheld unreasonably. Any advertising media so erected or displayed by Tenant shall remain the property of Tenant. Tenant shall remove any such advertising media at Tenant's own cost and expense upon expiration or termination of this Lease.

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

24.19 Light and Air. Tenant covenants and agrees that no diminution of light, air or view by any structure that may hereafter be erected (whether or not by City) shall entitle Tenant to any reduction of the Base Rent or Additional Charges under this Lease, result in any liability of City to Tenant, or in any other way affect this Lease or Tenant's obligations hereunder.

24.20 No Recording. Tenant shall not record this Lease or any memorandum hereof in the public records.

24.21 Taxes, Assessments, Licenses, Permit Fees and Liens.  
(a) Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest. (b) Tenant agrees to pay taxes of any kind, including possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Tenant's usage of the Property that may be imposed upon Tenant by law, all of which shall be paid when the same become due and payable and before delinquency. (c) Tenant agrees not to allow or suffer a lien for any such taxes to be imposed upon the Property or upon any equipment or personal property located thereon without promptly discharging the same, provided that Tenant, if so desiring, may have reasonable opportunity to contest the validity of the same. (d) San Francisco Administrative Code Sections 23.6-1 and 23.6-2 require that the City and County of San Francisco report certain information

relating to this Lease, and any renewals thereof, to the County Assessor within sixty (60) days after any such transaction, and that Tenant report certain information relating to any assignment of or sublease under this lease to the County Assessor within sixty (60) days after such assignment or sublease transaction. Tenant agrees to provide such information as may be requested by the City to enable the City to comply with this requirement.

24.22 Non-Liability of City Officials, Employees and Agents. No elective or appointive board, commission, member, officer, employee or other Agent of City shall be personally liable to Tenant, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Tenant, its successors and assigns, or for any obligation of City under this Agreement.

24.23 Wages and Working Conditions. With respect to the construction of any Alterations, any employee performing services for Tenant shall be paid not less than the highest prevailing rate of wages, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California.

24.24 Non-Discrimination. Tenant shall not, in the operation and use of the Property, discriminate against any person or group of persons solely because of race, color, creed, national origin, ancestry, age, sex, sexual orientation, disability or acquired immune deficiency syndrome (AIDS) or AIDS related condition (ARC). Tenant shall include a similar provision to the foregoing in any sublease or other agreement subordinate to this Lease and permitted hereunder. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code, relating to nondiscrimination by parties contracting with the City and County of San Francisco, are incorporated herein by reference and made a part hereof as though fully set forth herein. Tenant agrees to comply with all of the provisions of such Chapters 12B and 12C that apply to tenants of the City and County of San Francisco.

24.25 No Relocation Assistance. This Lease creates no right in Tenant to receive any relocation assistance upon any termination of tenancy except as provided in Article 14 (Eminent Domain) hereof.

24.26 MacBride Principles - Northern Ireland. The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide

by the MacBride Principles. Tenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

24.27 Options Personal. Any right or option to extend the term of this Lease or renew this Lease is personal to the original Tenant and may be exercised only by the original Tenant while occupying the Property who does so without the intent of thereafter making any Assignment of this Lease or Subletting of the Property, or any portion thereof, and may not be exercised by or assigned, voluntarily or involuntarily, by or to any person or entity other than Tenant. The options, if any, herein granted to Tenant are not assignable separate and apart from this Lease, nor may any option be separated from this Lease in any manner, either by reservation or otherwise.

24.28 Tropical Hardwood Ban. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood product.

24.29 Conflicts of Interest. Tenant states that it is familiar with the provisions of Section 8.105 and 8.106 of the San Francisco Charter and certifies that it knows of no facts which would constitute a violation of such provisions. Tenant further certifies that it has made a complete disclosure to the City of all facts bearing on any possible interests, direct or indirect, which Tenant 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 Tenant to make such disclosure, if any, shall constitute grounds for the City's termination and cancellation of this Lease.

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

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

24.32 Effective Date. This Lease shall become effective on the date upon which (i) City's Board of Supervisors and the Mayor enact an ordinance approving this Lease in accordance with all applicable laws and (ii) this Lease is duly executed by the parties hereto.

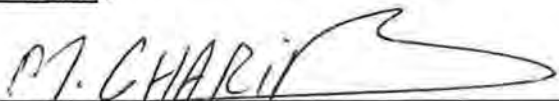
NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, TENANT ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS LEASE UNLESS AND



UNTIL AN ORDINANCE OF CITY'S BOARD OF SUPERVISORS SHALL HAVE BEEN DULY ENACTED APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ENACTMENT OF SUCH AN ORDINANCE, AND THIS LEASE SHALL BE NULL AND VOID IF CITY'S MAYOR AND THE BOARD OF SUPERVISORS DO NOT APPROVE THIS LEASE, IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH ORDINANCE WILL BE ENACTED, NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

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

TENANT:

  
\_\_\_\_\_  
Michael Gharib  
d/b/a TWIN PEAKS MOBIL

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

  
\_\_\_\_\_  
Mayor  
  
\_\_\_\_\_  
Clerk of Board of Supervisors

RECOMMENDED:

\_\_\_\_\_  
Director of Public Health

  
\_\_\_\_\_  
Director of Property

APPROVED AS TO FORM:  
LOUISE H. RENNE, City Attorney

By   
\_\_\_\_\_  
Deputy City Attorney

EXHIBIT A

DESCRIPTION AND MAP OF PROPERTY

A16U/060894

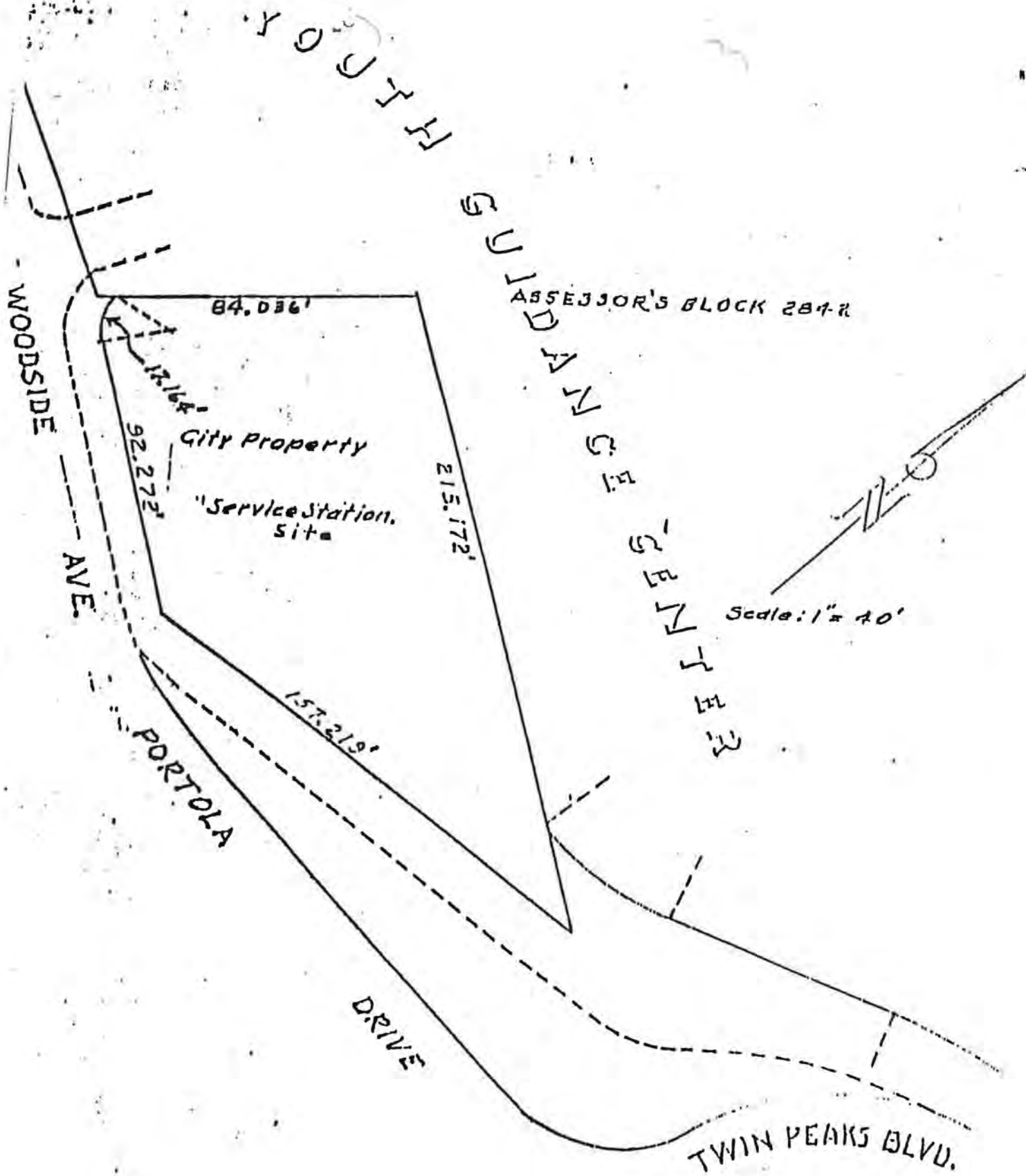


EXHIBIT A  
 Map of City property  
 Woodside Avenue and Portola Drive  
 San Francisco

FILE NO. 65-94-11

ORDINANCE NO. 279-94

17/94  
11b

1 [Lease of Real Property]  
2 AUTHORIZING AND APPROVING A NEGOTIATED LEASE WITH MICHAEL GHARIB,  
3 DBA TWIN PEAKS MOBIL, OF CERTAIN CITY-OWNED LAND AT THE NORTHEAST  
4 CORNER OF PORTOLA DRIVE AND WOODSIDE AVENUE, WITHOUT COMPETITIVE  
5 BIDDING; ~~AND RATIFYING PREVIOUS ACTIONS.~~

6 Be it ordained by the People of the City and County of  
7 San Francisco:

8 Section 1. In accordance with the recommendations of the  
9 San Francisco Health Commission on June 7, 1994 and of the City's  
10 Director of Property, the form of the lease presented to this  
11 Board (the "Lease") between the City, as landlord, and Michael  
12 Gharib, dba Twin Peaks Mobil, as tenant, for the continued use of  
13 certain City-owned property at the northwest corner of Portola  
14 Drive and Woodside Avenue for operation of a gas station, a copy  
15 of which Lease is on file with the Clerk of the Board of  
16 Supervisors in File No. 65-94-11, is hereby approved. The  
17 Lease shall have an initial term of 10 years, with one 5 year  
18 option to extend. The base monthly rent for the leased premises  
19 for the first five lease years shall be \$3,000 or \$.0189 per  
20 gallon of gasoline delivered to the premises, whichever is  
21 greater, and for the second five lease years shall increase to  
22 \$4,000 or \$.0283 per gallon of gasoline delivered to the  
23 premises, whichever is greater. Rent for the extension term  
24 shall be subject to reappraisal on the terms and conditions set  
25 forth in the Lease.

APPROVED AND PASSED  
JUL 14 1994

1 Section 2. The Mayor of the City is hereby authorized to  
2 execute, and the Clerk of the Board is hereby authorized to  
3 attest and affix the seal of the City thereon, the Lease in the  
4 form presented to this Board.

5 Section 3. The Board of Supervisors hereby finds that it is  
6 in the best interests of the City to enter into the Lease based  
7 on direct negotiations with Michael Gharib, dba Twin Peaks Mobil,  
8 the current operator of the gas station on the premises, without  
9 a competitive bid process. Competitive bidding in this situation  
10 would be impracticable or impossible.

11 Section 4. All actions authorized by this ordinance and  
12 heretofore taken by any City official in connection with the  
13 Lease are hereby ratified, approved and confirmed by this Board  
14 of Supervisors.

15 APPROVED AS TO FORM:

16 LOUISE H. RENNE  
17 City Attorney

18 By: Jane G. [Signature]  
19 Deputy City Attorney

RECOMMENDED:

[Signature]  
Director of Public Health  
[Signature]  
Director of Property

## FIRST AMENDMENT TO LEASE

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

### RECITALS

This Amendment is made with reference to the following facts:

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

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

### AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

24.24. Non-Discrimination in City Contracts and Benefits Ordinance

(a) Covenant Not to Discriminate

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

(b) Subleases and Other Subcontracts

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

(c) Non-Discrimination in Benefits

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

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

(d) HRC Form

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

(e) Incorporation of Administrative Code Provisions by Reference

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

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

24.25. No Relocation Assistance; Waiver of Claims

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



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

24.28. Tropical Hardwood and Virgin Redwood Ban

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

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

24.29. Conflicts of Interest

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

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

24.33. Pesticide Prohibition

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

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

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

#### 24.34. First Source Hiring Ordinance

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

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

#### 24.35. Sunshine Ordinance

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

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

#### 24.36. Requiring Health Benefits for Covered Employees

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

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

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

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

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

#### 24.37. Notification of Limitations on Contributions

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

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

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

#### 24.38. Preservative-Treated Wood Containing Arsenic

As of July 1, 2003, Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Tenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Tenant from purchasing preservative-treated wood containing arsenic for saltwater immersion.

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

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

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

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

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

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

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

Steve Leguizamo  
Director of Property *DL*

TENANT:

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

M. Gharib  
By: Michael Gharib  
Its: President and Chief Financial Officer

RECOMMENDED:

Amy L. Brown  
Director  
Department of Public Health

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

By: Amy L. Brown  
Deputy City Attorney

SERVICE STATION SITE LEASE

between

CITY AND COUNTY OF SAN FRANCISCO,  
as Landlord

and

TWIN PEAKS PETROLEUM, INC., a California corporation,  
dba Twin Peaks Auto Care

as Tenant

For the lease of  
598 Portola Drive  
San Francisco, California

July 23, 2015

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LIST OF EXHIBITS

EXHIBIT A – Property

## SERVICE STATION SITE LEASE

THIS SERVICE STATION SITE LEASE (this "Lease"), dated for reference purposes only as of July 23, 2015, is between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), and TWIN PEAKS PETROLEUM, INC., a California corporation, dba Twin Peaks Auto Care ("Tenant").

City and Tenant hereby covenant and 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 in this Lease pertaining to such item. In the event of any conflict between the information in this Section and any more specific provision of this Lease, the more specific provision shall control.

Lease Reference Date:	July 23, 2015
Landlord:	CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation
Tenant:	TWIN PEAKS PETROLEUM, INC., a California corporation Michael Gharib
Real Property ( <u>Section 2.1</u> ):	Portion of Lot 7, Block 2842, San Francisco, California, commonly known as 598 Portola Drive
Rentable Area of Real Property( <u>Section 2.1</u> ):	Approximately 14,499 square feet as depicted on <u>Exhibit A</u> , attached.
Term ( <u>Section 3.1</u> ):	Five (5) years. Commencing on the Commencement Date, as defined in <u>Section 3.1</u> , and ending on the date immediately preceding the five (5) year anniversary of the Commencement Date (the "Expiration Date")
Extension Option ( <u>Section 25.1</u> )	Tenant shall have the option to extend the term of this Lease for one five (5)-year extension period, commencing on the date immediately following the Expiration Date, on the terms and conditions set forth in <u>Section 25.1</u> .
Base Rent ( <u>Section 4.1</u> ):	Initial Annual Base Rent: \$100,920 _____ (\$6.96 per square foot)
	Initial monthly payments: \$8,410 (\$0.58 per square foot)
Rent Adjustment Dates ( <u>Section 4.2</u> ):	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 by 3% according to the provisions of Section 4.2.

Use (Section 5.1):

Operation of a retail gasoline station, automobile service station, ancillary sales and services related to the operation of an automotive fuel station, and for the retail sale of sodas, juices, candies, gums, snacks, and such other sundry articles as are commonly sold in gasoline stations in San Francisco, California, provided that Tenant shall not sell tobacco products or alcoholic beverages.

Tenant Improvements:

None

Utilities and Services (Section 10.1):

Tenant is responsible for all utilities and services.

Security Deposit (Section 22):

\$50,000

Notice Address of City (Section 26.1):

Real Estate Division  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Attn: Director of Property  
Re: 598 Portola Drive, SF, CA  
Fax No.: (415) 552-9216

with a copy to:

Department of Public Health  
101 Grove Street, Room 308  
San Francisco, California 94102  
Attn: Director of Public Health  
Fax No.: (415) 554-2811

and to:

Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4682  
Attn: Real Estate/Finance Team  
Re: 598 Portola Dr., SF, CA

Key Contact for City:

Claudia J. Gorham

Telephone No.:

415-554-9871

Address for Tenant (Section 26.1):

598 Portola Dr., San Francisco, CA 94131  
Fax No.: 415-648-4709

Key Contact for Tenant:

Michael Gharib

Telephone No.:

415-648-4709

Brokers (Section 26.8):

NONE

Other Noteworthy Provisions:

Underground Storage Tanks (Section 24.4)

Tenant is obligated to remove the underground storage tanks and Tenant's equipment at the expiration or termination of this Lease. Section 24.4.

## **2. PROPERTY; AS IS CONDITION**

### **2.1. Leased Property**

Subject to the provisions of this Lease, City leases to Tenant and Tenant leases from City the following described real property situated in the City and County of San Francisco, State of California, as depicted on Exhibit A (the "Property") attached hereto, and all improvements located thereon (including without limitation all buildings, structures, fixtures, apparatus, equipment, system and appliances used in connection with any of the foregoing, signs, driveways, parking areas, curbs, walks, fences, walls, stairs, poles, landscaping, and any and all other improvements now located or hereafter constructed on the Property during the Term of this Lease).

The area of the real property is specified in the Basic Lease Information and shall be conclusive for all purposes hereof. The real property and all other improvements on and appurtenances to such land are referred to collectively herein as the "Property".

### **2.2. Accessibility Disclosures**

California Civil Code Section 1938 requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("CASp") to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. Tenant is hereby advised that the Property has not been inspected by a CASp.

### **2.3. As Is Condition**

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

## **2.4. Energy Consumption.**

Tenant acknowledges and agrees that City has delivered a Disclosure Summary Sheet, Statement of Energy Performance, Data Checklist, and Facility Summary (all as defined in the California Code of Regulations, Title 20, Division 2, Chapter 4, Article 9, Section 1680) for the Property no less than 24 hours prior to Tenant's execution of this Lease.

## **3. TERM**

### **3.1. Lease Term**

The Property is leased for a term (the "Term") commencing on the date upon which (a) City's Mayor and Board of Supervisors, in their sole and absolute discretion, adopt a resolution approving this Lease in accordance with all applicable laws and (b) this Lease is duly executed by the parties hereto (the "Commencement Date"). The Term of this Lease shall end on the expiration date specified in the Basic Lease Information, unless sooner terminated pursuant to the provisions of this Lease or extended pursuant to the terms of Section 25.1. This Lease is subject to the Extension Option(s) set forth in Section 25.1 (Option to Extend Term). Tenant accepts the Property on the Commencement Date in its existing as is condition as further provided above, with no obligation of the City to make any improvements, repairs or alterations.

### **3.2. Confirmation of Commencement Date and Expiration Date**

The dates on which the Term commences and terminates pursuant hereto are referred to respectively as the "Commencement Date" and the "Expiration Date." At the request of either party, City and Tenant shall execute a notice confirming the actual Commencement Date and the Expiration Date, but the failure to do so shall not affect the commencement or expiration of the Term.

### **3.3. Termination of Existing Lease; Survival of Indemnities**

Landlord and Tenant acknowledge that Tenant is presently in possession of the Property pursuant to a lease, dated June 8, 1994, between City, as landlord, and Tenant (as successor in interest to Michael Gharib, d/b/a Twin Peaks Mobil), as tenant, as amended (the "Existing Lease"). Notwithstanding the provisions of the Existing Lease to the contrary, the Existing Lease shall terminate as of the date immediately preceding the commencement of the Term of this Lease; provided, however, that Tenant shall not be relieved of any of its obligations under the Existing Lease accruing prior to such termination of the Existing Lease, and Tenant's indemnification obligations under the Existing Lease shall survive the termination of the Existing Lease with regard to events occurring prior to such termination, and the provisions of Article 8 of the Existing Lease shall survive the termination of the Existing Lease.

## **4. RENT**

### **4.1. Base Rent; Rent**

Throughout the Term beginning on the Commencement Date, Tenant shall pay to City the annual Base Rent specified in the Basic Lease Information, provided that such sum shall be subject to escalation pursuant to Section 4.2 (Adjustments in Base Rent) (the "Base Rent"). The Base Rent shall be paid to City in advance, without prior demand and without any deduction, setoff or counterclaim whatsoever, in equal consecutive monthly payments on or before the first day of the Term and on or before the first day of each month thereafter. All sums payable by Tenant to City hereunder shall be paid in cash or by good (cashier's or certified) check to the City and County of San Francisco in care of the Director of Property at the primary address for City specified in the Basic Lease Information, or such other place as City may designate in

writing. If the Expiration Date occurs on a day other than the last day of a calendar month, then the Base Rent for such fractional month shall be prorated based on a thirty (30) day month. As used in this Lease, the term "Rent" shall include the Base Rent and any other amounts Tenant is obligated to pay hereunder, whether or not any such amounts are specifically characterized as rent.

#### **4.2. Adjustments in Base Rent**

On each date specified in the Basic Lease Information for adjustment of the Base Rent (an "Adjustment Date"), the Base Rent payable under this Lease on and after such Adjustment Date increased by 3% over the Base Rent rate payable during the immediately preceding twelve (12) month period.

#### **4.3. Late Charges**

If Tenant fails to pay any Rent or any portion of Rent within five (5) days following the due date, such unpaid amount shall be subject to a late payment charge equal to six percent (6%) of the unpaid amount in each instance. The late payment charge has been agreed upon by City and Tenant, 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 Tenant, 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 shall be paid to City together with such unpaid amount.

#### **4.4. Default Interest**

Any Rent, if not paid within five (5) days following the due date, 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 (the "Interest Rate"). However, interest shall not be payable on late charges incurred by Tenant nor on any amounts on which late charges are paid by Tenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Tenant.

### **5. USE**

#### **5.1. Permitted Use**

Tenant shall use and continuously occupy the Property during the Term solely for the operation of a retail gasoline station, automobile service station and associated convenience store, including the sale of merchandise generally sold at service stations, and for no other purposes.

#### **5.2. No Unlawful Uses, Nuisances or Waste**

Without limiting the foregoing, Tenant shall not use, occupy or permit the use or occupancy of any of the Property in any unlawful manner or for any illegal purpose, or permit any offensive, noisy or hazardous use or any waste on or about the Property. Tenant shall take all precautions to eliminate any nuisances or hazards relating to its activities on or about the Property.

**6. [INTENTIONALLY OMITTED]**

**7. ALTERATIONS**

**7.1. Tenant's Alterations**

**(a) General**

Tenant shall not make or permit any alterations, installations, additions or improvements, structural or otherwise (collectively, "Alterations"), in, to or about the Property, without City's prior written consent in each instance. All Alterations shall be done at Tenant's expense in accordance with plans and specifications approved by City, only by duly licensed and bonded contractors or mechanics approved by City, and subject to any conditions that City may reasonably impose. If the Alterations are of such a nature that formal plans will not be prepared for the work, Tenant shall provide City with a reasonably specific written description of the work. It is understood and agreed that Tenant's obligation to comply with laws shall include the obligation to make and perform all Alterations in compliance with applicable laws, and that Tenant has the sole responsibility for obtaining all necessary permits for the Alterations and to comply with the conditions of any such permits. Tenant shall make application for any such permits directly to the applicable regulatory agency. City may require Tenant, at Tenant's expense, to obtain the prior written approval of City's Art Commission for any such Alterations. Tenant shall deliver to City one complete set of as-built plans and specifications within ninety (90) days after completion of the Alterations, together with a final inspection report in connection with inspection required to close the permit process, if applicable.

**(b) Asbestos**

Without limiting Section 24.2 (No Hazardous Materials) below, in the event that asbestos-containing materials ("ACM") are determined to exist in or about the Property, Tenant shall ensure that all Alterations and any asbestos related work, as defined in California Health & Safety Code Section 25914.1(b), is performed in compliance with all laws relating to asbestos, including but not limited to California Occupational Safety and Health (OSHA) regulations found in Title 8 of the California Code of Regulations, Sections 1502 and 1529. Additionally, Tenant shall distribute notifications to all employees and contractors as required pursuant to California Health & Safety Code Section 25915 *et seq.* informing them of the existence of ACM and that moving, drilling, boring, or otherwise disturbing ACM may present a health risk and should not be attempted by an unqualified employee. No Alterations affecting ACM-containing areas or any asbestos related work shall be performed without City's prior written consent in each instance.

**(c) Tenant's Improvements or Alterations that Disturb or Remove Lead-Based Paint**

Tenant, on behalf of itself and its Agents or Invitees, shall comply with all requirements of the San Francisco Building Code, Section 3407, and all other applicable present or future federal, state, local and administrative laws, rules, regulations, orders and other governmental requirements, the requirements of any board of fire underwriters or other similar body, any directive or occupancy certificate issued pursuant to any law by any public officer or officers acting in their regulatory capacity (collectively, "Laws"), including, without limitation, the California and United States Occupational Health and Safety Acts and their implementing regulations, when the work of improvement or alteration disturbs or removes exterior lead-based or "presumed" lead-based paint (as defined below). Tenant and its Agents or Invitees shall give to City three (3) business days prior written notice of any disturbance or removal of exterior lead-based or presumed lead-based paint. Further, Tenant and its Agents or Invitees, when disturbing or removing exterior lead-based or presumed lead-based paint, shall not use or cause



to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter ("HEPA") local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool; and (e) heat guns operating above 1,100 degrees Fahrenheit. Paint on the exterior of buildings built before December 31, 1978, is presumed to be lead-based paint unless lead-based paint testing, as defined in Section 3407 of the San Francisco Building Code, demonstrates an absence of lead-based paint on the exterior surfaces of such buildings. Under this Section, lead-based paint is "disturbed or removed" if the work of improvement or alteration involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on an exterior surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface. Notice to City under this Lease shall not constitute notice to the City's Department of Building Inspection required under Section 3407 of the San Francisco Building Code.

## **7.2. Title to Improvements**

During the Term of this Lease, Tenant shall own all of the appurtenances, fixtures, equipment, and other property necessary to the operation of a retail gasoline station, automobile service station, and convenience store, and which are attached or affixed to or installed in the Property at the Commencement Date or during the Term, including, without limitation, any Alterations, and all appurtenant fixtures, machinery and equipment installed, excluding the existing building(s). Except as otherwise elected by City, at the expiration or earlier termination of this Lease, title to the Improvements, including appurtenant fixtures (except as otherwise set forth in this Lease, excluding trade fixtures and Personal Property), will vest City without further action of any Party, and without compensation or payment to Tenant. Tenant shall have the right at any time, or from time to time, including, without limitation, at the expiration or upon the earlier termination of the Term of this Lease to remove trade fixtures and other Personal Property from the Property in the ordinary course of business; provided, however, that if the removal of Personal Property causes damage to the Property, Tenant shall promptly cause the repair of such damage at no cost to City.

## **7.3. Tenant's Personal Property**

All furniture, trade fixtures, office equipment and articles of movable personal property installed in the Property by or for the account of Tenant, without expense to City, and that can be removed without structural or other damage to the Property (collectively, "Personal Property") shall be and remain Tenant's property. Tenant may remove its Personal Property at any time during the Term, subject to the provisions of Section 23 (Surrender of Property) below. Tenant shall pay any taxes or other impositions levied or assessed upon Tenant's Personal Property, at least ten (10) days prior to delinquency, and shall deliver satisfactory evidence of such payment to City upon request.

# **8. REPAIRS AND MAINTENANCE**

## **8.1. Tenant's Repairs**

Tenant shall maintain, at no expense to City, the Property and all improvements, fixtures, plumbing, wiring, utilities and equipment located thereon, in good repair and working order and in a clean, secure, safe and sanitary condition. Tenant shall promptly make all repairs and replacements: (a) at no cost to the City, (b) by licensed contractors or qualified mechanics approved by City, (c) so that the same shall be at least equal in quality, value and utility to the original work or installation. Tenant hereby waives all rights to make repairs at City's expense under Sections 1941 and 1942 of the California Civil Code or under any similar law, statute or ordinance now or hereafter in effect.

## **9. LIENS AND ENCUMBRANCES**

### **9.1. Liens**

Tenant shall keep the Property and the rest of the Property free from any liens arising out of any work performed, material furnished or obligations incurred by or for Tenant. In the event Tenant does not, within ten (10) 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, the right, but not the obligation, to cause the lien 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 incurred by it in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to City by Tenant upon demand. City shall have the right to post on the Property any notices that City may deem proper for the protection of City and the Property, from mechanics' and material supplier's liens. Tenant shall give to City at least fifteen (15) days' prior written notice of commencement of any Alteration, repair or construction on the Property. Tenant agrees to indemnify, defend and hold City and its Agents harmless from and against any claims for mechanic's, material supplier's or other liens in connection with any Alterations, repairs or construction on the Property, or materials furnished or obligations incurred by or for Tenant.

### **9.2. Encumbrances**

Tenant shall not create, permit or suffer any liens or encumbrances affecting any portion of the Property or City's interest therein or under this Lease.

## **10. UTILITIES AND SERVICES**

### **10.1. Utilities and Services**

Tenant shall make all arrangements for and pay, as the same become due, all charges, costs, bills and expenses for water, gas electricity, sewer, telephone and all other services and utilities, of whatever kind, furnished to or used by the Tenant or by any other party in connection with the use, occupancy, maintenance or operation of the Property or any part thereof.

### **10.2. Water and Energy Conservation; Mandatory or Voluntary Restrictions**

In the event any law, ordinance, code or governmental or regulatory guideline imposes mandatory or voluntary controls on City or the Property or any part thereof, relating to the use or conservation of energy, water, gas, light or electricity or the reduction of automobile or other emissions, or the provision of any other utility or service provided with respect to this Lease, or in the event City is required or elects to make alterations to any part of the Property in order to comply with such mandatory or voluntary controls or guidelines, such compliance and the making of such alterations shall in no event entitle Tenant to any damages, relieve Tenant of the obligation to pay the full Base Rent reserved hereunder or to perform each of its other covenants hereunder or constitute or be construed as a constructive or other eviction of Tenant. City shall have the right at any time to install a water meter in the Property or otherwise to measure the amount of water consumed on the Property, and the cost of such meter or other corrective measures and the installation and maintenance thereof shall be paid for by Tenant.

## **11. COMPLIANCE WITH LAWS AND RISK MANAGEMENT REQUIREMENTS**

### **11.1. Compliance with Laws**

Tenant shall promptly comply, at no cost to the City, with all present or future laws, ordinance, resolution, regulation, requirement, proclamation, order or decree of any municipal,

county, state or federal government or other governmental or regulatory authority relating to the Property or the use or occupancy thereof (the "Legal Requirements") and with any and all recorded covenants, conditions and restrictions affecting the Property or any portion thereof, whether in effect at the time of the execution of this Lease or adopted or recorded at any time thereafter and whether or not within the present contemplation of the parties. Tenant further understands and agrees that it is Tenant's obligation, at no cost to the City, to cause the Property and Tenant's uses thereof to be conducted in compliance with the Americans With Disabilities Act, 42 U.S.C. Section 12101 *et seq.* and any other applicable disability access laws. Tenant shall not be required to make any structural Alterations in order to comply with such laws unless such Alterations shall be occasioned, in whole or in part, directly or indirectly, by the Tenant improvements or any other Alterations, Tenant's use of the Property, or any act or omission of Tenant, its Agents or Invitees. Any Alteration made by or on behalf of Tenant pursuant to the provisions of this Section shall comply with the provisions of Section 8.1 (Tenant's Repairs) above. The parties acknowledge and agree that Tenant's obligation to comply with all Legal Requirements as provided herein is a material part of the bargained for consideration under this Lease. Tenant's obligation under this Section shall include, without limitation, the responsibility of Tenant to make substantial or structural repairs and Alterations to the Property (including any of the tenant improvements or any of Tenant's Alterations), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or City, the degree to which the curative action may interfere with Tenant's use or enjoyment of the Property, the likelihood that the parties contemplated the particular Legal Requirement involved, and whether the Legal Requirement involved is related to Tenant's particular use of the Property.

## **11.2. Regulatory Approvals**

### **(a) Responsible Party**

By entering into this Lease, City is in no way modifying or limiting Tenant's obligation to obtain any required regulatory approvals from City departments, boards or commissions having jurisdiction over the Property. By entering into this Lease, City is in no way modifying or limiting Tenant's obligation to cause the Property to be used and occupied in accordance with all laws, orders, regulations and requirements of governmental authorities as provided above. Tenant shall bear all costs associated with applying for and obtaining 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; provided, however, any such condition that could affect use or occupancy of the Property or City's interest therein must first be approved by City in its sole discretion. Any fines or penalties levied as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Tenant, and City shall have no liability, monetary or otherwise, for any such fines or penalties. Tenant shall Indemnify City and the other Indemnified Parties hereunder against all Claims (as such terms are defined in Section 18.2 below) arising in connection with Tenant's failure to obtain or failure by Tenant, its Agents or Invitees to comply with the terms and conditions of any regulatory approval.

### **(b) City Acting as Owner of Real Property**

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

### **11.3. Compliance with City's Risk Management Requirements**

Tenant shall not do anything, or permit anything to be done, in or about the Property which would be prohibited by or increase rates under a standard form fire insurance policy or subject City to potential Property liability. Tenant shall faithfully observe, at no cost to the City, any and all requirements of City's Risk Manager with respect to Tenant's use and occupancy of the Property, so long as such requirements do not unreasonably interfere with Tenant's use of the Property or are otherwise connected with standard prudent commercial practices of other landlords.

### **12. SUBORDINATION**

This Lease is and shall be subordinate to any reciprocal easement agreement, ground lease, facilities lease or other underlying lease and the lien of any mortgage or deed of trust and all renewals, modifications, consolidations, replacements and extensions of any of the foregoing, that may now exist or hereafter be executed by City affecting the Property, or any part thereof, or City's interest therein, without the necessity of executing any instrument to effectuate such subordination; provided, however, upon City's request, Tenant, or Tenant's successor-in-interest, shall execute and deliver any and all instruments desired by City evidencing such subordination in the manner requested by City. Notwithstanding the foregoing, City or the holder shall, in its respective discretion, have the right to subordinate any such interests to this Lease. If any ground lease or underlying lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant shall attorn to the successor-in-interest to City, at the option of such successor-in-interest. The provisions of this Section shall be self-operative and no further instrument shall be required. Tenant agrees, however, to execute and deliver, upon demand by City and in the form requested by City, any additional documents evidencing the priority or subordination of this Lease.

### **13. INABILITY TO PERFORM**

No actual or constructive eviction, in whole or in part, shall entitle Tenant to any abatement or diminution of Rent or relieve Tenant from any of its obligations under this Lease. If City is unable to perform or is delayed in performing any of City's obligations under this Lease, by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, protests, riots, demonstrations, inability to obtain utilities or materials or by any other reason beyond City's reasonable control, no such inability or delay shall constitute an eviction under this Lease, or impose any liability upon City or its Agents by reason of inconvenience, annoyance, interruption, injury or loss to or interference with Tenant's business or use and occupancy or quiet enjoyment of the Property or any loss or damage occasioned thereby. Tenant hereby waives and releases any right to terminate this Lease under Section 1932, subdivision 1 of the California Civil Code or any similar law, statute or ordinance now or hereafter in effect.

### **14. DAMAGE AND DESTRUCTION**

#### **14.1. Tenant's Election to Restore or Terminate**

For the purposes of this Lease, "Major Damage or Destruction" means damage to or destruction of all or any portion of the improvements or Tenant's Personal Property or equipment required to operate Tenant's business on the Property to the extent that the costs of restoration will exceed fifty percent (50%) of the costs to replace the improvements, equipment and Personal Property on the Property in their entirety. The calculation of such cost or percentage shall be based upon replacement costs and requirements of applicable Laws in effect as of the date of the event causing such Major Damage or Destruction. If an event of Major Damage or Destruction occurs, then Tenant shall provide City with a written notice (the "Casualty Notice") either (i) electing to commence and complete restoration of the improvements substantially to the condition they were in immediately before such Major Damage or Destruction to the extent

possible in accordance with then applicable Laws (including any required code upgrades) and replacement of the Personal Property and equipment required to operate Tenant's business in the Property; or (ii) electing to terminate this Lease. Tenant shall provide City with the Casualty Notice no later than the date that is ninety (90) days following the occurrence of such Major Damage or Destruction. As a condition to making such election, Tenant shall pay or cause to be paid to City, immediately upon receipt thereof, the proceeds of the rental interruption or business interruption insurance required hereunder arising out of or in connection with the casualty causing such Major Damage or Destruction to the extent attributable to the Rent payable to City under this Lease for the duration of such event of damage or destruction or Major Damage or Destruction. If Tenant elects to restore the improvements, all of the provisions of Article 7 that are applicable to Alterations shall apply to such restoration of the improvements.

#### **14.2. Obligations Upon Election to Terminate**

If Tenant elects to terminate this Lease pursuant to Section 14.1 above, Tenant shall raze the remainder of the improvements on the Property, remove all Tanks, dispensers, underground gas lines and fixtures, and surrender the Property to City in the condition required by this Lease. On the date that Tenant shall have fully complied with all other provisions of this Section to the reasonable satisfaction of City, this Lease shall terminate. Upon such termination, except otherwise set forth in this Lease, the Parties shall be released thereby without further obligations to the other Party as of the effective date of such termination, except with respect to the indemnities and other provisions which by their terms survive the expiration or termination of this Lease.

#### **14.3. Use of Insurance Proceeds**

(a) Restoration or Demolition and Removal. All Property related insurance proceeds paid to Tenant by reason of damage to or destruction of any improvements, if any, must be used by Tenant for the repair or rebuilding of such improvements or for demolition and removal of such improvements, except as otherwise approved by the City.

(b) Payment to Trustee. At City's election, any insurer paying compensation under any Property related insurance carried in connection with the Property shall pay such proceeds to a trustee (which shall be a bank or trust company, designated by City within thirty (30) days after written request by Tenant, having an office in San Francisco). However, such trustee shall pay to Tenant, from time to time as the work of restoration or demolition shall progress, in amounts designated by certification, by architects licensed to do business in the State, showing the application of such amounts as payment for such restoration.

(c) Excess to Be Paid to Tenant. Provided that no Event of Default shall then exist, any excess of monies received from insurance remaining with the trustee after the completion of such restoration or completion of the demolition and removal as required by this Article shall be paid to Tenant.

#### **14.4. No Release of Tenant's Obligations**

No damage to or destruction of the Property or improvements or any part thereof by fire or any other cause shall permit Tenant to surrender this Lease or relieve Tenant from any obligations, including, but not limited to, the obligation to pay Rent, except as otherwise expressly provided herein.

### **15. EMINENT DOMAIN**

#### **15.1. Definitions**

(a) "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.

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

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

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

## **15.2. General**

If during the Term or during the period between the execution of this Lease and the Commencement Date, there is any Taking of all or any part of the Property or any interest in this Lease, the rights and obligations of the parties hereunder shall be determined pursuant to this Section. City and Tenant intend that the provisions hereof govern fully in the event of a Taking and accordingly, the parties each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.110, 1265.120, 1265.130 and 1265.140 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

## **15.3. Total Taking; Automatic Termination**

If there is a total Taking of the Property, then this Lease shall terminate as of the Date of Taking.

## **15.4. Partial Taking; Election to Terminate**

(a) If there is a Taking of any portion (but less than all) of the Property, 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 Property untenable or unsuitable for continued use by Tenant, (B) the condition rendering the Property untenable or unsuitable either is not curable or is curable but City is unwilling or unable to cure such condition, and (C) Tenant elects to terminate; or (ii) if City elects to terminate; provided, however, that this Lease shall not terminate if Tenant agrees to, and does, pay full Rent, without abatement, and otherwise agrees to, and does, fully perform all of its obligations hereunder.

(b) Either party electing to terminate under the provisions of this Section 15 shall do so by giving the other party 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 (30th) day after such written notice is given or the Date of Taking.

## **15.5. Termination of Lease; Rent and Award**

Upon termination of this Lease in its entirety pursuant to Section 15.3, or pursuant to an election under Section 14.4 above, then: (i) Tenant's obligation to pay Rent shall continue up until the date of termination and thereafter shall cease, 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 any Improvements Pertaining to the Realty), and Tenant shall have no claim against City for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to movable Tenant's Personal Property.

#### **15.6. Partial Taking; Continuation of Lease**

If there is a partial Taking of the Property under circumstances where this Lease is not terminated in its entirety under Section 15.4 above, then this Lease shall terminate as to the portion of the Property so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the parties shall be as follows: (a) Base Rent shall be reduced by an amount that is in the same ratio to the Base Rent as the area of the Property taken bears to the area of the Property prior to the Date of Taking; provided, however, in no event shall the monthly Base Rent be reduced to less than seventy-five percent (75%) of the monthly Base Rent immediately prior to the Date of Taking, and (b) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease), and Tenant shall have no claim against City for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to movable Tenant's Personal Property.

#### **15.7. Temporary Takings**

Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to all or any part of the Property for a limited period of time not in excess of one hundred eighty (180) consecutive days, this Lease shall remain unaffected thereby, and Tenant shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, Tenant shall be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Property during the Term up to the total Rent owing by Tenant for the period of the Taking, and City shall be entitled to receive the balance of any Award.

### **16. ASSIGNMENT AND SUBLETTING**

#### **16.1. Restriction on Assignment and Subletting**

Tenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Tenant), voluntarily or by operation of law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Property or its leasehold estate hereunder (collectively, an "Assignment"), or permit or license any portion of the Property to be used or occupied by anyone other than itself, or sublet any portion of the Property (collectively, "Sublease"), without City's prior written consent in each instance, as provided hereinbelow. Notwithstanding the foregoing, Tenant may assign this Lease or sublet any or all portions of the Property to any Tenant Affiliate (as defined below) without obtaining the consent of City, by giving City written notice of its intent thereof at least fifteen (15) business days before the proposed effective date of such transfer, which notice shall be accompanied by such information as is reasonably required for City to confirm that the proposed assignee or subtenant is a Tenant Affiliate. As used in this Section, the term "Tenant Affiliate" shall mean any of the following: (1) any person or entity owning, directly or indirectly, fifty percent (50%) or more of the ownership interests of Tenant (an "Owning Person"), (2) any entity, fifty percent (50%) or more of the ownership interests of which are

owned, directly or indirectly, by any Owing Person, **(3)** any entity, fifty percent (50%) or more of the ownership interests of which are owned, directly or indirectly, by Tenant. Any Assignment or Sublease to a Tenant Affiliate shall be subject to the provisions of this Article 16, other than the provisions of Section 16.3 and Section 16.4, which shall not apply to a Tenant Affiliate.

### **16.2. Notice of Proposed Transfer**

If Tenant desires to enter into an Assignment or a Sublease, Tenant shall give written notice (a "Notice of Proposed Transfer") to City of its intention to do so. The Notice of Proposed Transfer shall identify the proposed assignee or subtenant (the proposed "Transferee") and state the terms and conditions of the proposed Assignment or Sublease. Tenant shall deliver to City with the Notice of Proposed Transfer the proposed Assignment or Sublease and current financial statements of the proposed Transferee, prepared by an independent certified public accountant, and promptly upon City's request for same, any additional documents or information reasonably related to the proposed transaction or Transferee.

### **16.3. City's Response**

Within twenty (20) business days after City's receipt of the Notice of Proposed Transfer (the "Response Period") to any proposed Transferee other than a Tenant Affiliate, City may elect, by written notice to Tenant, to: **(a)** sublease the portion of the Property specified in the Notice of Proposed Transfer on the terms and conditions set forth in such notice, except as otherwise provided in Section 16.4 (Sublease or Recapture Space), or **(b)** terminate this Lease as to the portion (including all) of the Property that is specified in the Notice of Proposed Transfer, with a proportionate reduction in Base Rent (a "Recapture"); provided that if City elects to exercise the recapture clause described herein ("Notice to Recapture"), Tenant shall have five (5) days from receipt of the Notice to Recapture to withdraw its Notice of Proposed Transfer, and if Tenant timely withdraws the Notice of Proposed Transfer, the Lease shall remain in full force and effect.

If City declines to exercise either of its options provided above, then Tenant shall have ninety (90) days following the earlier of **(i)** City's notice that it will not elect either such option or **(ii)** the expiration of the Response Period, to enter into such Assignment or Sublease, subject to City's prior written approval of the proposed assignee or subtenant (collectively, Transferee") and the terms and conditions of the proposed Sublease or Assignment. However, the greater of Five Thousand Dollars (\$5,000) or fifty percent (50%) of any rent or other consideration realized by Tenant under any such Assignment or Sublease in excess of the Base Rent payable hereunder (or the amount thereof proportionate to the portion of the Property subject to such Sublease or Recapture) shall be paid to City, after Tenant has recovered any reasonable brokers' commissions and the reasonable cost of any leasehold improvements that Tenant has incurred in connection with such Sublease or Recapture. Tenant shall provide City with such information regarding the proposed Transferee and the Assignment or Sublease as City may reasonably request. City agrees that it will not unreasonably withhold its approval of any proposed Transferee.

If after City declines to exercise any of the foregoing options Tenant desires to enter into such Assignment or Sublease **(A)** on terms and conditions materially more favorable to Tenant than those contained in the Notice of Proposed Transfer or **(B)** with a Transferee that is currently a tenant or other occupant of the Property, then Tenant shall give City a new Notice of Proposed Transfer, which notice shall state the terms and conditions of such Assignment or Sublease and identify the proposed Transferee, and City shall again be entitled to elect one of the options provided in clauses (a) and (b) of the first grammatical paragraph of this Section 16.3 at any time within twenty (20) business days after City's receipt of such new Notice of Proposed Transfer provided that Tenant shall have the right to withdraw the Notice of Proposed Transfer within five



(5) days after the date of City's Notice to Recapture, and this Lease shall remain in full force and effect if Tenant timely withdraws its Notice of Proposed Transfer.

In the event City elects either of the options provided in clauses (a) or (b) of the first grammatical paragraph of this Section 16.3, City shall be entitled to enter into a lease, sublease or assignment agreement with respect to the Property (or portion thereof specified in such new Notice of Proposed Transfer) with the proposed Transferee identified in Tenant's notice or with any other party of City's choosing.

Notwithstanding the foregoing, if any event of default by Tenant is outstanding hereunder at the time of Tenant's Notice of Proposed Transfer (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 Tenant to refuse to consent to Tenant's proposed Transfer and pursue any of its right or remedies hereunder or at law or in equity.

#### **16.4. Sublease or Recapture by City**

If City elects to Sublease or Recapture from Tenant as described in Section 16.3 (City's Response) the following shall apply:

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

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

#### **16.5. Effect of Sublease or Assignment**

No Sublease or Assignment by Tenant nor any consent by City thereto shall relieve Tenant, or any guarantor, of any obligation to be performed by Tenant under this Lease. Any Sublease or Assignment not in compliance with this Article 16 shall be void and, at City's option, shall constitute a material default by Tenant under this Lease. The acceptance of any Base 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 Tenant or other transferor to comply with this Section. If there is an Assignment or Sublease, whether in violation of or in compliance with this Section, in the event of default by any Transferee, or any successor of Tenant, in the performance or observance of any of the terms

of this Lease or any Sublease or Assignment agreement, City may proceed directly against Tenant without the necessity of exhausting remedies against such Transferee or successor.

#### **16.6. Assumption by Transferee**

Each Transferee (other than City) shall assume all obligations of Tenant under this Lease and shall be liable jointly and severally with Tenant for the payment of the Base Rent, and for the performance of all the terms, covenants and conditions to be performed on Tenant's part hereunder. No Assignment shall be binding on City unless Tenant or Transferee has delivered to City a counterpart of the Assignment and an instrument in recordable form that contains a covenant of assumption by such Transferee satisfactory in form and substance to City. However, the failure or refusal of such Transferee to execute such instrument of assumption shall not release such Transferee from its liability as set forth above. Tenant shall reimburse City on demand for any reasonable costs that may be incurred by City in connection with any proposed Sublease or Assignment, including, without limitation, the costs of making investigations as to the acceptability of the proposed Transferee and legal costs incurred in connection with the granting of any requested consent.

#### **16.7. Indemnity for Relocation Benefits**

Without limiting Section 16.6 (Assumption by Transferee) above, Tenant shall cause any Transferee to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease. Tenant shall Indemnify City for any and all Losses arising out of any relocation assistance or benefits payable to any Transferee.

### **17. DEFAULT; REMEDIES**

#### **17.1. Events of Default**

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

(a) a failure to pay Base Rent when due, and such failure continues for ten (10) days after the date of written notice by City. However, City shall not be required to provide such notice more than twice during any twelve (12)-month period, and any such failure by Tenant after Tenant has received two (2) such notices in such twelve (12)-month period shall constitute a default by Tenant hereunder without any further action by City or opportunity of Tenant to cure except as may be required by Section 1161 of the California Code of Civil Procedure;

(b) a failure to comply with any other covenant, condition or representation made under this Lease and such failure continues for fifteen (15) days after the date of written notice by City, provided that if such default is not capable of cure within such fifteen (15)-day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such fifteen (15)-day period and thereafter diligently prosecutes the same to completion within sixty (60) days after the receipt of notice of default from City. City shall not be required to provide such notice more than twice in any twelve (12)-month period with respect to any material non-monetary defaults and after the second notice in any calendar year, any subsequent failure by Tenant during such twelve (12)-month period shall constitute an Event of Default hereunder;

(c) Tenant abandons the Property, within the meaning of California Civil Code Section 1951.2, or otherwise ceases to use the Property for the uses permitted hereunder for a continuous period in excess of five (5) business days without the prior written consent of the City, which consent may be withheld in City's sole and absolute discretion, provided that the

City shall not unreasonably withhold its consent to any cessation of operations for any reasonably necessary time period due to the following causes or in the following circumstances: (a) if the Property become untenable due to force majeure, (b) as may be necessary in connection with performing testing of or repairs to the Property, or (c) if operations are disrupted due to a strike or other labor disturbance; or

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

## **17.2. Remedies**

Upon the occurrence of an Event of Default City shall have the following remedies, which shall not be exclusive but shall be cumulative and shall be in addition to any other remedies now or hereafter allowed by law or in equity:

(a) City may terminate Tenant's right to possession of the Property at any time by written notice to Tenant. Tenant expressly acknowledges that in the absence of such written notice from City, no other act of City, including, but not limited to, its re-entry into the Property, its efforts to relet the Property, its reletting of the Property for Tenant's account, its storage of Tenant's Personal Property and trade fixtures, its acceptance of keys to the Property from Tenant, its appointment of a receiver, or its exercise of any other rights and remedies under this Section 17.2 or otherwise at law, shall constitute an acceptance of Tenant's surrender of the Property or constitute a termination of this Lease or of Tenant's right to possession of the Property.

Upon such termination in writing of Tenant's right to possession of the Property, this Lease shall terminate and City shall be entitled to recover damages from Tenant as provided in California Civil Code Section 1951.2 or any other applicable existing or future Legal Requirement providing for recovery of damages for such breach, including but not limited to the following:

- (i) The reasonable cost of recovering the Property; plus
- (ii) The reasonable cost of removing Tenant's Alterations, trade fixtures and improvements; plus
- (iii) All unpaid rent due or earned hereunder prior to the date of termination, less the proceeds of any reletting or any rental received from subtenants prior to the date of termination applied as provided in Section 17.2(b) below, together with interest at the Interest Rate, on such sums from the date such rent is due and payable until the date of the award of damages; plus
- (iv) The amount by which the rent which would be payable by Tenant hereunder as reasonably estimated by City, from the date of termination until the date of the award of damages, exceeds the amount of such rental loss as Tenant proves could have been reasonably avoided, together with interest at the Interest Rate on such sums from the date such rent is due and payable until the date of the award of damages; plus
- (v) The amount by which the rent which would be payable by Tenant hereunder as reasonably estimated by City, for the remainder of the then term, after the date of the award of damages exceeds the amount such rental loss as Tenant proves could have been

reasonably avoided, discounted at the discount rate published by the Federal Reserve bank of San Francisco for member banks at the time of the award plus one percent (1%); plus

(vi) Such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law, including without limitation any other amount necessary to compensate City for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease which in the ordinary course of things would be likely to result therefrom.

(b) City has the remedy described in California Civil Code Section 1951.4 (a landlord may continue the lease in effect after the tenant's breach and abandonment and recover rent as it becomes due, if the tenant has the right to sublet and assign subject only to reasonable limitations), and may continue this Lease in full force and effect and may enforce all of its rights and remedies under this Lease, including, but not limited to, the right to recover rent as it becomes due. After the occurrence of an Event of Default, City may enter the Property without terminating this Lease and sublet all or any part of the Property for Tenant's account to any person, for such term (which may be a period beyond the remaining term of this Lease), at such rents and on such other terms and conditions as City deems advisable. In the event of any such subletting, rents received by City from such subletting shall be applied (i) first, to the payment of the costs of maintaining, preserving, altering and preparing the Property for subletting, the other costs of subletting, including but not limited to brokers' commissions, attorneys' fees and expenses of removal of Tenant's Personal Property, trade fixtures and Alterations; (ii) second, to the payment of rent then due and payable hereunder; (iii) third, to the payment of future rent as the same may become due and payable hereunder; and (iv) fourth, the balance, if any, shall be paid to Tenant upon (but not before) expiration of the term of this Lease. If the rents received by City from such subletting, after application as provided above, are insufficient in any month to pay the rent due and payable hereunder for such month, Tenant shall pay such deficiency to City monthly upon demand. Notwithstanding any such subletting for Tenant's account without termination, City may at any time thereafter, by written notice to Tenant, elect to terminate this Lease by virtue of a previous Event of Default.

During the continuance of an Event of Default, for so long as City does not terminate Tenant's right to possession of the Property and subject to Section 17 (Assignment and Subletting) and the options granted to City thereunder, City shall not unreasonably withhold its consent to an assignment or sublease of Tenant's interest in the Property or in this Lease.

(c) During the continuance of an Event of Default, City may enter the Property without terminating this Lease and remove all Tenant's Personal Property, Alterations and trade fixtures from the Property and store them at Tenant's risk and expense. If City removes such property from the Property and stores it at Tenant's risk and expense, and if Tenant fails to pay the cost of such removal and storage after written demand therefor and/or to pay any rent then due, then after the property has been stored for a period of thirty (30) days or more City may sell such property at public or private sale, in the manner and at such times and places as City deems commercially reasonable following reasonable notice to Tenant of the time and place of such sale. The proceeds of any such sale shall be applied first to the payment of the expenses for removal and storage of the property, the preparation for and the conducting of such sale, and for attorneys' fees and other legal expenses incurred by City in connection therewith, and the balance shall be applied as provided in Section 17.2(b) above.

Tenant hereby waives all claims for damages that may be caused by City's re-entering and taking possession of the Property or removing and storing Tenant's Personal Property pursuant to this Section 17.2, and Tenant shall indemnify, defend and hold City harmless from and against any and all Claims resulting from any such act. No re-entry by City shall constitute or be construed as a forcible entry by City.

(d) City may require Tenant to remove any and all Alterations from the Property or, if Tenant fails to do so within ten (10) days after City's request, City may do so at Tenant's expense.

(e) City may cure the Event of Default at Tenant's expense, it being understood that such performance shall not waive or cure the subject Event of Default. If City pays any sum or incurs any expense in curing the Event of Default, Tenant shall reimburse City upon demand for the amount of such payment or expense with interest at the Interest Rate from the date the sum is paid or the expense is incurred until City is reimbursed by Tenant. Any amount due City under this subsection shall constitute additional rent hereunder.

### **17.3. Waiver of Redemption**

Tenant hereby waives, for itself and all persons claiming by and under Tenant, all rights and privileges which it might have under any present or future Legal Requirement to redeem the Property or to continue this Lease after being dispossessed or ejected from the Property.

### **17.4. City's Right to Cure Tenant's Defaults**

If Tenant defaults in the performance of any of its obligations under this Lease, then City may, at its sole option, remedy such default for Tenant's account and at Tenant's expense by providing Tenant with three (3) days' prior written or oral notice of City's intention to cure such default (except that no such prior notice shall be required in the event of an emergency as determined by City). Such action by City shall not be construed as a waiver of such default or any rights or remedies of City, and nothing herein shall imply any duty of City to do any act that Tenant is obligated to perform. Tenant shall pay to City upon written demand, as additional rent, all costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such default. Tenant's obligations under this Section shall survive the termination of this Lease.

## **18. WAIVER OF CLAIMS; INDEMNIFICATION**

### **18.1. Limitation on City's Liability; Waiver of Claims**

City shall not be responsible for or liable to Tenant, and Tenant hereby assumes the risk of, and waives and releases City and its Agents from all Claims (as defined below) for, any injury, loss or damage to any person or property in or about the Property by or from any cause whatsoever including, without limitation, (i) any act or omission of persons occupying adjoining Property, (ii) theft, (iii) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (iv) stopped, leaking or defective building systems, (v) building defects, and (vi) any other acts, omissions or causes. Nothing in this Section 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.

### **18.2. Tenant's Indemnity**

Tenant, on behalf of itself and its successors and assigns, shall indemnify, defend and hold harmless ("Indemnify") City including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, its Department of Public Health and Health Commission, and all of its and their Agents, and their respective heirs, legal representatives, successors and assigns (individually and collectively, the "Indemnified Parties"), and each of them, from and against any and all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, including, without limitation, direct and vicarious liability of every kind (collectively, "Claims"), incurred in

connection with or arising in whole or in part from: **(a)** any accident, injury to or death of a person, including, without limitation, employees of Tenant, or loss of or damage to property, howsoever or by whomsoever caused, occurring in or about the Property; **(b)** any default by Tenant in the observation or performance of any of the terms, covenants or conditions of this Lease to be observed or performed on Tenant's part; **(c)** the use or occupancy or manner of use or occupancy of the Property by Tenant, its Agents or Invitees or any person or entity claiming through or under any of them; **(d)** the condition of the Property; **(e)** any construction or other work undertaken by Tenant on the Property whether before or during the Term of this Lease; or **(f)** any acts, omissions or negligence of Tenant, its Agents or Invitees, in, on or about the Property, all regardless of the active or passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that such Indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Lease and further except only such Claims as are caused exclusively by the willful misconduct or gross negligence of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any Claim. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to cause City to be defended from any claim which actually or potentially falls within this indemnity provision by competent counsel designated by Tenant and reasonably approved by City, even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Tenant by City and continues at all times thereafter. Tenant's obligations under this Section shall survive the termination of this Lease.

## **19. INSURANCE**

### **19.1. Tenant's Insurance**

**(a)** Tenant, at no cost to the City, shall procure and keep in effect at all times during the Term insurance as follows:

**(i)** Commercial general liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, fire damage legal liability (of not less than Two Hundred Fifty Thousand Dollars (\$250,000)), personal injury, products liability and completed operations.

**(ii)** Explosion, collapse and underground (XCU) coverage not less than One Million Dollars (\$1,000,000) each accident so long as Tenant is in compliance with all applicable Federal and State financial responsibility requirements and UST laws and regulations, including remaining current on payment and documentation of payments of all UST storage and permit fees, as required by and to remain eligible for the State of California, State Water Control Resources Board, Underground Storage Tank Cleanup Fund (the "UST Cleanup Fund"), and otherwise with coverage not less than Two Million Dollars (\$2,000,000) each accident.

**(iii)** Worker's Compensation Insurance with Employer's Liability Limits not less than One Million Dollars (\$1,000,000) each accident.

**(iv)** Business automobile liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, as applicable, if Tenant uses automobiles in connection with its use of the Property and sudden and accidental pollution.

**(v)** Tenant will at all times be in compliance with all applicable Federal and State financial responsibility requirements and UST laws and regulations, including remaining current on payment and documentation of payments of all UST storage and permit

fees, as required by and to remain eligible for the State of California, State Water Control Resources Board, Underground Storage Tank Cleanup Fund (the "UST Cleanup Fund"). If at any time Tenant is ineligible for the UST Cleanup Fund, Tenant shall obtain and keep in effect Pollution Liability/Environmental Damage Insurance with a limit no less than Two Million Dollars (\$2,000,000) per claim or occurrence per policy period of one year, covering releases from storage tanks, bodily injury, property damage and clean-up costs.

(vi) Liability insurance for gradual pollution or contamination, with limits not less than One Million Dollars (\$1,000,000) each occurrence.

(vii) Business Interruption Insurance insuring that the Rent will be paid to City for a period of at least one (1) year if Tenant is unable to operate its business at the Property. Such insurance shall also cover business interruptions due to failures or interruptions in telecommunications services, strikes, employee lockouts, riots, or other civil commotion.

(viii) Such other insurance as is generally required by commercial owners of Property similar in size and location, as may change from time to time.

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

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

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

(i) Name as additional insured the City and County of San Francisco, its officers, agents and employees.

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

(e) Each insurance policy required pursuant to Section 19.1(a) above shall be issued by an insurance company licensed in the State of California and with a general policyholders' rating of "A-" or better and a financial size ranking of "Class VIII" or higher in the most recent edition of Best's Insurance Guide.

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

(g) Tenant shall deliver to City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to City, evidencing the coverage required hereunder, on or before the Commencement Date, together with complete copies of the

policies promptly upon City's request, and Tenant shall provide City with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. In the event Tenant shall fail to procure such insurance, or to deliver such policies or certificates, City may procure, at its option, without waiving any rights or remedies which City may have for Tenant's default hereunder, the same for the account of Tenant, and the cost thereof shall be paid to City within five (5) days after delivery to Tenant of bills therefor.

(h) Upon City's request which may be made from time to time, Tenant shall deliver to City satisfactory evidence that Tenant is eligible for the UST Cleanup Fund.

(i) Upon City's request, Tenant and City shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Tenant for risks comparable to those associated with the Property, then Tenant shall, at City's request, increase the amounts or coverage carried by Tenant to conform to such general commercial practice.

(j) Tenant's compliance with the provisions of this Section shall in no way relieve or decrease Tenant's liability under Section 18.2 (Tenant's Indemnity), or any of Tenant's other obligations under this Lease.

(k) Notwithstanding anything to the contrary in this Lease, if any of the required insurance coverage lapses, this Lease shall terminate upon three (3) days' notice to Tenant, unless Tenant renews the insurance coverage within notice period.

#### **19.2. Property Insurance and Tenant's Personal Property**

Tenant shall be solely responsible for insuring the improvements on the Property against casualty and Tenant shall be entitled to all insurance and casualty proceeds in connection with any casualty to such improvements, subject to the provisions of Article 14 above. Tenant shall be responsible, at no cost to the City, for separately insuring Tenant's Personal Property.

#### **19.3. City's Self Insurance**

Tenant acknowledges that City self-insures against casualty, property damage and public liability risks and agrees that City may at its sole election, but shall not be required to, carry any third party insurance with respect to the Property or otherwise.

#### **19.4. Waiver of Subrogation**

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

### **20. ACCESS BY CITY**

City reserves for itself and any of its designated Agents, the right to enter the Property as follows: (i) on a regular basis without advance notice to supply any necessary or agreed-upon service to be provided by City hereunder; (ii) on an occasional basis, at all reasonable times after



giving Tenant reasonable advance written or oral notice, to show the Property to prospective tenants or other interested parties, to post notices of non-responsibility, to conduct any environmental audit of Tenant's use of the Property, to repair, alter or improve any part of the Property, and for any other lawful purpose; and (iii) on an emergency basis without notice whenever City believes that emergency access is required. City shall have the right to use any means that it deems proper to open doors in an emergency in order to obtain access to any part of the Property, and any such entry shall not be construed or deemed to be a forcible or unlawful entry into or a detainer of, the Property, or an eviction, actual or constructive, of Tenant from the Property or any portion thereof. Tenant shall not alter any lock or install any new or additional locking devices without the prior written consent of City.

## **21. CERTIFICATES**

### **21.1. Tenant's Estoppel Certificates**

Tenant, at any time and from time to time upon not less than ten (10) days' prior notice from City, shall execute and deliver to City or to any party designated by City a certificate stating: (a) that Tenant has accepted the Property, (b) the Commencement Date and Expiration Date of this Lease, (c) 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), (d) whether or not there are then existing any defenses against the enforcement of any of Tenant's obligations hereunder (and if so, specifying the same), (e) whether or not there are any defaults then existing under this Lease (and if so specifying the same), (f) the dates, if any, to which the Base Rent have been paid, and (g) any other information that may be required.

### **21.2. City's Certificates**

City, at any time and from time to time upon not less than ten (10) days' prior notice from Tenant, shall execute and deliver to Tenant or to any party designated by Tenant a certificate stating: (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) whether or not there are any defaults then existing under this Lease (and if so specifying the same), (d) the dates, if any, to which the Base Rent has been paid, and (e) any other information that may be required.

## **22. SECURITY DEPOSIT**

Upon execution of this Lease, Tenant shall deposit with City the sum specified as the security deposit in the Basic Lease Information (the "Security Deposit"), in cash, to secure Tenant's faithful performance of all terms, covenants and conditions of this Lease. Tenant 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 Property caused by Tenant, its Agents or Invitees, or any failure of Tenant to perform any other terms, covenants or conditions contained herein (including, but not limited to, the payment of Rent or other sum due hereunder either before or after a default), without waiving any of City's other rights and remedies hereunder or at law or in equity and without any obligation. Tenant waives the provisions of Section 1950.7 of the California Civil Code or any similar law, statute or ordinance now or hereafter in effect and agrees that Landlord may retain any portion of Security Deposit reasonably necessary to compensate Landlord for any other foreseeable or unforeseeable loss or damage caused by the acts or omissions of Tenant, its Agents or Invitees. Without limiting the foregoing, Tenant understands and agrees that Landlord may apply some or all of the Security Deposit to the payment of future Rent following a Tenant default.

Should City use any portion of the Security Deposit to cure any default by Tenant hereunder, Tenant shall immediately replenish the Security Deposit to the original amount. If the Base Rent is increased pursuant to any of the provisions of this Lease, Tenant 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 Tenant shall not be entitled to interest on the Security Deposit. The amount of the Security Deposit shall in no way limit the liabilities of Tenant under any provision of this Lease.

## **23. SURRENDER OF PROPERTY; REMOVAL OF IMPROVEMENTS**

### **23.1. Surrender of Property**

Subject to the provisions of Article 14 and Section 24.4, upon the Expiration Date or other termination of the Term of this Lease, Tenant shall peaceably quit and surrender to City the Property together with the improvements and all Alterations approved by City in good order and condition, except for normal wear and tear after Tenant having made the last necessary repair required on its part under this Lease, and further except for any portion of the Property condemned and any damage and destruction for which Tenant is not responsible hereunder. The Property shall be surrendered free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this Lease and any other encumbrances created by City. Immediately before the Expiration Date or other termination of this Lease, Tenant shall remove all of Tenant's Personal Property as provided in this Lease, and repair any damage resulting from the removal. If such removal is not completed at the expiration or other termination of this Lease, City may remove the same at Tenant's expense.

### **23.2. Removal of Improvements**

(a) Notwithstanding anything to the contrary above or in this Lease, City can elect within three (3) months prior to the Expiration Date or within five (5) days after termination of this Lease, to require Tenant to remove, at Tenant's sole expense, all or part of the improvements, Alterations or other improvements or equipment constructed, owned or installed by or at the expense of Tenant, provided that the removal of the Tanks (as defined in Section 24.4) shall be governed by Section 24.4 below. If the City elects to have the existing building (the current location of a convenience store and garage) removed, Tenant will not be required to repave the area where the demolition occurred.

(b) Except as provided in Section 24.4, Tenant shall promptly remove such items and shall repair, at no cost to the City, any damage to the Property or the building resulting from such removal, or if Tenant fails to repair, City may do so, at Tenant's expense.

(c) Any items of Tenant's Personal Property remaining in the Property after the Expiration Date or sooner termination of this Lease may, at City's option, be deemed abandoned and disposed of in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by law.

(d) Within five (5) days of the Expiration Date, termination date, or the date Tenant receives the City's election to require Tenant to remove the improvements, Alterations or other improvements or equipment, whichever is later, Tenant may request in writing additional time, up to ninety (90) days or longer if mutually agreed in writing by both City and Tenant ("Additional Time"), to remain in possession and control of the Property to remove the improvements, Alterations, equipment or Personal Property on the Property, to repair any damage to the Property or the building resulting from such removal, and/or to comply with Section 24.4, and City shall not unreasonably deny such request. After the Expiration Date or other termination date of this Lease, Tenant shall not use the Property for any other use or

purpose, nor operate the retail gas station, automobile service station, associated convenience store, nor sell any merchandise. Notwithstanding anything to the contrary, should Tenant's removal of Tanks be delayed due to circumstances beyond Tenant's control, or should Investigation or Remediation be mandated after or during removal of Tanks, Base Rent shall not be paid by Tenant for such Additional Time needed for such removal, Investigation or Remediation, after the Expiration Date or termination date .

### **23.3. Survival of Tenant's Obligations**

Tenant's obligations under this Section shall survive the Expiration Date or other termination of this Lease.

### **23.4. Quitclaim Deed**

Concurrently with the surrender of the Property, Tenant shall, if requested by City, execute, acknowledge and deliver to City a quitclaim deed to the Property and any other instrument reasonably requested by City to evidence or otherwise effect the termination of Tenant's leasehold estate hereunder and to effect such transfer or vesting of title to the tenant improvements or other improvements or equipment which remain part of the Property. The terms of this Section shall survive the expiration or sooner termination of this Lease.

## **24. HAZARDOUS MATERIALS**

### **24.1. Definitions**

As used herein, the following terms shall have the meanings set forth below:

(a) "Environmental Laws" shall mean any present or future federal, state, local or administrative law, rule, regulation, order or requirement relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage), or to health and safety, industrial hygiene or the environment, including, without limitation, soil, air and groundwater conditions.

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

(c) "Investigate and Remediate" ("Investigation" and "Remediation") shall mean the undertaking of any activities to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Property or that has been, are being or threaten to be Released into the environment, and to clean up, remove, contain, treat, stabilize, monitor or otherwise control such Hazardous Material.

(d) "Release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into, on, under or about any part of the Property or into the environment.

## **24.2. No Hazardous Materials**

Tenant covenants and agrees that neither Tenant nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Property, or transported to or from the Property, with the sole exception that Tenant may keep use and transport to and from the Property such substances, and in such reasonable amounts, as are customarily used in the operation of a gasoline service station so long as such storage and use are in compliance with all applicable Environmental Laws at all times. Tenant shall immediately notify City if and when Tenant learns or has reason to believe a Release of Hazardous Material on or about the Property has occurred that may require any Investigation or Remediation. Tenant may keep and use such substances in the Property in such reasonably limited amounts as are customarily used for general office purposes (such as copy toner and other normal office and cleaning supplies) and may generate such substances as a result of measures taken pursuant to Articles 7 or 8 of this Lease that disturb or remove lead-based or presumed lead-based paint from the exterior or interior surfaces of any buildings or improvements on the Property so long as such generation, storage, transportation, use, and disposal are in compliance with all applicable Environmental Laws at all times. Tenant shall give immediate written notice to City of: **(a)** any action, proceeding or inquiry by any governmental authority (including, without limitation, the California State Department of Health Services, the State or any Regional Water Quality Control Board, the Bay Area Air Quality Management district or any local governmental entity) against Tenant with respect to the presence or Release or suspected presence or Release of Hazardous Material on the Property or the migration thereof from or to other property; **(b)** all demands or claims made or threatened by any third party against Tenant or the Property relating to any loss or injury resulting from any Hazardous Materials; **(c)** any Release of Hazardous Material on or about the Property or any other part of the Property has occurred that may require any Investigation or Remediation; and **(d)** all matters of which Tenant is required to give notice pursuant to Section 25359.7 of the California Health and Safety Code.

## **24.3. Tenant's Environmental Indemnity**

If Tenant breaches any of its obligations contained in this Section, or, if any act or omission of Tenant, its Agents or Invitees, results in any Release of Hazardous Material in, on, under or about the Property or any other part of the Property in violation of any applicable Environmental Laws, then, without limiting Tenant's Indemnity contained in Section 18.2, Tenant shall, on behalf of itself and its successors and assigns, Indemnify the Indemnified Parties, and each of them, from and against all Claims (including, without limitation, damages for decrease in value of the Property or the loss or restriction of the use of rentable or usable space or of any amenity of the Property, and sums paid in settlement of claims, attorneys' fees, consultants' fees and experts' fees and costs) arising during or after the Term of this Lease and relating to such Release. The foregoing Indemnity includes, without limitation, costs incurred in connection with activities undertaken to Investigate and Remediate Hazardous Material and to restore the Property to its prior condition, fines and penalties assessed for the violation of any applicable Environmental Laws, and any natural resource damages. Without limiting the foregoing, if Tenant or any of its Agents or Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Property, Tenant shall immediately and at no expense to City take any and all appropriate actions to return the Property affected thereby to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City 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 Tenant by the City and continues at all times thereafter. Tenant shall afford City a full opportunity to participate in any discussions with governmental regulatory agencies regarding

any settlement agreement, cleanup or abatement agreement, consent decree, or other compromise or proceeding involving Hazardous Material.

#### **24.4. Underground Storage Tanks.**

(a) **Ownership of Tanks.** Tenant hereby acknowledges and agrees that, notwithstanding any other provision in this Lease to the contrary, all underground gasoline storage tanks, underground gas lines to the gasoline dispensers, and gasoline dispensers located within the Property (collectively the "Tanks") are the property of Tenant, and that City has no ownership or operational interest therein. Tenant hereby acknowledges and agrees that Tenant is the "owner and operator" of the Tanks for the purpose of applicable local, state and federal laws. Tenant shall maintain and operate the Tanks in accordance with all applicable Environmental Laws. Upon request by City, Tenant shall provide City with a photocopy of the evidence maintained by Tenant to obtain certification of financial responsibility as required by any local or state agency or governmental authority having jurisdiction over the Tanks, and upon request, Tenant shall provide City with any required updates to such evidence and certification of financial responsibility upon any change in the mechanism used to obtain such certification.

(b) **Removal of Tanks.** Unless waived in writing by City, upon the expiration or earlier termination of this Lease, or, if City has approved a written request for additional time for performance of Tenant's obligations as set forth in Section 23.2, by the end of such approved additional period, or other date mutually agreed upon in writing by City and Tenant, Tenant shall remove any and all underground storage tanks, the dispensers, and associated underground gas lines from the Property in accordance with all Environmental Laws, and shall Remediate any Releases of Hazardous Materials relating to the use of such Tanks, in accordance with all Environmental Laws. Upon the removal of the Tanks, Tenant shall not be required to repave over the areas where such removal occurred provided that Tenant complies with all procedures required by the agencies monitoring the removal including any and all mitigation requirements and repaving is not a required mitigation measure. Should Tenant's removal of such Tanks be delayed due to circumstances beyond Tenant's control, or should Investigation or Remediation be mandated after or during removal of Tanks, Base Rent shall not be paid by Tenant for Additional Time required to comply.

#### **24.5. Survival of Obligation**

Tenant's obligations under this Section 24 shall survive the expiration or other termination of this Lease.

### **25. SPECIAL PROVISIONS**

#### **25.1. Extension Option**

##### **(a) Option to Extend Term**

City grants to Tenant a one-time option to extend the Term of this Lease as to the entire Property only (the "Extension Option") for an additional sixty (60) months (the "Extension Term") commencing upon the date immediately following the scheduled Expiration Date upon the following terms and conditions. Tenant may exercise the Extension Option at any time during the Term but if it determines to do so it must give written notice to City thereof not less than one hundred eighty (180) days prior to the Expiration Date. Any such notice by Tenant shall be irrevocable by Tenant. If any event of default by Tenant is outstanding hereunder either at the time of Tenant's exercise of the Extension Option or at any time prior to the first day of the Extension Term (or if any event shall have occurred which with the giving of notice or the passage of time or both would constitute such a default), then City may elect by notice to Tenant to reject Tenant's exercise of the Extension Option, whereupon the Extension Option shall be

null and void. City shall also have the right to void Tenant's Extension Option if Tenant has assigned its interest hereunder or sublet more than fifty percent (50%) of the Property to any party other than a Tenant Affiliate.

**(b) Base Rent and Other Terms**

If Tenant elects to exercise the Extension Option, then the lease for the Extension Term shall cover the entire Property through the Extension Term and shall be upon all of the terms, covenants and conditions of this Lease, except that the "Expiration Date" shall be the last day of the Extension Term, Tenant shall have no further option to extend the term of this Lease, and the Base Rent hereunder shall be adjusted to the Prevailing Market Rate as follows:

(i) No later than one hundred fifty (150) days prior to commencement of the Extension Term, City shall notify Tenant in writing of City's determination made in good faith of the Prevailing Market Rate for the Property to be used to calculate the Base Rent for the Extension Term. As used herein, the term "Prevailing Market Rate" for the Property shall mean the rental and all other monetary payments and escalations, including, without limitation, consumer price indexing, that City could obtain from a third party desiring to lease the Property for the Extension Term taking into account the age of the improvements on the Property, the size, location of the Property, the quality of construction of the improvements, the services provided under the terms of this Lease, the rental then being obtained for new leases of space comparable to the Property in the same locality, and all other factors that would be relevant to a third party desiring to lease the Property for the Extension Term in determining the rental such party would be willing to pay therefor; provided, however, no allowance for the construction of tenant improvements shall be taken into account in determining Prevailing Market Rate,.

(ii) Within thirty (30) days after receipt of City's determination of the Prevailing Market Rate, Tenant shall notify City in writing either of (i) Tenant's acceptance of such determination, in which case such determination shall constitute the new Base Rent as of the commencement of the Extension Term, or (ii) Tenant's own good faith determination of the Prevailing Market Rate, including written justification for its determination.

(iii) If Tenant provides City with its determination of the Prevailing Market Rate pursuant to Section 25.1(b)(i) above, then within thirty (30) days following Tenant's notice to City, the parties shall attempt in good faith to meet no less than two (2) times, at a mutually agreeable time and place, to attempt to resolve in good faith any such disagreement as to the Prevailing Market Rate. The parties may, by an instrument in writing, mutually agree to extend such forty-five (45)-day consultation period for a reasonable period to resolve their disagreement if the parties are negotiating in good faith and would be unable to resolve their differences within such forty-five (45)-day period.

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

**(1) Appointment of Appraisers**

Each party shall appoint one (1) appraiser within thirty (30) days after the conclusion of the consultation period in Section 25.1(b)(iii). Upon selecting its appraiser, each party shall promptly notify the other party in writing of the name of the appraiser selected. Each such appraiser shall be competent, licensed, qualified by training and experience in the City and County of San Francisco, and shall be a member in good standing of the Appraisal Institute and designated as a MAI, or, if the Appraisal Institute no longer exists, shall hold the senior professional designation awarded by the most prominent organization of

appraisal professionals then awarding such professional designations. Each such MAI appraiser may have a prior working relationship with either or both of the parties, provided that such working relationship shall be disclosed to both parties. Without limiting the foregoing, each appraiser shall have at least five (5) years' experience valuing commercial real estate in the City and County of San Francisco. If either party fails to appoint its appraiser within such thirty (30)-day period, the appraiser appointed by the other party shall individually determine the Prevailing Market Rate in accordance with the provisions hereof.

### **(2) Appraisal Instructions**

Each appraiser will make an independent determination of the Prevailing Market Rate. The appraisers may share and have access to objective information in preparing their appraisals, but they will independently analyze the information in their determination of the Prevailing Market Rate. Neither of the appraisers shall have access to the appraisal of the other (except for the sharing of objective information contained in such appraisals) until both of the appraisals are submitted in accordance with the provisions of this Section. Neither party shall communicate with the appraiser appointed by the other party regarding the instructions contained in this Section before the appraisers complete their appraisals. If either appraiser has questions regarding the instructions in this Section or the interpretation of the Lease, such appraiser shall use his or her own professional judgment and shall make clear all assumptions upon which his or her professional conclusions are based, including any supplemental instructions or interpretative guidance received from the party appointing such appraiser. There shall not be any arbitration or adjudication of the instructions to the appraisers contained in this Section. Each appraiser shall complete, sign and submit its written appraisal setting forth the Prevailing Market Rate (to the nearest half percentage point) to the parties within thirty (30) days after the appointment of the last of such appraisers. If the higher appraised Prevailing Market Rate is not more than one hundred ten percent (110%) of the lower appraised Prevailing Market Rate, then the Prevailing Market Rate shall be the average of such two (2) Prevailing Market Rate figures (to the nearest half percentage point).

### **(3) "Baseball" Appraisal**

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

and Receivers Department of the Superior Court of the State of California in and for the County of San Francisco for appointment of a third appraiser meeting the foregoing qualifications. If the Court denies or otherwise refuses to act upon such application within sixty (60) days from the date on which the party first applies to the Court for appointment of the third appraiser, either party may apply to the American Arbitration Association or J.A.M.S., or any similar provider of professional commercial arbitration services, for appointment in accordance with the rules and procedures of such organization of an independent third appraiser meeting the foregoing qualifications.

Such third appraiser shall consider the appraisals submitted by the first two appraisers as well as any other relevant written evidence which the third appraiser may request of either or both of the first two appraisers. If either of the first two appraisers shall submit any such evidence to such third appraiser, it shall do so only at the request of the third appraiser and shall deliver a complete and accurate copy to the other party and the appraiser such party selected, at the same time it submits the same to the third appraiser. Neither party, nor the appraisers they appoint, shall conduct any ex parte communications with the third appraiser regarding the subject matter of the appraisal. Within thirty (30) days after his or her appointment, the third appraiser shall select the appraised Prevailing Market Rate determined by one or the other of the first two (2) appraisers that is the closer, in the opinion of the third appraiser, to the actual Prevailing Market Rate. The determination of the third appraiser shall be limited solely to the issue of deciding which of the appraisals of the two appraisers is closest to the actual Prevailing Market Rate. The third appraiser shall have no right to propose a middle ground or to modify either of the two appraisals, or any provision of this Lease.

#### **(4) Conclusive Determination**

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

#### **(5) Fees and Costs; Waiver**

Each party shall bear the fees, costs and expenses of the appraiser it selects under Section 25.1(b)(iv)(1) and of any experts and consultants used by that appraiser. The fees, costs and expenses of the third appraiser under Section 25.1(b)(iv)(3) shall be shared equally by City and Tenant. Each party waives any claims against the appraiser appointed by the other party, and against the third appraiser, for negligence, malpractice or similar claims in the performance of the appraisals or arbitration contemplated by this Section.

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



constitute a waiver by either party of the adjustment of Prevailing Market Rate as provided in this Section.

## **26. GENERAL PROVISIONS**

### **26.1. 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)** Tenant, **(i)** at Tenant's address set forth in the Basic Lease Information, if sent prior to Tenant's taking possession of the Property, or **(ii)** at the Property if sent on or subsequent to Tenant's taking possession of the Property, or **(iii)** at any place where Tenant or any Agent of Tenant may be found if sent subsequent to Tenant's vacating, abandoning or surrendering the Property; or **(b)** City, at City's address set forth in the Basic Lease Information; or **(c)** to such other address as either City or Tenant may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days 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. Tenant 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.

### **26.2. No Implied Waiver**

No failure by City to insist upon the strict performance of any obligation of Tenant under this Lease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial Base Rent during the continuance of any such breach, and no acceptance of the keys to or possession of the Property prior to the expiration of the Term by any Agent of City, shall constitute a waiver of such breach or of City's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Lease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. Any consent by City hereunder shall not relieve Tenant of any obligation to secure the consent of City in any other or future instance under the terms of this Lease.

### **26.3. 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 Director of Property, or his or her designee 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 Tenant, and City's agreement may be made upon the sole approval of the Director of Property, or his or her designee; provided, however, material amendments or modifications to this Lease (i) changing the legal description of the Property, (ii) increasing the Term, (iii) increasing the Rent, (iv) changing the general use of the Property from the use authorized under Section 5.1 of this Lease, and (v) 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.

#### **26.4. Authority**

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

#### **26.5. Parties and Their Agents; Approvals**

The words "City" and "Tenant" as used herein shall include the plural as well as the singular. If there is more than one Tenant, the obligations and liabilities under this Lease imposed on Tenant shall be joint and several. As used herein, the term "Agents" when used with respect to either party shall include the agents, employees, officers, contractors and representatives of such party, and the term "Invitees" when used with respect to Tenant shall include the clients, customers, invitees, guests, licensees, assignees or subtenants of Tenant. All approvals, consents or other determinations permitted or required by City hereunder shall be made by or through City's Director of Property unless otherwise provided in this Lease, subject to applicable law.

#### **26.6. Interpretation of Lease**

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

#### **26.7. Successors and Assigns**

Subject to the provisions of this Lease relating to Assignment and Subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of City and Tenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any sale, assignment or transfer by City named herein (or by any subsequent assignee, successor, etc., acting as landlord) of its interest in the Property as owner or lessee, including any transfer by operation of law, City (or any such subsequent landlord so selling, assigning or transferring its interest in the Property) shall be relieved from all

subsequent obligations and liabilities arising under this Lease subsequent to such sale, assignment or transfer.

#### **26.8. Brokers**

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

#### **26.9. Severability**

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

#### **26.10. Governing Law**

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

#### **26.11. Entire Agreement**

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

#### **26.12. Attorneys' Fees**

In the event that either City or Tenant fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the non-prevailing party in such dispute, as the case may be, shall pay the prevailing party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For purposes of this Lease, the terms "court costs and reasonable attorneys' fees" shall mean the fees and expenses of counsel to the Parties, which may

include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and other not admitted to the bar but performing services under the supervision of an attorney.. The term "court costs and attorneys' fees" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, mediation, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. For the purposes of this Lease, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

### **26.13. Holding Over**

Except as set forth in Section 23.2(iv), if Tenant retains possession of any portion of the Property after the expiration or the earlier termination of this Lease, then unless City expressly agrees to the holdover in writing, Tenant shall pay City, on a month-to-month basis Base Rent equal to two hundred percent (200%) of the latest Base Rent payable by Tenant hereunder prior to such expiration, and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term and any Extension Options). Any failure by Tenant to surrender, discontinue using, or, if required by City, any failure to remove any property or equipment following written demand for the same by City, shall constitute continuing possession for purposes hereof except as expressly provided herein. Tenant acknowledges that the foregoing provisions shall not serve as permission for the Tenant to hold over, nor serve to extend the term of this Lease beyond the end on the term hereof. Any holding over without City's consent shall constitute a default by Tenant 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 above or the rate in effect at the end of the Term of this Lease.

Any holding over after the expiration of the Term with the express consent of City shall be construed to automatically extend the Term of this Lease on a month-to-month basis at a Base Rent equal to one hundred fifty percent (150%) of the latest Base Rent payable by Tenant hereunder prior to such expiration, and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term and any Extension Options). Tenant's obligations under this Section shall survive the expiration or termination of this Lease.

### **26.14. Time of Essence**

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

### **26.15. Cumulative Remedies**

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

### **26.16. Survival of Indemnities**

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

### **26.17. Signs**

Tenant may at its own expense erect or post signs on the Property which are appropriate to the specified use of the Property. City reserves the right to review the placement, design and plan for any such sign prior to its erection or posting and agrees that approval thereof shall not be withheld unreasonably. Any advertising media so erected or displayed by Tenant shall remain the property of Tenant. Tenant shall remove any such advertising media at Tenant's own cost and expense upon expiration or termination of this Lease.

### **26.18. Relationship of the Parties**

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

### **26.19. Light and Air**

Tenant covenants and agrees that no diminution of light, air or view by any structure that may hereafter be erected (whether or not by City) shall entitle Tenant to any reduction of the Base Rent under this Lease, result in any liability of City to Tenant, or in any other way affect this Lease or Tenant's obligations hereunder.

### **26.20. No Recording**

Tenant shall not record this Lease or any memorandum hereof in the public records.

### **26.21. Options Personal**

Any right or option to extend the Term of this Lease or renew this Lease is personal to the original Tenant and may be exercised only by the original Tenant while occupying the Property who does so without the intent of thereafter making any Assignment of this Lease or Subletting of the Property, or any portion thereof, and may not be exercised by or assigned, voluntarily or involuntarily, by or to any person or entity other than Tenant [provided, however, that an option may be exercised by or assigned to an Affiliate]. The options, if any, herein granted to Tenant are not assignable separate and apart from this Lease, nor may any option be separated from this Lease in any manner, either by reservation or otherwise.

### **26.22. Public Transit Information**

Tenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Tenant employed on the Property, 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 Tenant's sole expense.

### **26.23. Taxes, Assessments, Licenses, Permit Fees and Liens**

(a) Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest.

(b) Tenant agrees to pay taxes of any kind, including possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other

taxes, excises, licenses, permit charges and assessments based on Tenant's usage of the Property that may be imposed upon Tenant by law, all of which shall be paid when the same become due and payable and before delinquency.

(c) Tenant agrees not to allow or suffer a lien for any such taxes to be imposed upon the Property or upon any equipment or property located thereon without promptly discharging the same, provided that Tenant, if so desiring, may have reasonable opportunity to contest the validity of the same.

(d) San Francisco Administrative Code Sections 23.38 and 23.39 require that the City and County of San Francisco report certain information relating to this Lease, and any renewals thereof, to the County Assessor within sixty (60) days after any such transaction, and that Tenant report certain information relating to any assignment of or sublease under this Lease to the County Assessor within sixty (60) days after such assignment or sublease transaction. Tenant agrees to provide such information as may be requested by the City to enable the City to comply with this requirement.

#### **26.24. Non-Liability of City Officials, Employees and Agents**

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

#### **26.25. Wages and Working Conditions**

Tenant agrees that any person performing labor in connection with tenant improvements or any Alterations to the Property, including any "public work" as defined under California Labor Code Section 1720 *et seq.* (which includes certain construction, alteration, demolition, installation, and repair work) shall be paid not less than the highest prevailing rate of wages consistent with the requirements of Section 6.22(E) of the San Francisco Administrative Code, and shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco County. Tenant shall include in any contract for such tenant improvements and Alterations a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Tenant shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing such labor at the Property.

#### **26.26. Non-Discrimination in City Contracts and Benefits Ordinance**

##### **(a) Covenant Not to Discriminate**

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

**(b) Subleases and Other Subcontracts**

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

**(c) Non-Discrimination in Benefits**

Tenant does not as of the date of this Lease and will not during the term of this Lease, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

**(d) CMD Form**

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

**(e) Incorporation of Administrative Code Provisions by Reference**

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

**26.27. No Relocation Assistance; Waiver of Claims**

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

### **26.28. MacBride Principles - Northern Ireland**

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

### **26.29. Tropical Hardwood and Virgin Redwood Ban**

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

### **26.30. Restrictions on the Use of Pesticides**

Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "IPM Ordinance") describes an integrated pest management ("IPM") policy to be implemented by all City departments. Tenant shall not use or apply or allow the use or application of any pesticides on the Property or contract with any party to provide pest abatement or control services to the Property without first receiving City's written approval of an IPM plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Property during the term of this Lease, (ii) describes the steps Tenant will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. Tenant shall comply, and shall require all of Tenant's contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Tenant were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (d) require Tenant to keep certain records and to report to City all pesticide use at the Property by Tenant's staff or contractors. If Tenant or Tenant's contractor will apply pesticides to outdoor areas at the Property, Tenant must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation ("CDPR") and any such pesticide application shall be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website. Nothing herein shall prevent Tenant, through Department of Public Health from seeking a determination from the Commission on the Environment that it is exempt from complying with certain portions of the Pesticide Ordinance as provided in Section 307 thereof.



### **26.31. First Source Hiring Ordinance**

The City has adopted a First Source Hiring Ordinance, San Francisco Administrative Code, Chapter 83, which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions. Upon request when applicable, Tenant shall enter into a First Source Hiring Agreement that meets the requirements of Section 83.9 of the First Source Hiring Ordinance.

### **26.32. Sunshine Ordinance**

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

### **26.33. Conflicts of Interest**

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

### **26.34. Charter Provisions**

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

### **26.35. Drug-Free Workplace**

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

### **26.36. Prohibition of Tobacco Sales and Advertising**

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

### **26.37. Prohibition of Alcoholic Beverage Advertising**

Tenant acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Property. For purposes of this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning

solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

#### **26.38. Counterparts**

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

#### **26.39. Effective Date**

This Lease shall become effective on the date (the "Effective Date") upon which (i) City's Board of Supervisors and the Mayor, in their sole and absolute discretion, adopt a resolution approving this Lease in accordance with all applicable laws and (ii) this Lease is duly executed and delivered by the parties hereto.

#### **26.40. Requiring Health Benefits for Covered Employees**

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

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

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

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

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

to comply, the City may pursue the remedies set forth in this Section against Tenant based on the Subcontractor's failure to comply, provided that City has first provided Tenant with notice and an opportunity to obtain a cure of the violation.

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

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

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

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

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

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

(k) If Tenant is exempt from the HCAO when this Lease is executed because its amount is less than Twenty-Five Thousand Dollars (\$25,000), but Tenant later enters into an agreement or agreements that cause Tenant's aggregate amount of all agreements with City to reach Seventy-Five Thousand Dollars (\$75,000), all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Tenant and the Contracting Department to be equal to or greater than Seventy-Five Thousand Dollars (\$75,000) in the fiscal year.

#### **26.41. Notification of Limitations on Contributions**

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

preceding sentence of the prohibitions contained in Section 1.126. Tenant further agrees to provide to City the name of each person, entity or committee described above.

#### **26.42. Preservative-Treated Wood Containing Arsenic**

Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Tenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Tenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

#### **26.43. Resource-Efficient City Buildings and Pilot Projects**

Tenant acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 707 relating to resource-efficient City buildings and resource-efficient pilot projects. Tenant hereby agrees that it shall comply with all applicable provisions of such code sections.

#### **26.44. Food Service Waste Reduction**

Tenant agrees to comply fully with and be bound by all of the applicable provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Lease as though fully set forth herein. Accordingly, Tenant acknowledges that 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, and shall instead use suitable Biodegradable/Compostable or Recyclable Disposable Food Service Ware. This provision is a material term of this Lease.

#### **26.45. San Francisco Bottled Water Ordinance**

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

#### **26.46. Local Hiring Requirements**

If Tenant performs (or causes to be performed) improvements that require a building permit and the estimated cost of improvements set forth in the building permit is more than \$750,000, then, unless exempt, Tenant agrees to comply with the Local Hiring Policy set forth in San Francisco Administrative Code Section 6.22(G) (the "Local Hiring Policy") in the performance of the work."

#### **26.47. Graffiti**

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 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 its residents, and to prevent the further spread of graffiti.

Tenant shall remove all graffiti from the Property within five (5) business days of the earlier of Tenant's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require Tenant to breach any lease or other agreement that it may have concerning its use of the real property. 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.*).

In addition to the enforcement mechanisms and abatement procedures for graffiti removal available to City in its regulatory capacity under Sections 1300 *et seq.* of the San Francisco Public Works Code or any successor statute or ordinance, any failure of Tenant to comply with this Section of this Lease shall constitute a default of this Lease.

#### **26.48. Criminal History in Hiring and Employment Decisions**

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

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

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

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

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

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

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

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

#### **26.49. 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.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, TENANT ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS LEASE UNLESS AND UNTIL CITY'S BOARD OF SUPERVISORS SHALL HAVE DULY ADOPTED A RESOLUTION APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS LEASE SHALL BE NULL AND VOID IF CITY'S MAYOR AND THE BOARD OF SUPERVISORS DO NOT APPROVE THIS LEASE, IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ENACTED, NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

*[SIGNATURES ON FOLLOWING PAGE]*

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

**TENANT:**

TWIN PEAKS PETROLEUM, INC.,  
a California corporation, dba Twin Peaks Auto Care

By:   
Michael Gharib  
Its: President and Chief Financial Officer

**CITY:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By:   
JOHN UPDIKE  
Director of Property


~~RECOMMENDED:~~

~~Department of Public Health~~

~~~~  
~~BARBARA GARCIA, Director~~

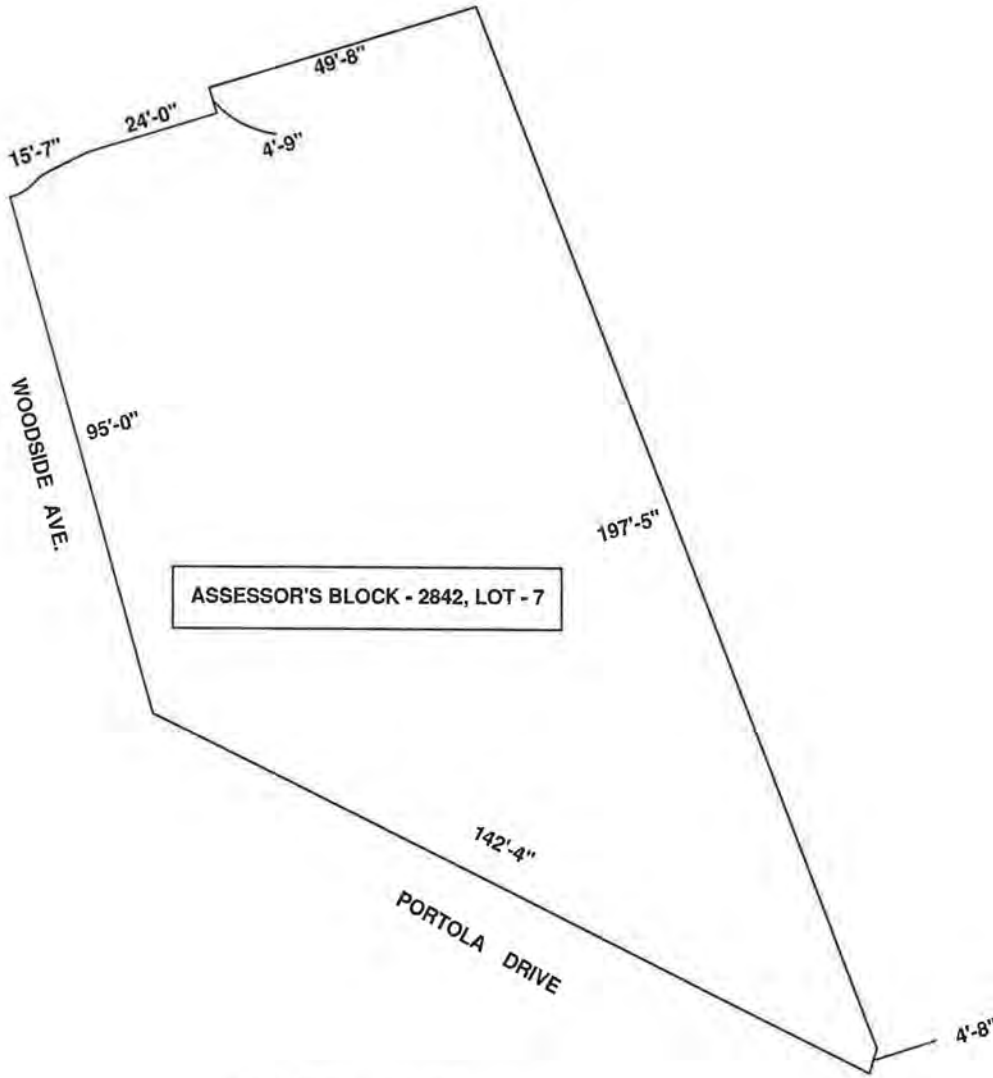
APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By:   
Deputy City Attorney

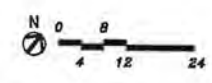






ASSESSOR'S BLOCK - 2842, LOT - 7

TOTAL - 14,499 s.f.



City and County of San Francisco  
**REAL ESTATE DIVISION**  
 25 VANNESS AVENUE, SUITE 400  
 SAN FRANCISCO, CA 94102  
 PHONE: 415 554 9550  
 FAX: 415 552 9718  
 Email: RealEstateUSA311@sf.gov

GAS STATION  
 SITE  
 598 PORTOLA DR.  
 SAN FRANCISCO, CA

REVISION			
NO.	DATE	BY	DESCRIPTION



ISSUE ISSUE  
 DATE 05/09/2015  
 SCALE 1/8"=1'-0"  
 DRAWN BY J. CELMINO  
 CHECKED BY C. VEMEGAS  
 PROJECT NUMBER 0515

SITE  
 PLAN

TITLE:  
 S-1

SHEET  
 1 OF 1





London N. Breed, Mayor  
Carmen Chu, City Administrator



Andrico Q. Penick  
Director of Real Estate

June 20, 2024

Through Carmen Chu,  
City Administrator

Honorable Board of Supervisors  
City & County of San Francisco  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 224  
San Francisco, CA 94102

**Re: 598 Portola Drive – Twin Peaks Gas Station**

Dear Board Members:

Attached for your consideration is a Resolution approving and authorizing the Director of Property to lease approximately 14,499 square feet at 598 Portola Drive to Twin Peaks Petroleum, Inc., a California corporation, successor-in-interest to Michael Gharib (“Tenant”). Tenant has leased the property for over twenty-five years doing business as “Twin Peaks Auto Care,” for the operation of a service station with a small convenience store and garage.

The proposed lease increases the Base Rent from the current \$9,465.51 per month to \$13,050 per month or \$156,600 per year (\$10.80 per square foot per year) as supported by an independent appraisal. Thereafter, rent shall increase annually by three (3) percent. Tenant is responsible for all utilities and services. The proposed lease term is twenty (20) years with one 10-year renewal option.

**Background**

In August 1994, the Board approved Resolution No. 279-94, authorizing a lease of the site to Tenant. Subsequently, in June 2004, the Board approved Resolution No. 364-04, to extend the lease through June 2014 and allowing the Tenant to make mandated improvements necessary to comply with regulations set by the State of California.

As amended, the 2004 Option Rent for approximately 15,000 square feet was \$6,806.25 per month (approximately \$0.45 per square foot per month or \$5.45 per square foot annually) with annual rent adjustments to reflect changes in the Consumer Price Index.

In October 2015, the Board approved Resolution 394-15, authorizing the current lease of the site to Tenant for another five years.

In 2019, the Real Estate Division commenced extensive negotiations with Tenant for a new lease. Tenant desired to enter into a new long-term lease rather than the five-year option the current lease provides. Negotiations lapsed and were then re-initiated late last year to enter into a new lease after the termination of the current lease in December 2025.

**Proposed Lease**

In addition to the above base rent and term, the new lease provides that Tenant will be replacing the underground storage tanks before the end of 2025 as required by code. Tenant may receive up to three months rent waiver if he should have to close during the replacement construction period.

Given the substantial investment in the equipment and fixtures and trade equipment Tenant has installed at the Premises (all the tanks, dispensers, canopy, signs, etc.), and the cost to remove same, and the Tenant's legacy business status, it would be impractical to have completed a competitive bidding process.

We recommend approval of the proposed lease. Should you have any questions, please contact Claudia J. Gorham or me at our office at 415.554.8750.

Respectfully,



Andrico Q. Penick  
Director of Property

**From:** [Lori Bessacini](#)  
**To:** [Jalipa, Brent \(BOS\)](#)  
**Subject:** Twin Peak Petroleum (TPP)  
**Date:** Saturday, July 6, 2024 12:59:35 PM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Mr. Jalipa,

This note is on behalf of Twin Peak Petroleum (TPP) station at 598 Portola Drive in San Francisco, CA. I understand on July 17th a proposal will go to the SF Board. This will include TPP being an alternative fueling station. I want to voice my support and hope that the SF Board will do the same. Twin Peaks Petroleum has been a value to the neighborhood and the city of SF. Owner Michael Gharib and Manager Ken Lau offer exceptional service to their customers... they should be commended on how they run their business. We need more business owners and leaders like them... I hope this proposal will be passed. It has my full support.

Thank you.  
Lori Bessacini

20 year customer and 30 year resident of San Francisco  
200 Whitney Street  
SF, CA 94131

**From:** [Samir Ghosh](#)  
**To:** [Jalipa Brent \(BOS\)](#)  
**Subject:** Support for Twin Peaks Petroleum's Auto Repair Services  
**Date:** Monday, July 8, 2024 12:48:07 AM

---

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Dear Members of the Budget Committee,

I hope this email finds you well.

I am writing to express my strong support for Twin Peaks Petroleum, particularly their auto repair business, as you consider their 20-year lease term. For the past two decades, I have relied on Twin Peaks Petroleum for all my auto repair needs, and they have consistently provided exceptional service. Their expertise, professionalism, and commitment to quality have made them an invaluable asset to our community.

The auto repair services at Twin Peaks Petroleum have not only ensured the safety and reliability of my vehicles but have also contributed to the overall convenience and satisfaction of numerous residents in our area. Maintaining their presence in our community is essential for continuing to receive the high level of service we have come to depend on.

I urge you to support Twin Peaks Petroleum and approve the lease term. Their long-standing service and dedication to our community deserve our full backing.

Thank you for your consideration.

Best regards,  
Samir Ghosh  
762 Clipper St, SF, CA 94114  
562-726-4744

**From:** [Nora Dowley](#)  
**To:** [Jalipa Brent \(BOS\)](#)  
**Subject:** Fwd: Yes on Twin Peaks Petroleum Lease  
**Date:** Monday, July 8, 2024 3:14:36 PM

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Attn. SFBOS Budget Committee (July 17, 2024)

Please accept this letter in support of renewing the Twin Peaks Petroleum lease.

Twin Peaks Petroleum has been "my" gas station for the 30 years I've lived in the neighborhood and the manager, Ken Lau, has kept my beloved 2003 Mini Cooper in excellent condition.

It would be a significant loss for me and my neighbors not to have Twin Peaks Petroleum available. The station is far cleaner and better maintained than the norm and finding a competent, reliable mechanic is challenging. Finding a true expert like Mr. Lau would be impossible for me.

Please renew the lease so my neighbors and I can continue to rely on this essential resource.

Sincerely,  
Nora Dowley  
932 Chenery St.  
San Francisco, CA 94131  
415-584-5895

**From:** [Daniel Brown](#)  
**To:** [Dan Brown](#)  
**Subject:** Save Twin Peaks Auto Center: File No240731  
**Date:** Monday, July 8, 2024 4:33:00 PM

---

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor,

Please vote yes on File No. 240731 sponsored by Supervisor Melgar to support the new lease for Twin Peaks Auto Care as an alternative fueling station. Twin Peaks Auto Care is an independent, active neighborhood-serving business with Legacy Business designation. Twin Peaks Auto Care's plan to become an alternative fueling station offering renewable fuels, biodiesel, and ethanol will be safer, cleaner, and greener for the environment. While the City may have other future ideas for this site, there are currently no planned uses when Twin Peaks Auto Care's existing lease expires.

Twin Peaks Auto Care is one of the few remaining auto car facilities in the city. A good portion of the neighborhood rely on this service.

Thank you for your consideration!

Sincerely,  
Dan Brown



**From:** [holly7531@aol.com](mailto:holly7531@aol.com)  
**To:** [MandelmanStaff \(BOS\)](#)  
**Cc:** [Jalipa, Brent \(BOS\)](#); [MelgarStaff \(BOS\)](#)  
**Subject:** Twin Peak Auto Care  
**Date:** Tuesday, July 9, 2024 1:01:03 PM  
**Attachments:** [twin\\_peaks Mandelman.pdf](#)

---

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July 9, 2024

Dear Supervisor Mandelman,

I am a native San Franciscan and granddaughter of the former San Francisco Mayor, P. H. McCarthy. I am a regular customer of Twin Peaks Auto Care for my gasoline and car repairs and would be lost without this legacy business.

Please vote yes on File No. 240731, sponsored by Supervisor Melgar to support the new lease for Twin Peaks Auto Care as an alternative fueling station.

Twin Peaks Auto Care is an independent, active neighborhood-serving business with Legacy Business designation. It must remain as one. Its plan to become an alternative fueling station offering renewable fuels, biodiesel, and ethanol will be safer, cleaner and greener for the environment.

While the City may have other future ideas for this site, there are currently no planned uses when Twin Peaks Autor Care's existing lease expires. Please approve this new lease to prevent this property from becoming a long-term vacancy that will be challenging and costly for the City to maintain. Its loss would create economic instability and inconvenience for people such as myself, who would have to drive a greater distance to fill up a gas tank, or to find a distant shop for car repairs. As a senior citizen, I need a place close to my residence where I can get the service that Twin Peaks Auto Care provides.

I have recommended this legacy business to my friends and family who also rely on its service.

Twin Peaks Auto Care will continue serving our community, providing jobs, and support out City's transition to greener alternatives.

Thank you for your consideration!

Sincerely,  
Kathy Holly, Resident of Diamond Heights, Native San Franciscan

July 9, 2024

Dear Supervisor Mandelman,

I am a native San Franciscan and granddaughter of the former San Francisco Mayor, P. H. McCarthy. I am a regular customer of Twin Peaks Auto Care for my gasoline and car repairs and would be lost without this legacy business.

Please vote yes on File No. 240731, sponsored by Supervisor Melgar to support the new lease for Twin Peaks Auto Care as an alternative fueling station.

Twin Peaks Auto Care is an independent, active neighborhood-serving business with Legacy Business designation. It must remain as one. Its plan to become an alternative fueling station offering renewable fuels, biodiesel, and ethanol will be safer, cleaner and greener for the environment.

While the City may have other future ideas for this site, there are currently no planned uses when Twin Peaks Auto Care's existing lease expires. Please approve this new lease to prevent this property from becoming a long-term vacancy that will be challenging and costly for the City to maintain. Its loss would create economic instability and inconvenience for people such as myself, who would have to drive a greater distance to fill up a gas tank, or to find a distant shop for car repairs. As a senior citizen, I need a place close to my residence where I can get the service that Twin Peaks Auto Care provides. I have recommended this legacy business to my friends and family who also rely on its service.

Twin Peaks Auto Care will continue serving our community, providing jobs, and support out City's transition to greener alternatives.

Thank you for your consideration!

Sincerely,  
Kathy Holly  
Resident of Diamond Heights,  
Native San Franciscan

**From:** [holly7531@aol.com](mailto:holly7531@aol.com)  
**To:** [ChanStaff \(BOS\)](#); [Hsieh, Frances \(BOS\)](#)  
**Cc:** [Jalipa, Brent \(BOS\)](#); [MelgarStaff \(BOS\)](#); [skype](#)  
**Subject:** Twin Peaks Auto, Kathy Holly  
**Date:** Tuesday, July 9, 2024 1:07:29 PM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

July 9, 2024

Dear Supervisor Connie Chan,

I am a native San Franciscan and granddaughter of the former San Francisco Mayor, P. H. McCarthy. I am a regular customer of Twin Peaks Auto Care for my gasoline and car repairs and would be lost without this legacy business.

Please vote yes on File No. 240731, sponsored by Supervisor Melgar to support the new lease for Twin Peaks Auto Care as an alternative fueling station.

Twin Peaks Auto Care is an independent, active neighborhood-serving business with Legacy Business designation. It must remain as one. Its plan to become an alternative fueling station offering renewable fuels, biodiesel, and ethanol will be safer, cleaner and greener for the environment.

While the City may have other future ideas for this site, there are currently no planned uses when Twin Peaks Autor Care's existing lease expires. Please approve this new lease to prevent this property from becoming a long-term vacancy that will be challenging and costly for the City to maintain. Its loss would create economic instability and inconvenience for people such as myself, who would have to drive a greater distance to fill up a gas tank, or to find a distant shop for car repairs. As a senior citizen, I need a place close to my residence where I can get the service that Twin Peaks Auto Care provides.

I have recommended this legacy business to my friends and family who also rely on its service.

Twin Peaks Auto Care will continue serving our community, providing jobs, and support out City's transition to greener alternatives.

Thank you for your consideration!

Sincerely,

Kathy Holly

Resident of Diamond Heights,

Native San Franciscan

**From:** [Yunny Yip](#)  
**To:** [Jalipa, Brent \(BOS\)](#)  
**Subject:** Support for Twin Peaks Petroleum's Auto Repair Services  
**Date:** Wednesday, July 10, 2024 12:01:47 AM

---

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Members of the Budget Committee,

I hope this email finds you well. I am writing to express my strong support for Twin Peaks Petroleum, particularly their auto repair business, as you consider their 20-year lease term. For the past 1.5 decades, I have relied on Twin Peaks Petroleum for all my auto repair needs, and they have consistently provided exceptional service. Their expertise, professionalism, and commitment to quality have made them an invaluable asset to our community. The auto repair services at Twin Peaks Petroleum have not only ensured the safety and reliability of my vehicles but have also contributed to the overall convenience and satisfaction of numerous residents in our area.

Maintaining their presence in our community is essential for continuing to receive the high level of service we have come to depend on. I urge you to support Twin Peaks Petroleum and approve the lease term. Their long-standing service and dedication to our community deserve our full backing.

Thank you for your consideration.

Best regards,  
Yunny Yip  
762 Clipper Street

**From:** [Gary Levene](#)  
**To:** [Jalipa, Brent \(BOS\)](#)  
**Subject:** letter of support for Twin Peaks gas station  
**Date:** Wednesday, July 10, 2024 8:44:57 AM

---

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Sir,

I am writing to show support for the Twin Peaks gas station in hopes that they may be allowed to renew their lease and remain in business. I have been taking my car there for over 20 years for fuel as well as maintenance because they are conveniently located and trustworthy. Having an auto mechanic that you can trust is a blessing and not easy to come by. Ken has been taking great care of my vehicles for years and hopefully for many many more.

Thank you!

Gary Levene

**From:** [Carolyn Kenady](#)  
**To:** [Melgar, Myrna \(BOS\)](#); [MelgarStaff \(BOS\)](#); [Jalipa, Brent \(BOS\)](#)  
**Subject:** Fwd: Support File No. 240731 - Renew Lease for Twin Peaks Auto Care  
**Date:** Wednesday, July 10, 2024 11:56:17 AM

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Forwarding this letter to you.

----- Forwarded message -----

**From:** **Carolyn Kenady** <[carolynkenady@gmail.com](mailto:carolynkenady@gmail.com)>  
**Date:** Wed, Jul 10, 2024 at 11:54 AM  
**Subject:** Support File No. 240731 - Renew Lease for Twin Peaks Auto Care  
**To:** <[chanstaff@sfgov.org](mailto:chanstaff@sfgov.org)>, <[frances.hsieh@sfgov.org](mailto:frances.hsieh@sfgov.org)>

Dear Supervisor Chan -

Please vote yes on File No. 240731 sponsored by Supervisor Melgar to support the new lease for Twin Peaks Auto Care as an alternative fueling station.

Twin Peaks Auto Care is an independent, active neighborhood-serving business with Legacy Business designation. Twin Peaks Auto Care's plan to become an alternative fueling station offering renewable fuels, biodiesel, and ethanol will be safer, cleaner, and greener for the environment.

I live in D8; here we have many properties where owners have not renewed leases and/or raised rents so high that existing businesses have vacated. These boarded-up properties create the perception that SF is a failing city and are a blight in our neighborhood commercial strips. While the City may have other future ideas for this site, there are currently no planned uses when Twin Peaks Auto Care's existing lease expires. So this property will become a long-term vacancy that will be challenging and costly for the City to maintain.

Please approve this new lease so that Twin Peaks Auto Care will continue serving its community, providing jobs, and support our City's transition to greener alternatives.

Thank you!

Sincerely,  
Carolyn

Carolyn Kenady  
[carolynkenady@gmail.com](mailto:carolynkenady@gmail.com)  
408-218-3115  
<http://www.linkedin.com/in/ckenady>

**From:** [Carolyn Kenady](#)  
**To:** [Melgar, Myrna \(BOS\)](#); [MelgarStaff \(BOS\)](#); [Jalipa, Brent \(BOS\)](#)  
**Subject:** Fwd: Support File No. 240731 - Renew Lease for Twin Peaks Auto Care  
**Date:** Wednesday, July 10, 2024 11:57:39 AM

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Forwarding this letter to you

----- Forwarded message -----

**From:** **Carolyn Kenady** <[carolynkenady@gmail.com](mailto:carolynkenady@gmail.com)>  
**Date:** Wed, Jul 10, 2024 at 11:49 AM  
**Subject:** Support File No. 240731 - Renew Lease for Twin Peaks Auto Care  
**To:** Supervisor Rafael Mandelman <[rafael.mandelman@sfgov.org](mailto:rafael.mandelman@sfgov.org)>, MandelmanStaff [BOS] <[MandelmanStaff@sfgov.org](mailto:MandelmanStaff@sfgov.org)>

Dear Supervisor Mandelman,

Please vote yes on File No. 240731 sponsored by Supervisor Melgar to support the new lease for Twin Peaks Auto Care as an alternative fueling station.

Twin Peaks Auto Care is an independent, active neighborhood-serving business with Legacy Business designation. Twin Peaks Auto Care's plan to become an alternative fueling station offering renewable fuels, biodiesel, and ethanol will be safer, cleaner, and greener for the environment.

In D8, we have many properties where owners have not renewed leases and/or raised rents so high that existing businesses have vacated. These boarded-up properties create the perception that SF is a failing city and are a blight in our neighborhood commercial strips. While the City may have other future ideas for this site, there are currently no planned uses when Twin Peaks Auto Care's existing lease expires. So this property will become a long-term vacancy that will be challenging and costly for the City to maintain.

Please approve this new lease so that Twin Peaks Auto Care will continue serving our community, providing jobs, and support our City's transition to greener alternatives.

Thank you!  
Sincerely,

Carolyn

Carolyn Kenady  
[carolynkenady@gmail.com](mailto:carolynkenady@gmail.com)  
408-218-3115  
<http://www.linkedin.com/in/ckenady>

**From:** [Herlina Ng](#)  
**To:** [ChanStaff \(BOS\)](#); [Hsieh, Frances \(BOS\)](#); [MandelmanStaff \(BOS\)](#)  
**Cc:** [Jalipa, Brent \(BOS\)](#); [MelgarStaff \(BOS\)](#)  
**Subject:** Vote yes on File No. 240731  
**Date:** Wednesday, July 10, 2024 2:22:30 PM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

To whom it may concern,

I am writing this email in hopes to please vote yes on File No 240731 sponsored by Supervisor Melgar to support the new lease for Twin Peaks Auto Care as an alternative fueling station.

We have been living in this neighborhood since 2003 and Twin Peaks Auto Care has been my go to service center. They have become an alternative fueling station offering renewable fuels, biodiesel, and ethanol which will be safer, greener, and cleaner for the environment.

I don't know what the city has planned for the site, but as a home owner in the neighborhood I'm hoping that Twin Peaks Auto Care can renew their lease. They have been an asset in the community, providing jobs and support to our City's transition to greener alternatives.

Thanks for your consideration,

Herlina Ng  
Miraloma Park Resident



**From:** [Sarah Gharib](#)  
**To:** [Hsieh, Frances \(BOS\)](#); [MandelmanStaff \(BOS\)](#)  
**Cc:** [Jalipa, Brent \(BOS\)](#); [melgarstaff@sfgoc.org](mailto:melgarstaff@sfgoc.org)  
**Subject:** Twin Peaks Petroleum  
**Date:** Thursday, July 11, 2024 1:31:31 PM

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To whom it may concern,

Please vote yes on File No. 240731 to support the new lease for Twin Peaks Auto Care as an alternative fueling station.

Twin Peaks Auto Care is a local small business I have been going to for years. I grew up in the neighborhood and would hate to have to use corporate gas stations such as Chevron and Shell, which are the only ones in the area.

Twin Peaks Auto Care plans to offer renewable fuels, biodiesel, and ethanol if the lease is renewed. This aligns well with the city's plans to create an environmentally conscious metropolis, especially since many residents of San Francisco cannot afford an electric car or do not have the garage to charge one.

As there are no plans for the land once the lease expires, it would be unnecessary and harmful to the community to not allow for an extension of the lease. Please approve this new lease to prevent this property from becoming a long-term vacancy. If not approved, this will be challenging and costly for San Francisco to maintain, especially due to the underground gas tanks.

Twin Peaks Auto Care will continue serving our community, provide jobs, and support our city's transition to greener alternatives.

Thank you for your time!

Sincerely,

Sarah

**From:** [Duncan, Jacque](#)  
**To:** [MandelmanStaff \(BOS\)](#)  
**Cc:** [Jalipa, Brent \(BOS\)](#)  
**Subject:** Please vote yes on File No. 240731!  
**Date:** Thursday, July 11, 2024 2:55:14 PM

---

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor Rafael Mandelman  
Committee Member,

Please vote yes on File No. 240731 sponsored by Supervisor Melgar to support the new lease for Twin Peaks Auto Care as an alternative fueling station. Twin Peaks Auto Care is an independent, active neighborhood-serving business with Legacy Business designation. Twin Peaks Auto Care's plan to become an alternative fueling station offering renewable fuels, biodiesel, and ethanol will be safer, cleaner, and greener for the environment. While the City may have other future ideas for this site, there are currently no planned uses when Twin Peaks Auto Care's existing lease expires. Please approve this new lease to prevent this property from becoming a long-term vacancy that will be challenging and costly for the City to maintain. Twin Peaks Auto Care will continue serving our community, providing jobs, and support our City's transition to greener alternatives.

Thank you for your consideration!

Sincerely,

Jacque Duncan, MD  
Chair and Professor  
Department of Ophthalmology  
University of California, San Francisco  
Wayne and Gladys Valley Center for Vision  
490 Illinois Street  
San Francisco, CA 94158  
415-514-4241 (academic)  
415-353-2020 (clinical)

*I often work on email outside of work hours, but if you've received this message outside of your usual work hours, I don't expect a response until you are back in the office.*

**From:** [jcorkery@comcast.net](mailto:jcorkery@comcast.net)  
**To:** [ChanStaff \(BOS\)](#); [Hsieh, Frances \(BOS\)](#); [MandelmanStaff \(BOS\)](#); [Jalipa, Brent \(BOS\)](#)  
**Cc:** [MelgarStaff \(BOS\)](#); [mgtgcg@hotmail.com](mailto:mgtgcg@hotmail.com)  
**Subject:** Twin Peaks Auto Care  
**Date:** Thursday, July 11, 2024 2:56:41 PM

---

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Group,

Please vote yes on File No. 240731 sponsored by Supervisor Melgar to support the new lease for Twin Peaks Auto Care as an alternative fueling station. Twin Peaks Auto Care is an independent, active neighborhood-serving business with Legacy Business designation. Twin Peaks Auto Care's plan to become an alternative fueling station offering renewable fuels, biodiesel, and ethanol will be safer, cleaner, and greener for the environment. While the City may have other future ideas for this site, there are currently no planned uses when Twin Peaks Auto Care's existing lease expires. Please approve this new lease to prevent this property from becoming a long-term vacancy that will be challenging and costly for the City to maintain. Twin Peaks Auto Care will continue serving our community, providing jobs, and support our City's transition to greener alternatives. Thank you for your consideration!

*Regards,*

*Jim Corkery*

*165 Juanita Way*

*415-260-1806*

**From:** [Kelly Thomas](#)  
**To:** [ChanStaff \(BOS\)](#); [Hsieh, Frances \(BOS\)](#); [MandelmanStaff \(BOS\)](#); [Jalipa, Brent \(BOS\)](#); [MelgarStaff \(BOS\)](#)  
**Subject:** Twin Peaks Auto Care lease, File no 240731  
**Date:** Thursday, July 11, 2024 3:52:53 PM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisors and Committee Members,

Please vote yes on File No. 240731 sponsored by Supervisor Melgar to support the new lease for Twin Peaks Auto Care as an alternative fueling station.

Twin Peaks Auto Care is an independent, active neighborhood-serving business with Legacy Business designation. Twin Peaks Auto Care's plan to become an alternative fueling station offering renewable fuels, biodiesel, and ethanol will be safer, cleaner and greener for the environment.

While the City may have other future offers for this site, there are currently no planned uses when Twin Peaks Auto Care's existing lease expires. Please approve this new lease to prevent this property from becoming a long-term vacancy and that will be challenging and costly for the City to maintain.

Twin Peaks Auto Care will continue serving our community, providing jobs and support our City's transition to greener alternatives.

Thank you for your consideration.

Sincerely,  
Kelly Thomas  
Victoria Street, San Francisco  
Ingleside Neighborhood

**From:** [JEFF NIGH](#)  
**To:** [ChanStaff \(BOS\)](#); [MandelmanStaff \(BOS\)](#)  
**Cc:** [MelgarStaff \(BOS\)](#); [Jalipa, Brent \(BOS\)](#)  
**Subject:** Twin Peaks Auto Care  
**Date:** Thursday, July 11, 2024 4:01:54 PM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisors,

Please vote yes on File No. 240731 sponsored by Supervisor Melgar to support the new lease for Twin Peaks Auto Care as an alternative fueling station. Twin Peaks Auto Care is an independent, active neighborhood-serving business with Legacy Business designation. Twin Peaks Auto Care's plan to become an alternative fueling station offering renewable fuels, biodiesel, and ethanol will be safer, cleaner, and greener for the environment. While the City may have other future ideas for this site, there are currently no planned uses when Twin Peaks Auto Care's existing lease expires. Please approve this new lease to prevent this property from becoming a long-term vacancy that will be challenging and costly for the City to maintain. Twin Peaks Auto Care will continue serving our community, providing jobs, and support our City's transition to greener alternatives.

Thank you for your consideration!

Sincerely,  
Jeffrey A. Nigh

**From:** [Eric Birnbaum](#)  
**To:** [ChanStaff \(BOS\)](#); [Hsieh, Frances \(BOS\)](#); [MandelmanStaff \(BOS\)](#)  
**Cc:** [Jalipa, Brent \(BOS\)](#); [MelgarStaff \(BOS\)](#)  
**Subject:** Renew Lease for Twin Peaks Auto Care  
**Date:** Thursday, July 11, 2024 4:27:57 PM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor Chan:

Please vote "yes" on File No. 240731 sponsored by Supervisor Melgar to support the new lease for Twin Peaks Auto care as an alternative fueling station.

Twin Peaks Auto Care is an independent, active neighborhood-serving business with Legacy Business designation. Twin Peaks Auto Care's plan to become an alternative fueling station offering renewable fuels, biodiesel, and ethanol will be safer, cleaner, and better for the environment.

While the city may have other future idea for the site, there are currently no planned uses when the existing lease expires. Please approve this new lease to prevent the property from becoming another long-term vacancy that will be challenging and costly for the city to maintain, and a blight on the neighborhood.

Twin Peaks Auto Care will continue serving our community, providing jobs and support our city's transition to greener alternatives.

Thank you for your consideration.

Sincerely,

Eric Birnbaum

Home Owner and Resident of  
Miraloma Park, San Francisco

**From:** [Maung Tin-Wa](#)  
**To:** [MelgarStaff \(BOS\)](#)  
**Cc:** [ChanStaff \(BOS\)](#); [Hsieh, Frances \(BOS\)](#); [MandelmanStaff \(BOS\)](#); [Jalipa, Brent \(BOS\)](#)  
**Subject:** Twin Peaks Auto Care new lease  
**Date:** Thursday, July 11, 2024 4:42:14 PM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor Melgar

We like File No. 240731 you sponsored to support the new lease for Twin Peaks Auto Care as an alternative fueling station. Twin Peaks Auto Care is an independent, active neighborhood-serving business with Legacy Business designation. Please approve this new lease to prevent this property from becoming a long-term vacancy that will be challenging and costly for the City to maintain. Twin Peaks Auto Care will continue serving our community, providing jobs, and support our City's transition to greener alternatives.

Twin Peaks Auto is the only gas station and repair shop in the whole area. I want to see this business stay.

Sincerely yours,

Maung Tin-Wa, Ph.D.

Anna Spielvogel< MD

30 Arroyo Way, San Francisco 94127

CC; [chanstaff@sfgov.org](mailto:chanstaff@sfgov.org) ; [frances.hsieh@sfgov.org](mailto:frances.hsieh@sfgov.org) Rafael Mandelman, Committee Member,

, [mandelmanstaff@sfgov.org](mailto:mandelmanstaff@sfgov.org) Cc: Brent Jalipa, clerk, Budget and Finance Committee

[brent.jalipa@sfgov.org](mailto:brent.jalipa@sfgov.org)

**From:** [bkivowitz@gmail.com](mailto:bkivowitz@gmail.com)  
**To:** [ChanStaff \(BOS\)](#); [Hsieh, Frances \(BOS\)](#); [MandelmanStaff \(BOS\)](#)  
**Cc:** [Jalipa, Brent \(BOS\)](#); [MelgarStaff \(BOS\)](#)  
**Subject:** HELP SAVE TWIN PEAKS AUTO CARE  
**Date:** Thursday, July 11, 2024 6:08:47 PM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisors and Staff,

Please vote yes on File No. 240731 sponsored by Supervisor Melgar to support the new lease for Twin Peaks Auto Care as an alternative fueling station.

Twin Peaks Auto Care is an independent, active neighborhood-serving business with Legacy Business designation. Twin Peaks Auto Care's plan to become an alternative fueling station offering renewable fuels, biodiesel, and ethanol will be safer, cleaner, and greener for the environment.

While the City may have other future ideas for this site, there are currently no planned uses when Twin Peaks Auto Care's existing lease expires. Please approve this new lease to prevent this property from becoming a long-term vacancy that will be challenging and costly for the City to maintain. Twin Peaks Auto Care will continue serving our community, providing jobs, and support our City's transition to greener alternatives.

Thank you for your consideration!

Sincerely,

Barbara Kivowitz (resident in West of Twin of Peaks)



**From:** [Paul Gomory](#)  
**To:** [ChanStaff \(BOS\)](#); [Jalipa Brent \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff \(BOS\)](#)  
**Subject:** Give Twin Peaks Auto Care a "lease on life" -- please!!  
**Date:** Thursday, July 11, 2024 6:16:27 PM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

For Supervisors Mandelman, Chan and Melgar:

I have patronized Twin Peaks Auto Care for 25+ years – for fuel, and for flat tires and other repairs. You surely know exactly what will happen if this small business is forced to close (yet another SF small business out of business and jobs lost!!): The building will quickly be covered in graffiti, and then it will sit empty and the lot un-used for years and years – until plans for the lot's use are proposed, *opposed*, and finally approved. (For an example, just look at the old Lucky Penny diner at Masonic and Geary – if you can even *bear* to look at it!)

Meanwhile there is no other fueling station (independent or otherwise) in the neighborhood – and Twin Peaks CONSISTENTLY HAS LOWER FUEL PRICES than the mega-corporate national-brand stations.

Please give this deserving (and community-serving) business another "Lease" on Life!

Thank you.

**Paul Gomory**  
1237 Douglass St. **(District 8)**  
San Francisco, CA 94131  
| H +1 415 641 7847  
| M +1 415 297 3380

**From:** [Jason Jungreis](#)  
**To:** [Jalipa, Brent \(BOS\)](#); [Melgar, Myrna \(BOS\)](#); [Chan, Connie \(BOS\)](#); [Mandelman, Rafael \(BOS\)](#)  
**Subject:** Renew Lease for Twin Peaks Service Center  
**Date:** Thursday, July 11, 2024 9:27:23 PM

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Budget Committee,

Twin Peaks Auto Care operates on City land and the lease is set to expire at the end of next year. After several years of discussions with the City's Department of Real Estate, Twin Peaks Auto Care has a pending lease with the City to continue operating an alternative fuel and energy station!

The station is located at 598 Portola Drive and Woodside Blvd. Twin Peaks Auto Care is committed to being at the forefront of new advances in bio-fuel infrastructure. The station's new multi compartment storage tanks will provide two additional renewable fuels with new dispensers capable of dispensing Biodiesel and E85 (ethanol) in addition to the three grades of gasoline. Twin Peaks Auto Care also has a well-loved repair shop that will get to continue to operate if the lease is approved.

Twin Peaks Auto Care is the last operating independent fueling station on Market Street/Portola Way--from Castro Street to West Portal Avenue. It has been designated as a "Legacy Business" in San Francisco. The Legacy Business Program is only for businesses 30+ years old that add to San Francisco's culture.

Mr. Gharib has lived in Midtown Terrace for over 25 years and has participated in numerous neighborhood events. Twin Peaks Auto Care has also become an institution to surrounding neighborhoods. Twin Peaks Auto Care's 20-year lease must be approved by the Board of Supervisors, but it first needs to pass the Budget and Finance Committee.

If the Board of Supervisors does not approve Twin Peaks Auto Care's lease, there is no plan for the 598 Portola Drive property. The property may remain vacant and in poor condition for years.

Jason Jungreis  
San Francisco

**From:** [Raquel Bayardo](#)  
**To:** [ChanStaff \(BOS\)](#)  
**Cc:** [Hsieh, Frances \(BOS\)](#); [MandelmanStaff \(BOS\)](#); [Jalipa, Brent \(BOS\)](#)  
**Subject:** File No 240731  
**Date:** Thursday, July 11, 2024 10:36:08 PM

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Dear Supervisor Chan,

Please vote yes on File No. 240731 sponsored by Supervisor Melgar to support the new lease for Twin Peaks Auto Care as an alternative fueling station. Twin Peaks Auto Care is an independent, active neighborhood-serving business with Legacy Business designation. Twin Peaks Auto Care's plan to become an alternative fueling station offering renewable fuels, biodiesel, and ethanol will be safer, cleaner, and greener for the environment. While the City may have other future ideas for this site, there are currently no planned uses when Twin Peaks Auto Care's existing lease expires. Please approve this new lease to prevent this property from becoming a long-term vacancy that will be challenging and costly for the City to maintain. Twin Peaks Auto Care will continue serving our community, providing jobs, and support our City's transition to greener alternatives. Thank you for your consideration!

Sincerely, Raquel Bayardo

**Raquel Bayardo**

**From:** [Robert Gee](#)  
**To:** [ChanStaff \(BOS\)](#); [MandelmanStaff \(BOS\)](#)  
**Cc:** [MelgarStaff \(BOS\)](#); [Jalipa, Brent \(BOS\)](#)  
**Subject:** BOS Budget and Finance Committee - Please Vote Yes to Support File No. 240731  
**Date:** Friday, July 12, 2024 7:05:57 AM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisors Chan and Mandelman,

**Please vote Yes to support File No 240731** sponsored by Supervisor Melgar to support the new lease for Twin Peaks Auto Care. Twin Peaks Auto Care is one of the last remaining independent, active neighborhood serving businesses with a Legacy Business designation. Twin Peaks plans to become an alternative fueling station offering renewable fuels, biodiesel, and ethanol which will be safer, cleaner and greener for our environment.

I have lived in the Miraloma Park neighborhood for 26 years and Twin Peaks Auto has always been my local gas station located just a few blocks away. While the City may have other future ideas for this site, there are currently no planned uses when Twin Peaks Auto existing lease expires. Please approve this new lease to prevent this property from becoming a long term vacancy that will be challenging and costly for the City to maintain.

Twin Peaks Auto will continue to serve our community, providing jobs and support our City's transition to greener alternatives.

Sincerely,

Robert Gee  
9 Bella Vista Way  
San Francisco

From: [ROGER DAWSON - CPOST](#)  
To: [Jalipa, Brent \(BOS\)](#)  
Subject: TWIN PEAKS AUTO CARE - PLEASE APPROVE THE LEASE!  
Date: Friday, July 12, 2024 10:45:50 AM  
Attachments: [YW6oGEPYMHdSLvUM.png](#)  
[OnIRioD5g0I\\_vfOIT.png](#)  
[12IV9xH5EVaxSENO.png](#)  
[m7xLwLP4x082PGxS.png](#)

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Dear Clerk of the Board ,

This is in support of the following RESOLUTION to be heard on July 17th at the Budget and Finance Committee:

**240731 [Real Property Lease - Twin Peaks Petroleum, Inc. - 598 Portola Drive - \$156,600 Initial Annual Base Rent]**

**Sponsor:** Melgar

Resolution approving and authorizing the Director of Property to enter into a real property lease with Twin Peaks Petroleum, Inc., a California corporation, doing business as Twin Peaks Auto Care, successor-in-interest to Michael Gharib, for approximately 14,499 square feet located at 598 Portola Drive, for an initial term of twenty years with one ten-year option to extend, at an initial base rent of \$156,600 with annual adjustments of three percent thereafter, effective upon approval of this Resolution by the Board of Supervisors and Mayor, and full execution of the Lease; requiring Tenant to complete certain improvements by December 31, 2025, with a waiver of rent up to three months; approving a finding that competitive bidding procedures required under San Francisco Administrative Code, Chapter 23, Section 23.33, are impractical; approving a finding that the Premises is exempt surplus land under California Code, Section 54421(f)(1)(B); and authorizing the Director of Property to enter into amendments or modifications to the lease that do not materially increase the obligations or liabilities to the City and are necessary to effectuate the purposes of the lease or this Resolution. RECEIVED AND ASSIGNED to Budget and Finance Committee.

Twin Peaks Auto Care (TPAC) is an important part of our community! In fact it is an anchor business in this Twin Peaks retail district, drawing customers to the other establishments.

The convenience of getting gas and shopping done in one stop is a big draw, especially for daily commuters. You can get everything you need to meet the demands of modern life in one compact shopping district. The perfect balance of services here on Twin Peaks would be irreparably harmed if TPAC were to disappear. Many other retail areas in SF have declined significantly, please don't let this happen to Twin Peaks!

All of us up here on Twin Peaks rely on this service station at least once a week and many more often than that. Every neighborhood in this City needs the proper infrastructure to provide for a good quality of life. Here at the top of the hill is a near perfect mix of services that are essential for daily life: the Twin Peaks Service Station, Tower Market, CVS pharmacy, Round Table Pizza, coffee, a bank, a bar, a couple of restaurants, a dentist, a gym, a place of worship, a dry cleaners and a physical therapist for us seniors with disabilities. In this amazingly compact business district, we could live our entire lives without ever having to descend The Peak.



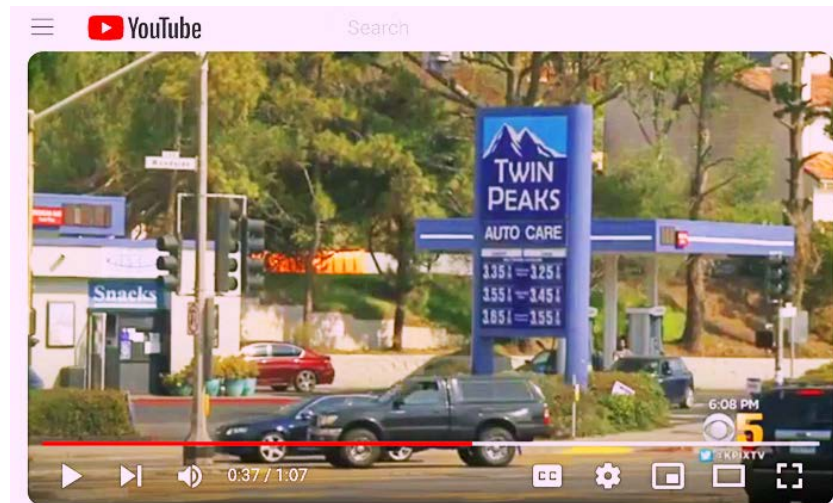


Not all cars need fuel, but they all need maintenance like tires, brakes, fluids, and repairs. One need only look at the daily cue of cars awaiting service to see how vital TPAC is. The demand for this business's five star rated mechanics would be the envy of any business in our City.

Additionally, denying the lease extension would send two thriving and vital businesses started by hard working successful immigrants into chaos. A vote for this lease is literally a vote in support of the American Dream.

Here is a CBS-5 profile of TPAC and its importance to the neighborhood...

<https://youtu.be/tQN4202XIU?si=eDA2VCFYXuUgbfE>



TWIN PEAKS AUTO CARE



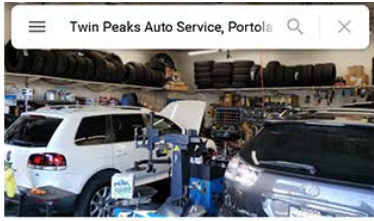
QR CODE FOR VIDEO IF YOU ARE VIEWING A PRINTOUT OF THIS EMAIL

The Twin Peaks Service Station is a vital part of our community. It is a gas station, it's an automobile repair business and it's a convenience market where you can shop long after Mollie Stone's closes for the evening.



**On this premises resides the best automobile maintenance and repair shop I have ever found.** It is a symbiotic business with the gas station, who's immigrant owners and crew are absolutely wonderful and amazingly talented people. Ronald, Ken and their crew have created a vital business here as is

epitomized by their Yelp and Google standings (few businesses in SF achieve such awesome ratings):



### Twin Peaks Auto Service

4.8 ★★★★★ (35)  
Auto repair shop



#### Review summary



- "Replaced my fuel pump quickly and for a good price."
- "These people work together to solve any problems!!!"

### Twin Peaks Auto Care

★★★★★ 178 reviews

Auto Repair [EAT]



#### Overall rating



178 reviews



"Ronald did a test drive, noticed the squeaking, and knew immediately what was wrong with our bakes." in 11 reviews



"If you are looking for an honest, trustworthy, upfront and friendly mechanic this is the place." in 6 reviews

★★★★★ May 27, 2020



They have literally saved my life by pointing out my very old dry and cracked tires and warning me about the safety hazard, turns out they were 20 years old. Us Senior Citizens who can't bend down for a detailed look anymore rely on this kind of attention to detail to help us.



TPAC owner Michael Gharib is a very nice man and you can tell he cares about his business and his customers. Everything is always so clean at TPAC, all the employees are friendly and helpful, and all the pumps are new and always work great. Gas here is always less than at Chevron and places like that.

Service stations are even more needed in a world of EV's. Electric cars require maintenance: tires, battery coolant systems, battery replacement, suspension systems, wheel bearings, brakes (they all got em'), air conditioning, and those high-voltage system components break down over time - guaranteed. I know, I have a degree in Electrical Engineering from Cal Poly and 50 years of experience with high voltage battery systems. You can always spot a Tesla or two in the daily mix of cars cued up for repair at TPAC.

Perhaps most importantly, as we evolve to a more EV-based transportation system, there will be a rapidly increasing need for charging stations. All the Amazon, Uber, Waymo and Lyft vehicles are going to need a place to stop and charge while making their rounds in our City. New developments in battery chemistry and thermodynamics will allow for near fully charging in about five minutes, the same amount of time it takes to fill a gas tank. This ultra high amperage charging is something that the Twin Peaks Service Station will evolve into...



...providing a strategic location near the geographic center of San Francisco to charge, especially for those of us who live in apartment buildings without charging units.

What a tragedy it would be if the Board of Supervisors were to allow the destruction of two prosperous businesses here on Twin Peaks, both of them run by incredibly hard working immigrants who have achieved success and contribute to a great quality of life for about 2000 (or more) of us residents here on the hill.

Please vote to approve the lease!

Sincerely,

A handwritten signature in black ink, appearing to read "Roger Dawson".

Roger Dawson

Tel: (650) 218-5431

801 Corbett, 15  
San Francisco, CA 94131





**From:** [ROGER DAWSON - CPOST](#)  
**To:** [Jalpa, Brent \(BOS\)](#)  
**Subject:** PLEASE APPROVE THE LEASE! - TWIN PEAKS AUTO CARE  
**Date:** Friday, July 12, 2024 11:11:06 AM  
**Attachments:** [YW6oGEPYMHdSLvUM.pnq](#)  
[OnIRioD5g0I\\_yfOJT.png](#)  
[12IV9xH5EVaxSENO.pnq](#)  
[m7xLwLP4x082PGxS.png](#)

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

**Dear Clerk of the Board,**  
**This contains a revision, please replace my previous email sent at 10:44 AM.**

This is in support of the following RESOLUTION to be heard on July 17th at the Budget and Finance Committee:

**240731 [Real Property Lease - Twin Peaks Petroleum, Inc. - 598 Portola Drive - \$156,600 Initial Annual Base Rent]**

**Sponsor:** Melgar

Resolution approving and authorizing the Director of Property to enter into a real property lease with Twin Peaks Petroleum, Inc., a California corporation, doing business as Twin Peaks Auto Care, successor-in-interest to Michael Gharib, for approximately 14,499 square feet located at 598 Portola Drive, for an initial term of twenty years with one ten-year option to extend, at an initial base rent of \$156,600 with annual adjustments of three percent thereafter, effective upon approval of this Resolution by the Board of Supervisors and Mayor, and full execution of the Lease; requiring Tenant to complete certain improvements by December 31, 2025, with a waiver of rent up to three months; approving a finding that competitive bidding procedures required under San Francisco Administrative Code, Chapter 23, Section 23.33, are impractical; approving a finding that the Premises is exempt surplus land under California Code, Section 54421(f)(1)(B); and authorizing the Director of Property to enter into amendments or modifications to the lease that do not materially increase the obligations or liabilities to the City and are necessary to effectuate the purposes of the lease or this Resolution. RECEIVED AND ASSIGNED to Budget and Finance Committee.

Twin Peaks Auto Care (TPAC) is an important part of our community! In fact it is an anchor business in this Twin Peaks retail district, drawing customers to the other establishments.

The convenience of getting gas and shopping done in one stop is a big draw, especially for daily commuters. You can get everything you need to meet the demands of modern life in one compact shopping district. The perfect balance of services here on Twin Peaks would be irreparably harmed if TPAC were to disappear. Many other retail areas in SF have declined significantly, please don't let this happen to Twin Peaks!

All of us up here on Twin Peaks rely on this service station at least once a week and many more often than that. Every neighborhood in this City needs the proper infrastructure to provide for a good quality of life. Here at the top of the hill is a near perfect mix of services that are essential for daily life: the Twin Peaks Service Station, Tower Market, CVS pharmacy, Round Table Pizza, coffee, a bank, a bar, a couple of restaurants, a dentist, a gym, a place of worship, a dry cleaners and a physical therapist for us seniors with disabilities. In this amazingly compact business district, we could live our entire lives without ever having to descend The Peak.

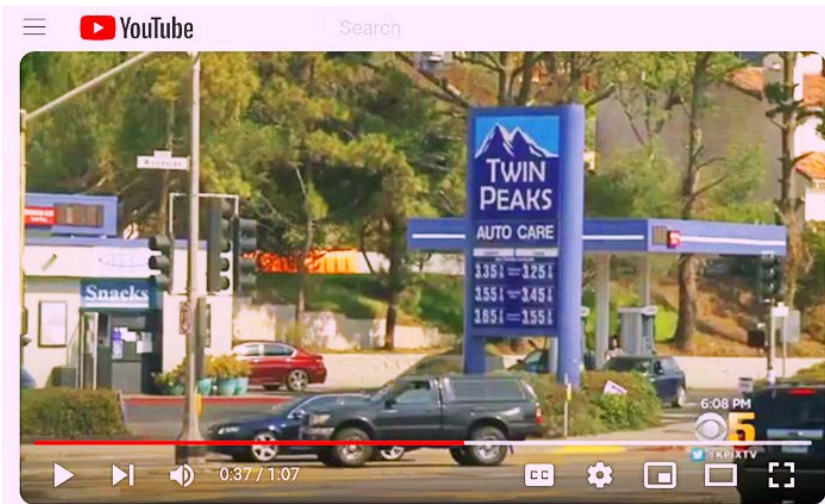


Not all cars need fuel, but they all need maintenance like tires, brakes, fluids, and repairs. One need only look at the daily cue of cars awaiting service to see how vital TPAC is. The demand for this business's five star rated mechanics would be the envy of any business in our City.

Additionally, denying the lease extension would send two thriving and vital businesses started by hard working successful immigrants into chaos. A vote for this lease is literally a vote in support of the American Dream.

Here is a CBS-5 profile of TPAC and its importance to the neighborhood...

<https://youtu.be/tQNu4202XIU?si=eDA2VCFYXuUgbfE>



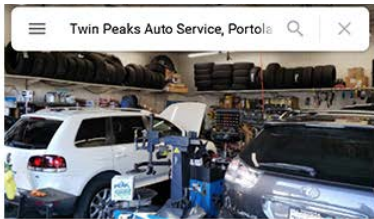
TWIN PEAKS AUTO CARE



The Twin Peaks Service Station is a vital part of our community. It is a gas station, it's an automobile repair business and it's a convenience market where you can shop long after Mollie Stone's closes for the evening.



On this premises resides the best automobile maintenance and repair shop I have ever found. It is a symbiotic business with the gas station, who's immigrant owners and crew are absolutely wonderful and amazingly talented people. Ronald, Ken and their crew have created a vital business here as is epitomized by their Yelp and Google standings (few businesses in SF achieve such awesome ratings):



**Twin Peaks Auto Service**  
 4.8 ★★★★★ (35)  
 Auto repair shop

**Google**

**Review summary**

5 stars: ██████████  
 4 stars: ██████████  
 3 stars: ██████████  
 2 stars: ██████████  
 1 star: ██████████

**4.8** ★★★★★  
 35 reviews

"Replaced my fuel pump quickly and for a good price."  
 "These people work together to solve any problems!!!"

**Twin Peaks Auto Care**

★★★★★ 178 reviews

Auto Repair (Est.)



**Overall rating**



178 reviews

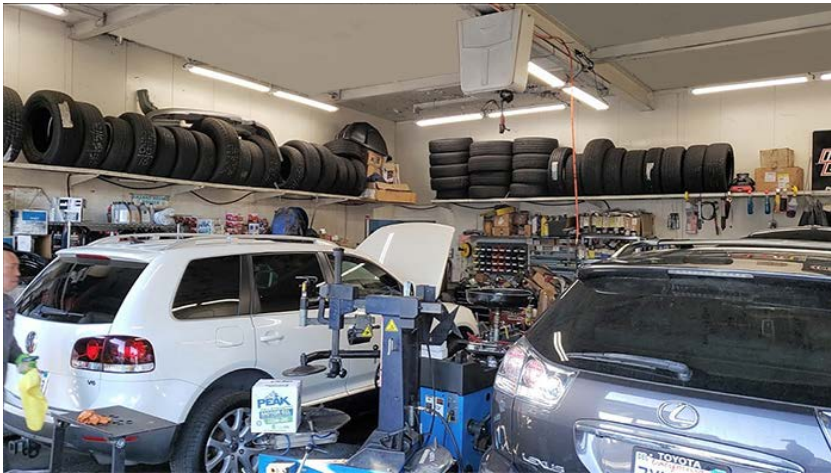


"Ronald did a test drive, noticed the squeaking, and knew immediately what was wrong with our bakes." [in 11 reviews](#)



"If you are looking for an honest, trustworthy, upfront and friendly mechanic this is the place." [in 6 reviews](#)

★★★★★ May 27, 2020



They have literally **saved my life** by pointing out my very old dry and cracked tires and warning me about the safety hazard, turns out they were 20 years old. Us Senior Citizens who can't bend down for a detailed look anymore rely on this kind of attention to detail to help us.



TPAC owner Michael Gharib is a very nice man and you can tell he cares about his business and his customers. Everything is always so clean at TPAC, all the employees are friendly and helpful, and all the pumps are new and always work great. Gas here is always less than at Chevron and places like that.

Service stations are even more needed in a world of EV's. Electric cars require maintenance: tires, battery coolant systems, battery replacement, suspension systems, wheel bearings, brakes (they all got em'), air conditioning, and those high-voltage system components break down over time - guaranteed. I know, I have a degree in Electrical Engineering from Cal Poly and 50 years of experience with high voltage battery systems. You can always spot a Tesla or two in the daily mix of cars cued up for repair at TPAC.

Perhaps most importantly, as we evolve to a more EV-based transportation system, there will be a rapidly increasing need for charging stations. All the Amazon, Uber, Waymo and Lyft vehicles are going to need a place to stop and charge while making their rounds in our City. New developments in battery chemistry and thermodynamics will allow for near fully charging in about five minutes, the same amount of time it takes to fill a gas tank. This ultra high amperage charging is something that the Twin Peaks Service Station will evolve into...



...providing a strategic location near the geographic center of San Francisco to charge, especially for those of us who live in apartment buildings without charging units.

What a tragedy it would be if the Board of Supervisors were to allow the destruction of two prosperous businesses here on Twin Peaks, both of them run by incredibly hard working immigrants who have achieved success and contribute to a great quality of life for about 2000 (or more) of us residents here on the hill.

Please vote to approve the lease!

Sincerely,

Handwritten signature of Roger Dawson

Roger Dawson

Tel: (650) 218-5431

801 Corbett, 15  
San Francisco, CA 94131

**From:** [Serge Rubinstein](#)  
**To:** [ChanStaff \(BOS\)](#); [Hsieh, Frances \(BOS\)](#); [MandelmanStaff \(BOS\)](#)  
**Cc:** [Jalipa, Brent \(BOS\)](#); [MelgarStaff \(BOS\)](#)  
**Subject:** Save Twin Peaks Auto Care  
**Date:** Friday, July 12, 2024 12:02:12 PM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisors,

Please vote yes on File No. 240731 sponsored by Supervisor Melgar to support the new lease for Twin Peaks Auto Care as an alternative fueling station.

Twin Peaks Auto Care is an independent, active neighborhood-serving business with Legacy Business designation. Twin Peaks Auto Care's plan to become an alternative fueling station offering renewable fuels, biodiesel, and ethanol will be safer, cleaner, and greener for the environment.

While the City may have other future ideas for this site, there are currently no planned uses when Twin Peaks Auto Care's existing lease expires. Please approve this new lease to prevent this property from becoming a long-term vacancy that will be challenging and costly for the City to maintain. Twin Peaks Auto Care will continue serving our community, providing jobs, and support our City's transition to greener alternatives.

Thank you for your consideration!

Sincerely,

S. Rubinstein, District 7

**From:** [Bronagh Hanley](#)  
**To:** [ChanStaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [Hsieh, Frances \(BOS\)](#); [MandelmanStaff \(BOS\)](#)  
**Subject:** Twin Peaks Auto  
**Date:** Friday, July 12, 2024 12:47:48 PM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

## To Whom It May Concern:

I am a 13-year resident of District 7 and have relied on Twin Peaks Auto and Ken for auto repairs and car advice during that time. Ken and his business are an integral part of our community and the service station is widely used by everyone in the district.

It would be seriously detrimental to the community for the business to be closed due to a land lease if the city can do anything about it. My fear is that if the business is closed, the space will sit abandoned and derelict, creating a blight in the neighborhood and a gathering place for junk and sketchy activity. We have seen this before across the city.

I am writing in the hopes that you can take action to support a local business, support the neighborhood and support the neighbors by doing everything you can to keep Twin Peaks Auto Service open.

Thank you,  
Bronagh Hanley



**From:** [Hsieh, Frances \(BOS\)](#)  
**To:** [Jalpa, Brent \(BOS\)](#)  
**Subject:** Fw: File no 240731  
**Date:** Friday, July 12, 2024 3:27:29 PM

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**From:** Jeff Lee <jefflee103@yahoo.com>  
**Sent:** Wednesday, July 10, 2024 8:18 PM  
**To:** MandelmanStaff (BOS) <mandelmanstaff@sfgov.org>; ChanStaff (BOS) <chanstaff@sfgov.org>; Hsieh, Frances (BOS) <frances.hsieh@sfgov.org>  
**Subject:** File no 240731

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisors Chan, Hsieh and Mandelman,  
Please vote yes on File No. 240731 sponsored by Supervisor Melgar to support the new lease for Twin Peaks Auto Care as an alternative fueling station.  
Twin Peaks Auto Care is an independent, active neighborhood-serving business with Legacy Business designation. Twin Peaks Auto Care's plan to become an alternative fueling station offering renewable fuels, biodiesel, and ethanol will be safer, cleaner, and greener for the environment.  
While the City may have other future ideas for this site, there are

currently no planned uses when Twin Peaks Auto Care's existing lease expires. Please approve this new lease to prevent this property from becoming a long-term vacancy that will be challenging and costly for the City to maintain. Twin Peaks Auto Care will continue serving our community, providing jobs, and support our City's transition to greener alternatives.

Thank you for your consideration!

Sincerely,

Jeff Lee

Diamond Heights resident for 34 years



## San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 . Fax: 415.252.3112

[ethics.commission@sfgov.org](mailto:ethics.commission@sfgov.org) . [www.sfethics.org](http://www.sfethics.org)

Received On:

File #: 240731

Bid/RFP #:

### Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

#### 1. FILING INFORMATION

<b>TYPE OF FILING</b>	<b>DATE OF ORIGINAL FILING (for amendment only)</b>
Original	
<b>AMENDMENT DESCRIPTION – Explain reason for amendment</b>	

#### 2. CITY ELECTIVE OFFICE OR BOARD

<b>OFFICE OR BOARD</b>	<b>NAME OF CITY ELECTIVE OFFICER</b>
Board of Supervisors	Members

#### 3. FILER'S CONTACT

<b>NAME OF FILER'S CONTACT</b>	<b>TELEPHONE NUMBER</b>
Angela Calvillo	415-554-5184
<b>FULL DEPARTMENT NAME</b>	<b>EMAIL</b>
office of the clerk of the Board	Board.of.Supervisors@sfgov.org

#### 4. CONTRACTING DEPARTMENT CONTACT

<b>NAME OF DEPARTMENTAL CONTACT</b>	<b>DEPARTMENT CONTACT TELEPHONE NUMBER</b>
Claudia Gorham	415-554-9850
<b>FULL DEPARTMENT NAME</b>	<b>DEPARTMENT CONTACT EMAIL</b>
ADM                      RED	realstateadmin@sfgov.org

5. CONTRACTOR	
<b>NAME OF CONTRACTOR</b> Twin Peaks Auto Care	<b>TELEPHONE NUMBER</b> 415-286-2812
<b>STREET ADDRESS (including City, State and Zip Code)</b> 598 Portola Dr. San Francisco, CA 94131	<b>EMAIL</b>

6. CONTRACT		
<b>DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)</b>	<b>ORIGINAL BID/RFP NUMBER</b>	<b>FILE NUMBER (If applicable)</b> 240731
<b>DESCRIPTION OF AMOUNT OF CONTRACT</b> \$156,600		
<b>NATURE OF THE CONTRACT (Please describe)</b> Lease of Gas Station, convenience store & repair shop. Value - First year \$156,600; 20 years: approximately \$3,225.960		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

**9. AFFILIATES AND SUBCONTRACTORS**

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Gharib	Michael	Other Principal Officer
2			
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6			
7			
8			
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19			

**9. AFFILIATES AND SUBCONTRACTORS**

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
20			
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**9. AFFILIATES AND SUBCONTRACTORS**

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
39			
40			
41			
42			
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44			
45			
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47			
48			
49			
50			

Check this box if you need to include additional names. Please submit a separate form with complete information. Select “Supplemental” for filing type.

**10. VERIFICATION**

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

**I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

<p><b>SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK</b></p>  <p>BOS Clerk of the Board</p>	<p><b>DATE SIGNED</b></p>
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## Introduction Form

(by a Member of the Board of Supervisors or the Mayor)



I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- 2. Request for next printed agenda (For Adoption Without Committee Reference)  
*(Routine, non-controversial and/or commendatory matters only)*
- 3. Request for Hearing on a subject matter at Committee
- 4. Request for Letter beginning with "Supervisor  inquires..."
- 5. City Attorney Request
- 6. Call File No.  from Committee.
- 7. Budget and Legislative Analyst Request (attached written Motion)
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the Board on

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

- Small Business Commission       Youth Commission       Ethics Commission
- Planning Commission       Building Inspection Commission       Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

- Yes       No

*(Note: For Imperative Agenda items (a Resolution not on the printed agenda), use the Imperative Agenda Form.)*

Sponsor(s):

Subject:

Long Title or text listed:

Signature of Sponsoring Supervisor: