

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

TABLE OF CONTENTS

	<u>Page</u>
1. BASIC LEASE INFORMATION	1
2. PROPERTY; AS IS CONDITION	3
2.1. Leased Property	3
2.2. Accessibility Disclosures	3
2.3. As Is Condition	3
2.4. Energy Consumption	4
3. TERM	4
3.1. Lease Term.....	4
3.2. Confirmation of Commencement Date and Expiration Date.....	4
3.3. Termination of Existing Lease; Survival of Indemnities.....	4
4. RENT	4
4.1. Base Rent; Rent.....	4
4.2. Adjustments in Base Rent.....	5
4.3. Late Charges	5
4.4. Default Interest.....	5
5. USE.....	5
5.1. Permitted Use.....	5
5.2. No Unlawful Uses, Nuisances or Waste	5
6. [INTENTIONALLY OMITTED].....	6
7. ALTERATIONS	6
7.1. Tenant’s Alterations.....	6
7.2. Title to Improvements.....	7
7.3. Tenant’s Personal Property	7
8. REPAIRS AND MAINTENANCE	7
8.1. Tenant’s Repairs	7
9. LIENS AND ENCUMBRANCES.....	8
9.1. Liens.....	8
9.2. Encumbrances.....	8
10. UTILITIES AND SERVICES	8
10.1. Utilities and Services	8
10.2. Water and Energy Conservation; Mandatory or Voluntary Restrictions.....	8
11. COMPLIANCE WITH LAWS AND RISK MANAGEMENT REQUIREMENTS	8
11.1. Compliance with Laws	8
11.2. Regulatory Approvals.....	9
11.3. Compliance with City’s Risk Management Requirements.....	10
12. SUBORDINATION.....	10
13. INABILITY TO PERFORM	10
14. DAMAGE AND DESTRUCTION.....	10
14.1. Tenant’s Election to Restore or Terminate	10
14.2. Obligations Upon Election to Terminate	11
14.3. Use of Insurance Proceeds.....	11
14.4. No Release of Tenant’s Obligations	11
15. EMINENT DOMAIN	11
15.1. Definitions.....	11
15.2. General.....	12
15.3. Total Taking; Automatic Termination.....	12
15.4. Partial Taking; Election to Terminate.....	12
15.5. Termination of Lease; Rent and Award.....	12
15.6. Partial Taking; Continuation of Lease	13
15.7. Temporary Takings.....	13
16. ASSIGNMENT AND SUBLETTING	13

16.1.	Restriction on Assignment and Subletting.....	13
16.2.	Notice of Proposed Transfer	14
16.3.	City's Response	14
16.4.	Sublease or Recapture by City.....	15
16.5.	Effect of Sublease or Assignment.....	15
16.6.	Assumption by Transferee	16
16.7.	Indemnity for Relocation Benefits.....	16
17.	DEFAULT; REMEDIES	16
17.1.	Events of Default	16
17.2.	Remedies.....	17
17.3.	Waiver of Redemption.....	19
17.4.	City's Right to Cure Tenant's Defaults	19
18.	WAIVER OF CLAIMS; INDEMNIFICATION	19
18.1.	Limitation on City's Liability; Waiver of Claims.....	19
18.2.	Tenant's Indemnity	19
19.	INSURANCE.....	20
19.1.	Tenant's Insurance	20
19.2.	Property Insurance and Tenant's Personal Property	22
19.3.	City's Self Insurance.....	22
19.4.	Waiver of Subrogation.....	22
20.	ACCESS BY CITY.....	22
21.	CERTIFICATES.....	23
21.1.	Tenant's Estoppel Certificates	23
21.2.	City's Certificates	23
22.	SECURITY DEPOSIT.....	23
23.	SURRENDER OF PROPERTY; REMOVAL OF IMPROVEMENTS.....	24
23.1.	Surrender of Property.....	24
23.2.	Removal of Improvements.....	24
23.3.	Survival of Tenant's Obligations	25
23.4.	Quitclaim Deed	25
24.	HAZARDOUS MATERIALS	25
24.1.	Definitions.....	25
24.2.	No Hazardous Materials	26
24.3.	Tenant's Environmental Indemnity	26
24.4.	Underground Storage Tanks.	27
24.5.	Survival of Obligation.....	27
25.	SPECIAL PROVISIONS.....	27
25.1.	Extension Option	27
26.	GENERAL PROVISIONS	31
26.1.	Notices	31
26.2.	No Implied Waiver	31
26.3.	Amendments	31
26.4.	Authority	32
26.5.	Parties and Their Agents; Approvals	32
26.6.	Interpretation of Lease	32
26.7.	Successors and Assigns.....	32
26.8.	Brokers.....	33
26.9.	Severability	33
26.10.	Governing Law	33
26.11.	Entire Agreement	33
26.12.	Attorneys' Fees	33
26.13.	Holding Over	34
26.14.	Time of Essence.....	34
26.15.	Cumulative Remedies	34
26.16.	Survival of Indemnities.....	34

26.17. Signs.....	35
26.18. Relationship of the Parties	35
26.19. Light and Air.....	35
26.20. No Recording.....	35
26.21. Options Personal	35
26.22. Public Transit Information.....	35
26.23. Taxes, Assessments, Licenses, Permit Fees and Liens.....	35
26.24. Non-Liability of City Officials, Employees and Agents	36
26.25. Wages and Working Conditions	36
26.26. Non-Discrimination in City Contracts and Benefits Ordinance	36
26.27. No Relocation Assistance; Waiver of Claims.....	37
26.28. MacBride Principles - Northern Ireland	38
26.29. Tropical Hardwood and Virgin Redwood Ban.....	38
26.30. Restrictions on the Use of Pesticides	38
26.31. First Source Hiring Ordinance	39
26.32. Sunshine Ordinance	39
26.33. Conflicts of Interest.....	39
26.34. Charter Provisions.....	39
26.35. Drug-Free Workplace	39
26.36. Prohibition of Tobacco Sales and Advertising	39
26.37. Prohibition of Alcoholic Beverage Advertising	39
26.38. Counterparts.....	40
26.39. Effective Date	40
26.40. Requiring Health Benefits for Covered Employees.....	40
26.41. Notification of Limitations on Contributions	41
26.42. Preservative-Treated Wood Containing Arsenic	42
26.43. Resource-Efficient City Buildings and Pilot Projects.....	42
26.44. Food Service Waste Reduction.....	42
26.45. San Francisco Bottled Water Ordinance.....	42
26.46. Local Hiring Requirements.....	42
26.47. Graffiti.....	43
26.48. Criminal History in Hiring and Employment Decisions.....	43
26.49 Cooperative Drafting	44

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 Owning 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)(ii) 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: M. Gharib
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:~~

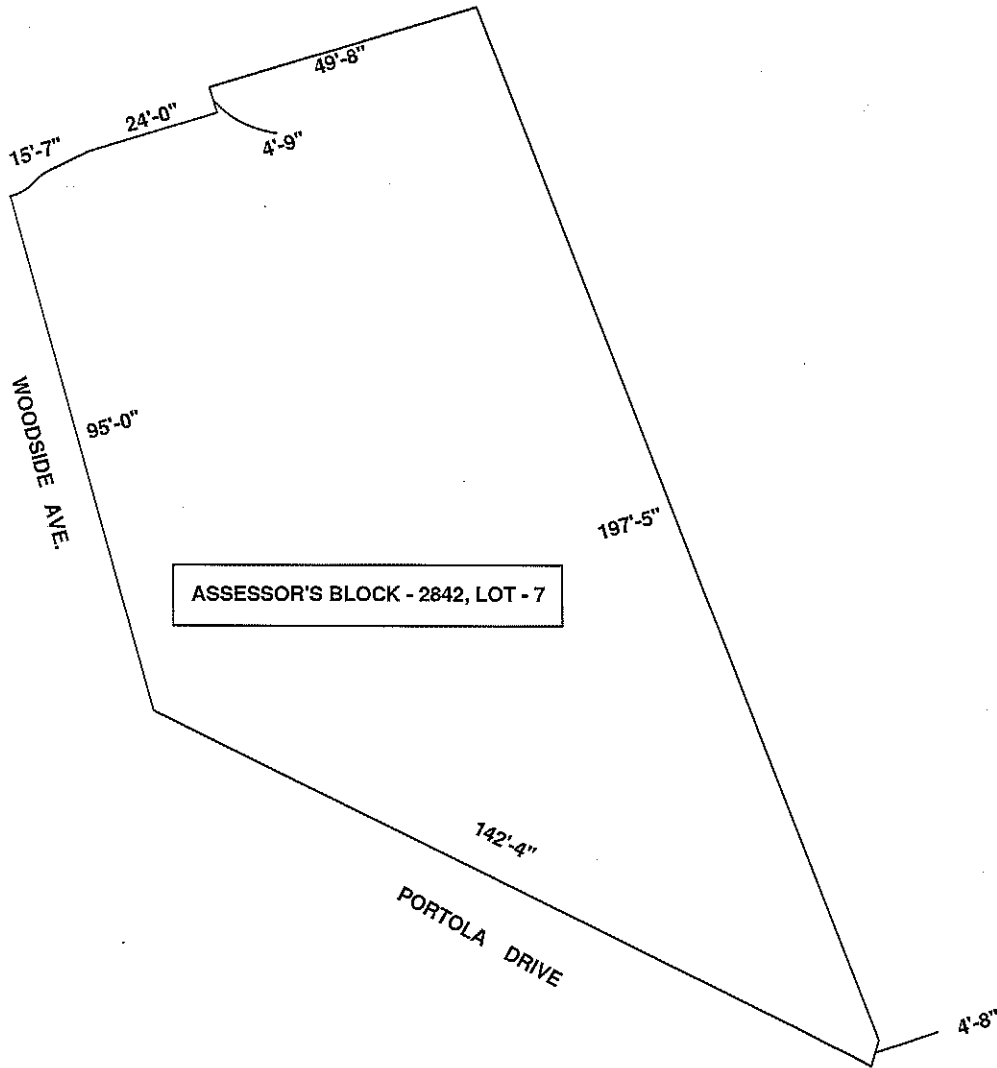
~~Department of Public Health~~

~~BARBARA GARCIA, Director~~

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: Anita R. Wood
Deputy City Attorney



TOTAL - 14,499 s.f.



City and County of San Francisco
REAL ESTATE DIVISION
 25 VAN NESS AVENUE, SUITE 400
 SAN FRANCISCO, CA 94102
 PHONE: 415.554.3650
 FAX: 415.552.8216
 Email: RealEstate.GSA.311@gov.org

**GAS STATION
 SITE**
 598 PORTOLA DR.
 SAN FRANCISCO, CA

REVISION		
NO.	DATE	DESCRIPTION



ISSUE/ISSUE _____
 DATE: 05/25/2015 _____
 SCALE: 1/8"=1'-0" _____
 DRAWN BY: J. OELMAN _____
 CHECKED BY: C. YENEGAS _____
 PROJECT NUMBER: 0515 _____

**SITE
 PLAN**

TITLE _____

S-1
 SHEET _____

