

File No. 121185

Committee Item No. 5
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS
AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date 02/13/2013

Board of Supervisors Meeting

Date _____

Cmte Board

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Completed by: Victor Young Date February 8, 2013

Completed by: Victor Young Date _____

1 [Lease Agreement - Uptown Parking Corporation - Sutter Stockton Public Parking Garage -
2 \$1]

3 **Resolution approving a lease agreement between the City and County of San**
4 **Francisco and the City of San Francisco Uptown Parking Corporation for the Sutter**
5 **Stockton Public Parking Garage, for an annual base rent of \$1 plus surplus, with an**
6 **initial term of 10 years with two 5 year options.**

7
8 WHEREAS, The City and County of San Francisco (City), a municipal corporation,
9 owns the Sutter Stockton Garage (Garage) located at 444 Stockton Street, San Francisco,
10 California; and

11 WHEREAS, The City of San Francisco Uptown Parking Corporation (Corporation), a
12 non-profit 501(c)2 corporation, was formed in 1956 for the sole purpose of assisting the City
13 in designing and constructing the Garage by financing the cost through the sale of bonds of
14 the Corporation secured by a lease of the Garage from the City to the Corporation; and

15 WHEREAS, The City leased the Garage to the Corporation under a lease agreement
16 dated May 5, 1959, which lease was subsequently amended and extended in March 1973
17 for facilitate the expansion of the garage then amended and extended in April 2001 with a
18 termination date of 2035 or sooner if bonds issued by the Corporation are paid (Lease); and

19 WHEREAS, On April 1, 2001, the Corporation issued certain parking revenue bonds
20 ("the Bonds") in the amount of \$19,00,000 to finance the renovation of the Union Square
21 Garage and Plaza, and the indenture documents for said Bonds ("the Indenture") were
22 recorded on the about May 16, 2001; and

23 WHEREAS, Section 26 of the Lease provides that the Lease shall terminate upon the
24 Corporation's payment of the debt incurred under the Bonds, and Article X of the Indenture
25 sets out the requirements for the discharge and defeasance (payment) of the Bonds; and

1 WHEREAS, In July 2012, the City, by and through the San Francisco Municipal
2 Transportation Agency (SFMTA), refinanced the remaining balance owing on the Bonds as
3 part of and as material requirement of issuing new revenue bonds that are secured in part
4 by revenues of the premises; and

5 WHEREAS, Because the Bonds issued by the Corporation have been fully paid
6 requiring the Corporation to vacate the premises, the Corporation's Board of Directors
7 therefore wish to enter into a new lease and renew its obligations and liability as the
8 leaseholder of the Garage; and

9 WHEREAS, The Corporation Board of Directors unanimously approved a lease
10 amendment extending the agreement on a month-to-month basis until a new lease can be
11 approved at its Board meeting on June 18, 2012; and

12 WHEREAS, The SFMTA negotiated new terms and conditions with the Corporation
13 that includes best practices and other required changes related to bond financing, capital
14 improvements and SFMTA operating procedures; and

15 WHEREAS, The proposed term of the lease is 10-years with two 5-year options to
16 extend; and

17 WHEREAS, On December 4, 2012, the SFMTA Board of Directors passed a
18 resolution authorizing the Director of Transportation to execute the Lease Agreement and to
19 forward to the Board of Supervisors for final approval; now, therefore, be it

20 RESOLVED, That the Board of Supervisors approves the Lease Agreement between
21 the City and County of San Francisco and the Uptown Parking Corporation for the Sutter
22 Stockton Garage for an initial term of 10-years with two 5-years options to extend.
23
24
25

Item 5
File 12-1185
(Continued from January 16, 2012)

Departments:
 San Francisco Municipal Transportation Agency (SFMTA)

EXECUTIVE SUMMARY

Legislative Objective

- The proposed resolution would approve a new lease agreement between the City and County of San Francisco and Uptown Parking Corporation, a non-profit corporation, for the Sutter Stockton Public Parking Garage, with an initial term of ten years with two five-year options to extend.

Key Points

- The San Francisco Municipal Transportation Agency (SFMTA) has an existing month-to-month lease with the Uptown Parking Corporation for the Sutter Stockton Garage. SFMTA proposes to terminate the existing lease and enter into a new lease in order to (a) incorporate provisions of the July 2012 SFMTA Parking Revenue Bonds, (b) standardize provisions of SFMTA's leases with parking garage corporations (Uptown Parking Corporation – Sutter Stockton Garage and Union Square Garage and Japan Center Garage Corporation – Japan Center Garage, File 12-1184), and (c) improve operational requirements.

Fiscal Impact

- The FY 2013-14 Sutter Stockton Garage budget includes expenditures of \$5,073,705 and revenues of \$12,416,000, resulting in estimated net revenues to SFMTA of \$7,342,295. The proposed lease contains the following changes as compared to the existing lease: (a) annual expenditures of \$22,060 for the Sutter Stockton Garage share of debt service on \$5,000,000 of the \$43,050,000 SFMTA Parking Revenue Bonds, which are allocated to the capital assessment of SFMTA public parking facilities; (b) discontinuation of the annual set aside of 15 percent of net income for capital improvements that is replaced by an annual set aside of \$550,000 for capital improvements beginning in the fourth year of the proposed lease.

Policy Consideration

- Although the Controller's June 9, 2011 finding that "leasing garages to nonprofit corporations is unnecessarily costly to the City", SFMTA is proposing to enter into new garage leases with two nonprofit corporations (Uptown Parking Corporation and Japan Center Garage Corporation, File 12-1184). According to SFMTA, the provisions in the proposed lease to address specific recommendations that the Controller made in its report, including (a) the option to terminate the lease with a 90-day notice for convenience and (b) the incorporation of updated SFMTA parking facility operation and management regulations which govern all day-to-day garage operations administered by the SFMTA.
- The subject resolution was continued from the January 16, 2013 Budget and Finance Committee. Attached to this report is a memorandum from the Director of Transportation to the Chair of the Budget and Finance Committee in response to the Budget and Finance Committee's continuation of the subject resolution.

Recommendation

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

MANDATE STATEMENT / BACKGROUND**Mandate Statement**

In accordance with City Charter Section 9.118(c), any lease exceeding ten years and/or having anticipated revenue of \$1,000,000 or greater is subject to the Board of Supervisors approval.

Background

The Sutter Stockton Garage (Garage) is a City-owned off-street parking facility under the jurisdiction of the San Francisco Municipal Transportation Agency (SFMTA), located at 444 Stockton Street. The Sutter Stockton Garage has approximately 1,865 parking spaces and provides over 30,000 square feet of retail space, currently leased to various tenants.

The Uptown Parking Corporation a non-profit corporation, has managed the Sutter Stockton and Union Square Garages for decades, which primarily requires oversight of a day-to-day parking operator agreement, including ensuring that the operator is providing sufficient staffing and cleanliness levels, and that all equipment is in proper working order. The Uptown Parking Corporation currently contracts with Central Parking SF to provide day-to-day parking garage operations at the Sutter Stockton and Union Square Garages.

The Uptown Parking Corporation was formed in 1956 for the sole purpose of assisting the City with the design and construction of the Sutter Stockton Garage through the sale of bonds. In 1959, the City leased the Garage to the Uptown Parking Corporation through a lease agreement, which was subsequently amended and extended in 1973 for garage expansion with an expiration date of 2023 or upon repayment of debt¹. Under the lease, the Corporation managed the day-to-day operations of the Garage with oversight and policy direction from the SFMTA. In April 2001, a second amendment and extension of the lease was approved by the Board of Supervisors to allow the Uptown Garage Corporation to issue \$19,000,000 in parking revenue bonds to finance the renovation of the Union Square Garage and Plaza, which expired on the earlier of either (a) May 5, 2035 or (b) full repayment, retirement, or earlier redemption of the debt. The lease stipulated that the City has "buyback" rights, such that the City may pay off the bonds for the Union Square Garage. In accordance with this lease provision, if the City exercises these buyback rights, the leases between Uptown Parking Corporation and the City for the Sutter Stockton and the Union Square Garages would terminate, and Uptown Parking Corporation must vacate the premises of each garage within 90 days.

In June 2012, in advance of the July 2012 SFMTA issuance of \$43,050,000 in Parking Revenue Bonds for the SFMTA public parking facility portfolio, the Corporation's Board of Directors executed an amendment to the lease with the SFMTA for the Sutter Stockton Garage to continue the term of the lease on a month-to-month basis following the retirement of the parking revenue bonds until the City and Uptown Parking Corporation either (a) execute a new lease to replace the existing lease, or (b) terminate the lease and create a new advisory body in place of Uptown Parking Corporation. Under the existing lease amendment, "the City's redemption and/or defeasance of the Bonds shall not effect a termination of the Lease or require the Corporation to

¹ Repayment of debt not only includes debt of the Union Square Garage but also the Downtown Parking Corporation's debt from the Fifth & Mission Garage.

vacate the premises”, as was required under the previous lease. Rather, under the existing lease amendment, upon payment and retirement of the bonds, the term of the lease would continue on a month-to-month basis unless and until terminated by agreement of the parties or replacement by approval and execution of a new lease.

In July 2012, the SFMTA issued \$43,050,000 in Parking Revenue Bonds for the SFMTA public parking facility portfolio to refinance the existing garage debt and to perform necessary garage capital improvements. According to Mr. Steven Lee, Manager, SFMTA Financial Services/SFpark, of the \$43,050,000 Parking Revenue Bonds issued by SFMTA, \$15,905,000 was allocated to retire Uptown Parking Corporation’s outstanding debt for the Union Square Garage and \$5,000,000 was allocated for a capital improvement assessment of the SFMTA public parking facilities. This assessment will be used to determine the size of the next bond issuance for the actual capital improvement work anticipated to begin in FY 2013-14.

The existing month-to-month lease between the City and the Uptown Parking Corporation for the Sutter Stockton Garage requires that the Uptown Parking Corporation pay the SFMTA \$1 in annual rent and requires an annual set aside of 15 percent of the Garage’s net income for capital improvements. The Uptown Parking Corporation historically collected all garage revenue on behalf of SFMTA and then deducted the annual expenses of operating and managing the Sutter Stockton Garage from those revenues. The remaining net income was remitted by Uptown Parking Corporation to SFMTA. As shown in Table 1 below, the Uptown Parking Corporation paid the SFMTA \$6,573,668 that represents the net income (revenues less expenditures from the Sutter Stockton Garage in FY 2011-12.

Table 1: Sutter Stockton Garages Actual Expenditures & Revenues for FY 2011-12

Expenditures	Actual
Operating Expenses	\$2,408,878
Parking Tax	2,235,009
Corporation Expense	32,800
Total Expenditures	\$4,676,687
Revenue	
Parking Revenue	\$11,463,038
Non-Parking Revenue	947,376
Total Revenues	\$12,410,414
Net Income	\$7,733,727
15% retained by corporation for capital improvements	\$1,160,059
Total Balance Paid to SFMTA	\$6,573,668

Mr. Lee advises that the Uptown Parking Corporation is reimbursed for its actual costs to manage the Sutter Stockton Garage. As shown in Table 2 below, Uptown Parking Corporation incurred management costs of \$154,500 in FY 2011-12 for the Sutter Stockton Garage, which are included in the \$2,408,878 in operating expenses (See Table 1).

**Table 2: Uptown Parking Corporation's FY 2011-12 Management Costs
For the Sutter Stockton Garage**

Corporation Expenditures	Savings
Corporate Manager*	\$72,000
Attorney Fees	32,000
Corporation Accounting Staff*	47,000
Corporate D&O Insurance*	3,500
TOTAL Estimated	\$154,500

*Attributed to Sutter Stockton Garage, includes 50 percent of total expenditures for the Uptown Parking Corporation.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve a new lease agreement between the City and County of San Francisco and Uptown Parking Corporation to continue to manage the garage operations for the Sutter Stockton Public Parking Garage, with an initial term of ten years with two five-year options to extend. The proposed lease requires that the Uptown Parking Corporation pay the SFMTA \$1 in annual rent and requires an annual set aside of \$550,000 for capital improvements beginning in the fourth year of the initial ten-year term. The proposed lease incorporates updated SFMTA parking facility operation and management regulations which govern all day-to-day garage operations administered by the SFMTA. Additionally, under the proposed lease, both the City and the Uptown Parking Garage Corporation can terminate the lease with a 90-day notice.

FISCAL IMPACTS

Currently, Uptown Parking Corporation pays \$1 in annual rent to SFMTA for the Sutter Stockton Garage and would continue to be required to pay the \$1 in annual rent to SFMTA under the proposed lease. In addition, as discussed above, the Uptown Parking Corporation currently collects all garage revenues on behalf of SFMTA and then deducts the annual expenses of operating and managing the Sutter Stockton Garage, with the remaining balance of net income being remitted to SFMTA.²

² According to Mr. Lee, the Sutter Stockton Garage had a Capital Improvement Account balance of \$1,600,000 that was previously transferred to SFMTA.

As shown in Table 3 below, the FY 2013-14 Sutter Stockton Garage budget, which is the first full year of the proposed new lease, includes expenditures of \$5,073,705 and revenues of \$12,416,000, resulting in estimated net revenues to SFMTA of \$7,342,295³. The proposed new lease contains the following changes as compared to the existing lease:

- (a) Annual expenditures of \$22,060⁴ share of debt service on \$5,000,000 of the \$43,050,000 SFMTA Parking Revenue Bonds, which are allocated for the capital assessment of SFMTA's public parking facilities; and
- (b) Discontinuation of the annual set aside of 15 percent of net income for capital improvements to be replaced by an annual set aside of \$550,000 for capital improvements beginning in the fourth year of the initial ten-year term of the proposed new lease.

Table 3: Budgeted Sutter Stockton Garages Expenditures & Revenues for FY 2013-14

Expenditures	Budgeted
Operating Expense	\$2,800,585
Parking Tax	2,227,600
Corporation Expense	23,460
Debt Service ¹	22,060
Total Expenditures	\$5,073,705
Revenue	
Parking Revenue	\$11,446,000
Non-Parking Revenue ²	970,000
Total Revenues	\$12,416,000
Total Balance Paid to SFMTA	\$7,342,295

¹ The Sutter Stockton Garage's share of debt service on \$5,000,000 of the \$43,050,000 SFMTA Parking Revenue Bond that was allocated to the capital assessment of SFMTA's public parking facilities.

² Non-parking revenues are from retail leases and concessions located in the Sutter Stockton Garage.

³ The FY 2012-13 Sutter Stockton Garage budget, which includes approximately 5 months of the proposed, includes expenditures of \$4,942,930 and revenues of \$12,265,000, resulting in net revenues to SFMTA of \$7,322,070.

⁴ Annual debt service is expected to increase to \$28,222 in Fiscal Year 2022-23, the final year of the initial term of the proposed lease.

The Uptown Parking Corporation's management costs are \$141,070, or 2.8 percent, of the FY 2013-14 expenditure budget of \$5,073,705. According to Mr. Lee, Uptown Parking Corporation's management costs allocated to the Sutter Stockton Garage are 2.8 percent of operating expenses, compared to Japan Center Garage Corporation's management costs allocated to the Japan Center Garage, of 11.4 percent (File 12-1184), because the Uptown Parking Corporation's management costs are distributed between the Sutter Stockton and Union Square Garages, resulting in greater efficiencies. Also, according to Mr. Lee, the Japan Center Garage has an extensive validation program that requires higher than usual accounting oversight.

POLICY CONSIDERATIONS

The Controller's June 9, 2011 report found that "leasing garages to nonprofit corporations is unnecessarily costly to the City"

On June 9, 2011 the Controller's Office issued a report which found that "leasing garages to nonprofit corporations is unnecessarily costly to the City". This Controller's report found that the City's practice of leasing City-owned garages to special-purpose nonprofit corporations, such as the Uptown Parking Corporation, added a total of approximately \$551,070 in additional annual costs to the City. Specifically, the Controller found that (a) based on the results of a survey, the City is the only municipality in California which leases City-owned parking garages to nonprofit corporations who then subcontract the day-to-day operations of those City-owned garages, (b) nonprofit parking corporations do not appear to offer tangible operational advantages, and (c) the City is unlikely to need nonprofit parking corporations to help construct or expand parking garages in the future.

Mr. Lee advises that the SFMTA has addressed specific recommendations which the Controller made, including (a) the option to terminate the lease with a 90-day notice for convenience and (b) the incorporation of updated SFMTA parking facility operation and management regulations which govern all day-to-day garage operations administered by the SFMTA.

The leases of the other two non-profit corporations, (a) Ellis O'Farrell Parking Corporation which manages the Ellis O'Farrell Garage, and (b) Downtown Parking Corporation, which manages the Fifth & Mission Garage, whose debt was redeemed in July 2012, have been terminated as their leases required. In contrast, the SFMTA is requesting that the Uptown Parking Corporation⁵ and the Japan Center Garage Corporation be the only two nonprofit corporations that would continue to manage City-owned garages, on behalf of the SFMTA, even though these two garages have no outstanding debt. According to Mr. Lee, when considering alternatives to day-to-day management by non-profit corporations, the actual value of the corporation board oversight is difficult to quantify.

Given (a) the Controller's June 9, 2011 report findings, (b) and that the Uptown Parking Corporation would be the only nonprofit corporation whose bonds were redeemed which would continue in its current role of managing City-owned garages and be one of two remaining nonprofit corporation to continue to manage City-owned garages on behalf of the SFMTA, and

⁵The proposed lease between SFMTA and Uptown Parking Corporation for the Union Square Garage, which is located on Recreation and Park Department property, is expected to be heard by the Recreation and Park Commission, and subsequently sent to the Board of Supervisors if approved.

(c) that SFMTA reports that the actual value of the corporation board oversight is difficult to quantify, approval of the proposed resolution is a policy decision for the Board of Supervisors.

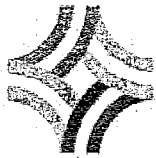
The proposed resolution was continued by the Budget and Finance Committee at the January 16, 2013 meeting. The Budget & Finance Committee directed SFMTA to return to the SFMTA Board of Directors for further information to be provided to the Budget & Finance Committee on:

- (1) The costs and benefits to the City of maintaining two nonprofit parking corporations while dissolving two other nonprofit corporations;
- (2) Reasons that the nonprofit parking corporation structure is necessary to support the merchants and communities, rather than alternative structures such as advisory committees;
- (3) SFMTA's long term goals for managing the garages; and
- (4) SFMTA's reasons for not implementing the Controller's audit recommendations and the lease provisions to dissolve the nonprofit corporations.

Attached to this report is a memorandum from the Director of Transportation to the Chair of the Budget and Finance Committee in response to the Budget and Finance Committee's continuation of the subject resolution.

RECOMMENDATION

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



February 6, 2013

Supervisor Mark Farrell
Chairperson, Budget and Finance Committee
Board of Supervisors
City and County of San Francisco
1 Carlton B. Goodlett Place, Room 244
San Francisco, California 94102

RE: *Lease Agreements between the City and County of San Francisco and Non-Profit Garage Corporations*

Dear Supervisor Farrell:

The purpose of this letter is to provide the Budget and Finance Committee with additional information and to address concerns related to the proposed lease agreement with the Japan Center Garage Corporation (JCGC) for the Japan Center Garage and with the Uptown Parking Corporation (UPC) for the Sutter Stockton Garage.

Background

Non-profit garage corporations have existed since the late 1950's and were originally formed for the purpose of and their ability to issue bonds for the construction of publicly owned garages where long-term leases were established between these corporations and the City. Several of these corporations have dissolved upon repayment of their debt, relinquishing management to the City and several continued to exist through refinancing for garage expansion and/or major renovations. Some of the latter have since evolved into a community-oriented role, bringing neighborhood-specific perspective, concern, and knowledge to bear on the management of the respective garages. The governing boards of these garages comprise neighborhood business leaders, owners, and other stakeholders that provide stewardship over the garages and the role they play in their neighborhoods.

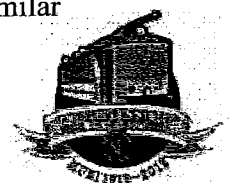
In 2008, Proposition A was approved by the voters, giving the SFMTA the authority to issue bonds; therefore, non-profit garage corporations were no longer needed for that particular purpose. Last year, as the SFMTA prepared to issue bonds for the repayment of existing public garage debt held by non-profit garage corporations, and to fund garage capital improvements, it became necessary to work with the corporations and get them to agree to pay off their debt. The City only had buyback rights for debt held by the UPC in connection with the Union Square Plaza and Garage Renovation Project in 2001. The City did not have buyback rights for debt held by the Ellis O'Farrell Parking Corporation (Ellis O'Farrell Garage) and the Downtown Parking Corporation (Fifth & Mission Garage). The current JCGC Lease, dated July 1, 2002, was not based on debt issuance and does not expire until 2017. The corporations with debt expressed their desire to continue a lease arrangement similar to the JCGC to provide oversight that benefits the SFMTA in representing the community and merchants.

- Edwin M. Lee
Mayor
- Tom Nolan
Chairman
- Cheryl Brinkman
Vice-Chairman
- Leona Bridges
Director
- Malcolm Heinicke
Director
- Jerry Lee
Director
- Joél Ramos
Director
- Cristina Rubke
Director
- Edward D. Reiskin
Director of Transportation

One South Van Ness Ave.
Seventh Floor
San Francisco, CA 94103

Tele: 415.701.4500

www.sfmta.com



The SFMTA Board of Directors therefore approved a lease form for this purpose and negotiations began with the intent to enter into a new lease with the four non-profit corporations. The JCGC agreed to participate and was included in these negotiations so that the SFMTA would have a consistent lease that would contain updated lease provisions and address conditions called out in the June 2011 Controller’s Audit Report of the SFMTA’s Sustainable Street Division. Near the time of the SFMTA bond issuance in July 2012, both the Ellis O’Farrell and Downtown Parking Corporations had reservations about the final lease provisions and were given the option to terminate their existing lease and continue as an advisory body if the bonds were paid. These two corporations chose to terminate, leaving two new leases and two termination agreements submitted for your consideration.

Lease Provisions and Garage Overview

	Japan Center Garage Corporation Japan Center Garages	Uptown Parking Corporation Sutter Stockton Garage
Term	10-years	10-years
Options	(2) 5-year extensions	(2) 5-year extensions
Termination	90 day notice <ul style="list-style-type: none"> • By Director for default • By Board for convenience 	90 day notice <ul style="list-style-type: none"> • By Director for default • By Board for convenience
General Description	<ul style="list-style-type: none"> • Totals 920 spaces • Parks over 500,000 transient vehicles annually • Gross Revenue - \$4.2M • Operating Expense - \$2.0M • Parking Tax \$828K • Net Income to SFMTA \$1.1M 	<ul style="list-style-type: none"> • Totals 1,865 spaces on 12 levels • Parks over 1,000,000 transient vehicles annually • Gross Revenue - \$12.3M • Operating Expense - \$2.7M • Parking Tax - \$2.2M • Net Income to SFMTA \$6.2M
Current Lease	Dated 2002 expires in 2017 with 15-year option to extend	Month-to-month until new lease or termination with formation of advisory body
Formation of Corporation	Formed in 1998 to replace the Western Addition Parking Corporation (WAPC) after the WAPC debt was paid. Current corporation was not formed to issue debt.	Formed in 1956 to issue bonds to construct the Sutter Stockton Garage. Uptown bonds for Sutter Stockton Garage were paid in 1996 but its revenue was pledged to the Downtown Corporation bond issue of 1992 for the expansion of the 5th & Mission Garage. In April 2001, the Uptown Corporation issued bonds to assist the City in the renovation of the Union Square Plaza and Garage and their lease was extended to 2035 or until the bonds were paid.

Compliance with Controller's Audit

On June 9, 2011, the Controller's Office issued an audit report on the performance of the SFMTA's Sustainable Street Division which, in addition to other functions, oversees the off-street garage operations. The audit contained six recommendations related to existing non-profit garage corporation lease conditions. The SFMTA is proposing a lease that would address these concerns.

Specifically:

- The SFMTA has assumed all outstanding debt and the corporations are prohibited from further bond issuance.
- Corporations are required to submit their proposed by-laws to the SFMTA for review and approval.
- Extensive and specific oversight of expenditures with strict procedures and limits on spending.
- Corporation manager hiring guidelines are approved by SFMTA with minimum job descriptions and clearly defined duties and responsibilities.
- A Corporation manager compensation scale that is commensurate with the size and complexity of the garage managed.
- Consideration of whether the corporation manager should work under employment contract, which will be addressed in the hiring guidelines.

The proposed leases go further to require that the corporations comply with the SFMTA Parking Facility Operation and Management Regulations, adopted by the SFMTA Board, that outline procedures related to garage operations, cash handling, reporting, accounting, maintenance, etc. Additionally, restrictions are placed on commercial sub-leases and corporation expenditures.

Garage Improvement Funds

For several years prior to the issuance of bonds, SFMTA has been contemplating bond issuance for garage capital improvement efforts and deferred various improvements unless absolutely necessary to benefit from economies of scale for similar work across all garages. As a result, capital fund balances held by the corporations have accumulated. The JCGC currently retains 25% and the UPC retained 15% of annual net income both with a \$2 million maximum allowable balance. Regular on-going maintenance is supported by the individual garage operating budgets.

The SFMTA allocated \$5 million of the July 2012 bond issuance for the purpose of conducting a detailed garage capital improvement assessment. DPW is currently conducting the assessment to evaluate all SFMTA owned garages in terms of structural, mechanical, electrical, and parking equipment conditions that will lead to staging for actual implementation of improvements. This assessment will size the next SFMTA bond issuance anticipated in the summer of 2013. UPC has already transferred \$1.6 million to support the SFMTA Operating Budget. Upon approval of this lease, the JCGC will also transfer their reserve balance of \$2 million to the SFMTA.

The two proposed leases contain a provision where the capital set-asides are fixed amounts and would commence beginning the fourth year of the initial term. The annual set amount for Japan Center Garage is proposed at \$450,000 with an accumulated balance cap of \$1.35 million and the Sutter Stockton Garage at \$550,000 with an accumulated balance cap of \$1.65 million. Any

amounts above the cap would be transferred to the SFMTA as net income. These amounts are proposed to ensure availability of funds beyond the completion of the anticipated improvements.

Alternatives Considered

If the proposed leases are not approved, the current lease for the Japan Center Garage would continue with existing provisions and expire in 2017. The SFMTA would have to unilaterally terminate the leases with the Uptown Parking Corporation for the Sutter Stockton and Union Square Garages and directly administer the day-to-day operations.

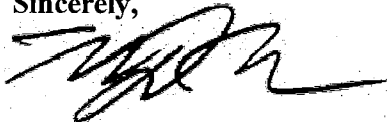
While the SFMTA certainly has the knowledge and ability to directly administer these two garages, the SFMTA considers the added oversight and community relations provided by these corporations to be in the best interest of the garages and the City.

Recommendation

The SFMTA recommends that the Board of Supervisors approve the proposed leases between the City and County of San Francisco and the City of San Francisco Japan Center Garage Corporation for the Japan Center Garage and the Uptown Parking Corporation for the Sutter Stockton Garage.

Please do not hesitate to contact me if you have any concerns.

Sincerely,



Edward D. Reiskin
Director of Transportation

cc: Board of Supervisors
SFMTA Board of Directors

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. 12-155

WHEREAS, On December 6, 2011, the SFMTA Board approved Resolution No. 11-153 approving a new parking garage lease form to coincide with an SFMTA bond issuance to fund garage capital improvements and to repay garage debt, if any, held by the corporations; and,

WHEREAS, The Sutter Stockton Garage is currently leased to the Uptown Parking Corporation originally establish to issue debt on behalf of the City; and

WHEREAS, The current Uptown Parking Corporation Lease was amended on June 18th, 2012 to continue, upon repayment of the corporation's debt by the SFMTA, on a month-to-month basis for 180-days until a new lease is approved; and,

WHEREAS, The Japan Center Garage is currently leased to the Japan Center Parking Corporation but did not issue debt on behalf of the City; and,

WHEREAS, The current Japan Center Garage Corporation Lease expires July 1, 2017 and will be included the SFMTA garage capital improvement plan; and,

WHEREAS, The SFMTA negotiated new terms and conditions with both the Uptown Parking Corporation and the Japan Center Garage Corporation that update the terms and conditions of the existing leases and includes best practices and other required changes related to bond financing, capital improvements and SFMTA operating procedures; and,

WHEREAS, The lease with the Uptown Parking Corporation and the lease with the Japan Center Garage Corporation are essentially the same except with respect to corporation identity and garage specific requirements for insurance and amounts for capital improvement set asides; and,

WHEREAS, The changes to the approved lease form are considered substantial and requires further approval by the SFMTA Board of Directors; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute a new parking garage lease with the Uptown Parking Corporation for the Sutter Stockton Garage for an initial term of ten years for \$1.00 with two five-year options to extend the term of the lease and to forward to the Board of Supervisors for final approval; and, be it

FURTHER RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute a new parking garage lease with the Japan Center Garage Corporation for the Japan Center Garage for an initial term of ten years for \$1.00 with two five-year options to extend the term of the lease and to forward to the Board of Supervisors for final approval.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of December 4, 2012.

R. Bowmer

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency



December 3, 2012

**Angela Calvillo, Clerk of the Board
Board of Supervisors
City and County of San Francisco
1 Carlton B. Goodlett Place, Room 244
San Francisco, California 94102**

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2012 DEC -3 PM 12:23

Re: *Public Parking Garage Lease between the City and County of San Francisco and the City of San Francisco Uptown Parking Corporation for the Sutter Stockton Garage*

Dear Ms. Calvillo:

Attached please find an original and four copies of the proposed resolution for the consideration by the Board of Supervisors. The resolution requests approval of the agreement aforementioned above. We respectfully request that this item be scheduled for the first appropriate committee hearing scheduled in 2013.

Edwin M. Lee
Mayor

Tom Nolan
Chairman

Cheryl Brinkman
Vice-Chairman

Leona Bridges
Director

Malcolm Heinicke
Director

Jerry Lee
Director

Joél Ramos
Director

Cristina Rubke
Director

Edward D. Reiskin
Director of Transportation

The following are enclosed:

1. Proposed Resolution
2. Lease between the City and County of San Francisco and the City of San Francisco Uptown Parking Corporation
3. SFMTA Board Resolution
4. SFEC 126 Form

Please contact Janet Martinson of my staff at 415.701.4693 with any questions regarding this matter.

Sincerely,

**Edward D. Reiskin
Director of Transportation**

Enclosures



121185



December 4, 2012

**The Honorable Board of Supervisors
City and County of San Francisco
1 Carlton B. Goodlett Place, Room 244
San Francisco, California 94102**

***RE: Lease Agreement between the City and County of San Francisco and the
City of San Francisco Uptown Parking Corporation***

Dear Members of the Board of Supervisors:

Attached for your consideration is a Resolution authorizing the lease agreement (Lease) between the City and County of San Francisco and the City of San Francisco Uptown Parking Corporation (Corporation).

Background

The Sutter Stockton Garage (Garage) was originally built in 1961 and was expanded in 1973 to meet growing demand. It provides nearly 1,865 parking spaces and several retail/commercial lease spaces at the ground level. The facility generates over \$12 million in annual gross revenue.

The Corporation is a non-profit 501(c)2 entity, formed in 1956 for the sole purpose of assisting the City with the design and construction of the Garage by financing the costs through the sale of bonds. In May 1959, the City leased the Garage to the Corporation through a lease agreement for a term of 50-years or upon repayment of debt, which was subsequently amended and extended in March 1973 for expansion expiring 2023 or upon repayment of debt. Under the Lease, the Corporation manages the day-to-day operations of the Garage with oversight and policy direction from the San Francisco Municipal Transportation Agency (SFMTA).

A second amendment and extension to the Lease was executed in April 2001 so that the Corporation could issue certain parking revenue bonds in the amount of \$19 million to finance the renovation of the Union Square Garage and Plaza. In July 2012, those bonds were fully paid off through the issuance of a revenue bond by the SFMTA. Since the bonds issued by the Corporation have been fully paid requiring the Corporation to vacate the premises, the Corporation's Board of Directors wish to enter into a new lease and renew its obligations and liability as the leaseholder of the Garage.

SFMTA staff negotiated new terms and conditions with the Corporation that includes best practices and other required changes related to bond financing, capital improvements and SFMTA operating procedures. The proposed lease has an initial

Edwin M. Lee
Mayor

Tom Nolan
Chairman

Cheryl Brinkman
Vice-Chairman

Leona Bridges
Director

Malcolm Heinicke
Director

Jerry Lee
Director

Joél Ramos
Director

Cristina Rubke
Director

Edward D. Reiskin
Director of
Transportation

One South Van Ness Ave.
Seventh Floor
San Francisco, CA 94103

Tele: 415.701.4500

www.sfmta.com



term of 10-years with two 5-years options to extend the term. Both the City and the Corporation can terminate the lease with a 90-day notice.

Funding Impact

The 15 percent of net income estimated at \$900,000 annually that was previously set aside by the Corporation for capital improvements would be eliminated and a fixed amount of \$550,000 annually would be set aside beginning at the fourth year of the initial term.

Alternatives Considered

If the proposed Lease is not approved, the current lease with the Corporation would terminate and require direct day-to-day management by the SFMTA staff. SFMTA considered this alternative and determine that the Corporation staff experience would continue to benefit the day-to-day operations. Additionally, the SFMTA would continue to benefit from the experience, participation and close oversight provided by the Corporation board members free of charge.

SFMTA Board of Directors' Approval

The SFMTA Board of Directors at its meeting of December 4, 2012 passed a resolution approving the Lease and authorizing the Director of Transportation to execute the Lease and to forward it to the Board of Supervisors for final approval.

Recommendation

The SFMTA recommends that the Board of Supervisors approve this Lease between the City and County of San Francisco and the City of San Francisco Uptown Parking Corporation.

If you have any questions regarding this matter, please contact Steven Lee at 701-4592 or steven.lee@sfmta.com.

Sincerely,



Edward D. Reiskin
Director of Transportation

Attachments

SUTTER STOCKTON PUBLIC PARKING GARAGE LEASE

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND

THE CITY OF SAN FRANCISCO UPTOWN PARKING CORPORATION

Dated as of _____

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EXHIBITS

EXHIBIT A – PREMISES

EXHIBIT B – Standard Commercial Real Estate Business Terms

PARKING GARAGE LEASE AGREEMENT

SUTTER STOCKTON PUBLIC PARKING GARAGE LEASE

This lease ("Lease"), dated for convenience as of _____, is by and between the City and County of San Francisco, a California municipal corporation ("City") acting by and through the San Francisco Municipal Transportation Agency ("SFMTA"), as landlord, and the City of San Francisco Uptown Parking Corporation, a California nonprofit public benefit corporation ("Tenant"), as tenant, who agree as follows:

BASIC LEASE INFORMATION

The following is a summary of basic Lease information ("Basic Lease Information"). Each item listed 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 or any ambiguity in this Section, the more specific provision in the Lease shall control.

Lease Reference Date:	_____
City (Landlord):	City and County of San Francisco
City Designee (Director)	Unless otherwise required by City's Charter or by applicable ordinance, this Lease or other applicable law, all rights, powers and privileges of City under this Lease may be exercised, on behalf of City, by the City's Director of Transportation (the "Director"), or his or her designee, as specified in writing.
Tenant:	City of San Francisco Uptown Parking Corporation, a California non-profit public benefit corporation
Premises (Section 1):	Sutter Stockton Garage. See <u>Exhibit A</u> for more detailed description
Term (Section 2):	Ten (10) years, commencing on the Commencement Date and expiring on the Expiration Date, subject to any extension or early termination specifically provided by the terms of this Lease. The Commencement Date shall be the date specified in Section 2.4 below.

Expiration Date: The date immediately preceding the tenth anniversary of the Commencement Date, or the last date of an Extended Term, as applicable.

Extension Term (Section 2.2): City has the option to extend the Term of this Lease for two periods of five (5) years each (each, an "Extended Term"), subject to Tenant's right to void the extension, as provided in Section 2.2.

Termination Right (Section 2.3): City and Tenant have the option to terminate this Lease early at any time upon ninety (90) days' written notice.

Base Rent (Section 4.1): \$1.00 for the initial Term and \$1.00 for each Extension Term, if any.

Use (Section 6.1): Off-street public parking facility

Notice Address of City
San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 7th floor
San Francisco, CA 94102
Attention: Director of Transportation

with a copy to:
San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 3rd floor
San Francisco, CA 94102
Attention: Director of Off-Street Parking

and to:
Office of the City Attorney
1390 Market Street, 6th floor
San Francisco, CA 94102 4682
Transportation Team
Fax No.: (415) 554-4755

Key Contact for City:
Telephone No.:
Director of Off-Street Parking
Phone: (415) 701-4462
Fax No.: (415) 701-4319

Notice Address for Tenant:
Uptown Parking Corporation
Corporation Manager
444 Stockton Street
San Francisco, CA 94108

Key Contact for Tenant:
Corporation Manager
444 Stockton Street
San Francisco, CA 94108
Phone: (415) 982-7275

1. PREMISES

City leases to Tenant and Tenant leases from City all buildings and improvements described in Exhibit A attached hereto (the "Premises") or (the "Site") commonly known as the Sutter Stockton Garage.

2. TERM

2.1. **Initial Term.** The Premises are leased for a term (the "Term"), commencing on the Commencement Date (as defined in Section 2.4 below), subject to this Lease becoming effective pursuant to Section 27.1 below. The Term of this Lease shall end on the Expiration Date specified in the Basic Lease Information, unless extended or sooner terminated pursuant to the provisions of this Lease. City shall deliver the Premises to Tenant on the Commencement Date in their then existing "as-is" condition as further provided below, with no obligation of the City to make any improvements, repairs or alterations except as otherwise specifically provided herein.

2.2. **Extension Options.** The City shall have the right to extend the Term, in its sole discretion, for two successive additional terms of five (5) years each (each, an "Extended Term"), commencing upon the date immediately following expiration of the initial Term or the expiration of the initial Extension Term, as applicable, upon the following terms and conditions. The City shall exercise its right to extend the Lease, if at all, by delivering written notice of extension (the "Exercise Notice") to Tenant not less than ninety (90) days before the Expiration Date of the current Term. Notwithstanding the foregoing, Tenant shall have the right to void City's exercise of the option to extend the Term of the Lease for an Extended Term by delivering to City a written notice of rejection within thirty (30) days after receipt of City's Exercise Notice, and in such event this Lease shall expire on the Expiration Date of the then Term. All terms and conditions of this Lease shall remain the same for the Extended Term, except and to extent the parties agree to an amendment in writing, provided that City shall not have the option to extend the Term of this Lease beyond the second Extended Term. All references in this Lease to the Term shall include the Extended Term(s), if applicable.

2.3. **Early Termination Rights.** Notwithstanding anything to the contrary herein, City shall have the right to terminate this Lease at any time for the City's convenience, upon ninety (90) days' written notice to the Tenant, which said right to terminate for City's convenience shall be exercised by the SFMTA Board of Directors. Upon written notice to the Tenant, the Director of Transportation shall have the right to terminate this Lease at any time for good cause, including but not limited to Tenant's default of any provision of this Lease, as provided in Section 21.3, below. Tenant shall have the right to terminate this lease for convenience by providing ninety (90) days written notice to the Director of Transportation. The Corporation shall assign to the City all subleases and vendor agreements as directed by the City upon demand by the City.

2.4. **Termination of Existing Lease; Commencement of Lease** City and Tenant acknowledge that Tenant is now, and will be up to the commencement of the Term hereof, in possession of the Premises pursuant to a lease, dated May 5, 1959 and last amended on June 18, 2012 (the "Existing Lease"), between City, as landlord, and Tenant, as tenant. City and Tenant acknowledge that SFMTA has issued revenue bonds and Tenant's existing bonds, if any, were redeemed. Notwithstanding the provisions of the Existing Lease to the contrary, the Existing Lease shall terminate and the Term of this Lease shall commence effective as of the date of final approval of this lease by the Board of Supervisors (the "Commencement Date"); 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, except as specifically provided below in this Section 2.4, 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.

2.5 Bond Financing.

Tenant represents and covenants that its only activities and operations are and will be operating the Premises as provided in this Lease and that it shall not undertake in any material respect any activities that are not contemplated by the terms of this Lease, including but not limited to contractual obligations or any obligations for borrowed money or indebtedness. Tenant shall not permit or otherwise allow any portion of the Premises that have been financed or refinanced with proceeds of the SFMTA revenue bonds to be used by or for the benefit of any purpose other than general public use (i.e., commercial purposes), including but not limited to any lease or sublease thereof without the expressed written consent of the SFMTA. Tenant shall not enter into or explore entering into bonded indebtedness (or any other similar indebtedness) using the Premises or Gross Revenues as security without the express written approval of the Director. Tenant shall not engage the services (either through a written or oral contract) of any bond counsel, disclosure counsel, financial advisors, underwriters, continuing disclosure counsel or any other professionals in contemplation of such indebtedness without the express written approval of the Director, including the City Attorney with respect to legal counsel (and the Mayor's Office of Public Finance with respect to garages located under Recreation and Park Commission property).

Notwithstanding any other provisions of this Lease, Tenant shall not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from federal gross income of interest on any SFMTA bonds or other indebtedness relating to the Premises, including, without limitation, the preparation and filing of any statements required to be filed by it in order to maintain such exclusion.

3. SUITABILITY; ACCEPTANCE

Tenant acknowledges and agrees that the Premises are being leased and accepted in their "as is" condition, without representation or warranty of any kind, and subject to all applicable laws, rules and ordinances governing their use, occupancy and possession. Tenant represents and covenants to City that Tenant has investigated and inspected, either independently or through agents of Tenant's own choosing, the condition of the Premises and the suitability of the Premises for Tenant's intended use. Cost associated with any inspection by the Tenant shall be paid for as a SFMTA pre-approved Operating Expense. Tenant has determined, based solely on its own investigation, that the Premises are suitable for Tenant's business and intended use. Tenant acknowledges and agrees that neither 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 Premises the physical or environmental condition of the Premises or the Site, the present or future suitability of the Premises for Tenant's business, or any other matter whatsoever relating to the Premises, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

4. PAYMENTS BY TENANT

4.1. **Rent.** Within ten (10) calendar days following the Commencement Date of this Lease pursuant to Section 2, the Tenant shall pay to City One Dollar (\$1.00) in

lawful money of the United States of America, as base rent under this Lease. If the Term is extended as set forth in Section 2 above, Tenant shall pay to City, One Dollar (\$1.00) as base rent as consideration for each Extended Term. In addition to the payment of base rent, Tenant shall pay to City surplus sums from time to time in the Revenue Account in accordance with the provisions of Section 8.6.

4.2. **Recoverable Costs.** To the extent an Operating Expense (as defined below) results from the wrongful acts or omissions of an operator of the Premises engaged by Tenant or of any other third party (a "Recoverable Cost"), Tenant agrees to use reasonable efforts or to assist the City, at City's sole discretion, to recover such amounts from the responsible third party including, if applicable, from an insurer. If Tenant recoups payment of any Recoverable Cost from any operator or other third party, Tenant shall promptly provide City with written notice of such recovery, and such recouped amounts shall be deposited in the Revenue Account, or such other account as City may designate.

5. TAXES AND ASSESSMENTS

5.1. 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 Premises that may be imposed upon Tenant by law, all of which shall be paid as a SFMTA pre-approved Operating Expense 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 Premises or upon any equipment or property located thereon without promptly discharging the same, provided that Tenant, if so desiring, may have reasonable opportunity to contest the validity of the same.

(d) City ordinances require City to report certain information relating to this Lease, and any renewals thereof, to the County Assessor within sixty (60) days after any such transaction, and Tenant to 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 those requirements.

6. USE OF PREMISES

6.1. **Off-Street Public Parking Facility.** Tenant shall use and continuously occupy the Premises as a public off-street parking facility. The Premises shall be operated for the benefit and convenience of the public, which shall have the right to use the Premises at all times, except as provided below, subject to such rates, charges, hours of operation, regulations and restrictions as may be fixed and established from time to time in accordance with Section 15.

6.2. **Subleasing.** All subleases are subject to the approval of the City, subject to the requirements of City law. If Tenant from time to time reasonably determines that space in the Premises is unsuitable or unnecessary for parking purposes, and Tenant desires to use or sublease part or all of such space for commercial purposes, Tenant shall give City written notice thereof and the terms of use or sublease proposed (the "Sublease Notice"), which Sublease Notice, shall designate the space proposed to be used or sublet for commercial purposes. City shall have the right to in its sole discretion to any of the following: 1) disapprove Tenant's request, 2) to terminate this Lease as it pertains to the portion of the Premises so proposed by Tenant to be sublet and re-lease such space to third parties for such lawful purposes as City may determine, or 3) to approve Tenant's proposal to sublet conditional upon City's subsequent written approval of the specific sublease obtained by Tenant. Any such sublease shall be subject to applicable laws and the requirements of this Lease, including without limitation, Sections 7, 8, 9 and 10 and the terms and conditions set forth in Exhibit B. All subleases shall be executed on a form provided or expressly approved in writing by the Director. City reserves the right to administer the subleasing of identified space in the Premises suitable for such uses. City may at any time require Tenant to assign any or all existing subleases to City.

6.3. **Limitations on Use.** Tenant's use of the Premises as provided in this Lease shall be in accordance with the following:

- (a) Tenant shall not do, bring, or keep anything in or about the Premises that will cause a cancellation of any insurance covering the Premises.
- (b) Tenant shall comply with all laws concerning the Premises or Tenant's use of the Premises, including, without limitation, the obligation to alter, maintain, or restore the Premises in compliance and conformity with all laws relating to the condition and pay for such Alterations as a SFMTA pre-approved Capital Expenditure, use or occupancy of the Premises during the term of this Lease.
- (c) Tenant shall not use the Premises in any manner that will constitute waste, nuisance or unreasonable annoyance to owners or occupants of adjacent properties.
- (d) Tenant shall not do anything on the Premises that will cause damage to the Premises.
- (e) Tenant shall not allow or permit any use of the Premises (or any portion thereof) that will adversely affect the tax-exempt status of SFMTA revenue bonds issued to finance or refinance the Premises.

6.4. **Vehicle Parking and Capacity/Floor Load.** Tenant shall strictly enforce parking capacity limits of the Premises. Tenant shall make reasonable efforts to ensure that vehicles are parked in designated spaces only. Valet or valet assist parking operations that park vehicles in aisles, lanes or other areas other than designated as single-vehicle occupancy spaces is prohibited unless expressly authorized in writing by the Director or his/her designee.

6.5. **Disabled Persons Parking.** Tenant shall strictly enforce disabled parking restrictions, rules, regulations and laws. Tenant shall not cause or allow designated spaces or areas designated for disabled parking to be used for any other purpose, including but not limited to valet or special event parking, and Tenant shall ensure that

such spaces and areas are accessible to disabled persons at all times that the Premises are open to the public.

6.6 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 Premises in any unlawful manner or for any illegal purpose, or permit any offensive, noisy or hazardous use or any waste on or about the Premises. Tenant shall take all precautions to eliminate any nuisances or hazards relating to its activities on or about the Premises. Tenant shall not conduct any business, place any sales display, or advertise in any manner in areas outside the Premises, or on or about the Site except identification signs in a location and size and design approved by City in its sole discretion.

6.7 Advertising.

(a) **Rental of Advertising Space.** City may direct Tenant to rent space on walls and structures on the Site and about the Premises at the rates, charges and in the locations determined appropriate for the display of commercial advertisements and public information ("Advertising"). City also reserves the right itself to rent space for Advertising on the Site and about the Premises as the City may determine to be appropriate. Whether the placement of advertising is administered by Tenant or City, the SFMTA shall receive all revenues from such rental of advertising space. The SFMTA may include the rental of advertising space in any advertising program administered on behalf of the SFMTA by a third party, and Tenant shall assist and cooperate with any vendor authorized by the SFMTA to place Advertising on the Site and about the Premises.

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

(c) **Prohibition of Alcoholic Beverage Advertising.** Tenant shall not cause or allow to be displayed any general advertising of alcoholic beverages on the Premises, in accordance with San Francisco Administrative Code section 4.20, and as that code may be amended. 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 in any general advertising sign. This advertising prohibition does not apply to business signs and displays allowed under San Francisco Planning Code section 602.3, and as that code may be amended. 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.

6.8 Litigation and Legal Expenses. Tenant shall not commence litigation concerning any matter concerning or touching this Lease, the Premises or Site, including but not limited to litigation concerning any subtenant or sublessee, without the express written authorization of the Director. Tenant shall provide City with written reports as requested by the Director concerning the status and costs of any litigation concerning or touching this Lease, the Premises or Site, including but not limited to litigation concerning any subtenant or sublessee. Tenant shall discontinue and resolve any third party litigation concerning or touching this Lease, the Premises or Site, including but not limited to litigation concerning any subtenant or sublessee, as directed by the Director.

6.9 Public Transit Information. Tenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Tenant employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Premises, and encouraging use of such facilities, all as an Operating Expense.

6.10 Signs.

(a) Tenant shall erect and maintain such signs, notice, graphics, advertisement, awning, banner, or other exterior decoration ("Signs") upon or about the Premises or Site as may be required by the Director.

(b) Tenant shall not erect or maintain or permit to be erected or maintained, any Signs upon or about the Premises or Site without City's express written consent. Any Sign that Tenant shall be permitted to place, construct and maintain shall comply with all laws, and Tenant shall obtain all permits and approvals required by such laws, including, if necessary, approval of the Art Commission of the City and County of San Francisco. City makes no representation with respect to Tenant's ability to obtain such approvals. If requested by City, Tenant, as an Operating Expense, shall remove any or all Signs placed by it on the Premises at the expiration or earlier termination of this Lease. City shall have the right to use for its Signs, or for Signs placed thereon by others with City's consent, the exterior walls of the Premises.

6.11 Waiver of Tenantability. Tenant waives the provisions of California Civil Code Sections 1941 and 1942, or of any law, statute or ordinance now or hereafter in effect, with respect to City's obligations for tenantability of the Premises and Tenant's right to make repairs and deduct the expenses of such repairs from rent.

7. MANAGEMENT OF THE PREMISES

7.1. Approval of Bylaws. Tenant represents and warrants that Tenant will provide City with a true and correct draft of Tenant's corporate bylaws for review and approval by the SFMTA within thirty (60) days after commencement of this lease. Tenant shall provide City with written request to amend Tenant's bylaws prior to any such amendment. Tenant's corporate bylaws governing the composition, term, duties and responsibilities of Tenant's Board of Directors shall be consistent with best practices for non-profit organizations. Among other matters Tenant's bylaws shall provide for a sufficient number of members to make it likely that the Board of Directors can achieve a quorum at most meetings, provide for regular meeting, provide for members with appropriate background and skills, including at least one member with financial expertise appropriate to the operation of the garage in the Premises, require replacement of member who regularly miss meetings, establish effective standards and

procedures to minimize and require disclosure of potential conflicts of interest. Tenant's corporate Board of Directors shall hold regular, effective meetings and properly document the actions of the Board of Directors.

7.2. Approval of Corporation Staff. Tenant shall follow hiring guidelines established from time to time by the SFMTA outlining a job description and compensation standards of Tenant's employees and staff. City shall provide Tenant with written notice of SFMTA's current hiring guidelines.

7.3. Operating Standards; Approval of Management Agreement. Except as otherwise specifically provided herein, Tenant shall be responsible for the management and operation of the Premises in accordance with the SFMTA Parking Facility Operation and Management Regulations. In connection with managing and operating the Premises, Tenant shall provide (or require others to provide), such services as may be necessary or appropriate to achieve and maintain first class operating standards (subject to the budget and Operating Expense limitations set forth in this Lease), including, but not limited to, (a) routine and extraordinary repair and maintenance of the improvements, (b) utility services, (c) cleaning, janitorial, extermination, and trash removal, (d) landscaping and groundskeeping, (e) security services, (f) marketing the Premises, selection of retail subtenants and negotiation of subleases, to the extent allowed by this Lease, (g) enforcement of reasonable rules and regulations for the conduct of persons present on the Premises, (h) collection of parking fees, rents and other receivables and preparation of statements, (i) use reasonable efforts to enforce, as fully as practicable, the compliance by any subtenants or licensees with the terms, covenants and conditions of their subleases or licenses, (i) securing certificates of insurance from subtenants and persons working on the Premises, and (j) establishing and maintaining books and records and systems of account covering operations of the Premises in accordance with sound accounting practices. When entering into contracts, issuing purchase orders or otherwise arranging for goods or services for the operation of the Premises, Tenant shall attempt to secure the best price reasonably obtainable. During the term of this Lease and any extension, Tenant shall engage, as a professional operator, a person, firm or corporation with a staff experienced in the management and operation of public parking facilities (the "Operator"). Tenant shall complete a competitive selection process, identify an Operator and submit a written request for consideration and approval by the SFMTA at least forty-five (45) days prior to the expiration of existing Operator agreement. Upon failure to submit request within forty-five (45) days, the SFMTA shall have the option to enter into an agreement or modify an existing agreement, and assign an Operator as deemed necessary for the continued operations of the garage. Tenant's selection of such Operator shall be subject to City's prior written approval, in accordance with the San Francisco Charter, SFMTA Parking Facility Operation and Management Regulations concerning off-street parking facilities in effect from time to time (the "Parking Facility Operation and Management Regulations"), and Chapters 17 and 21 of the San Francisco Administrative Code, of: (i) the manner in which such Operator is selected, including the bid process and bid documents, (ii) the terms of the contract engaging such Operator, (iii) the identity of the Operator, and (iv) the identity of the Operator's facility manager to be employed at the Premises (the "Facility Manager"). The City shall have the authority at any time to require Tenant to remove the Facility Manager for poor job performance. Tenant shall not amend the approved agreement with such Operator, or permit any assignment of any interest therein, without obtaining City's written consent. The SFMTA Board of Directors (the "Board"), by approving this Lease, authorizes the Director to approve or reject the above matters without the need for further Board action, so long as, based solely on the opinion of the Director, the operating agreement or any changes or modifications thereto does not adversely affect

the tax-exempt status of interest on any bonds or other indebtedness relating to the Premises. The Operator's compensation must be based on a fixed periodic fee and the term of the operating agreement, including any renewal periods, must not exceed nine (9) years. Neither the Corporation, its manager, nor any member of its Board of Directors shall have any proprietary, pecuniary or other beneficial interest in the Operator or in those persons or entities that have a controlling interest in the Operator.

7.4 Operator Must Abide by Lease Terms. Tenant shall ensure that the Operator engaged by Tenant for the operation of the Premises shall be aware of the terms and conditions of this Lease and shall abide by the terms, conditions and restriction on the use of the Premises, including but not limited to those set out in Section 6, above.

7.5 Prevailing Wages. The operation of an off-street public parking facility on the Premises is subject to the provisions of section 8A and section A, 7.204 of the San Francisco Charter, and of sections 6.22(E) of the San Francisco Administrative Code (as those sections may be amended, supplemented or replaced) relating to working conditions and payment of prevailing wages, and such sections are incorporated in this Lease by this reference and made a part of this Lease as though fully set forth herein.

8. FISCAL DUTIES AND MATTERS

8.1. Annual Budget/Marketing Plan. Tenant will prepare and submit to the Director an annual operating budget ("Annual Budget"); in such line item form as from time to time is approved by the Director. Such line item form must include specific entries for professional services to be provided to Tenant including legal and accounting fees. The Annual Budget, if requested, shall include a marketing plan, and the payment of marketing expenses shall be approved within the approval of the Annual Budget.

The Tenant will submit the Annual Budget to the Director for review, revision and written approval or disapproval by the Director in a reasonable time to be established by the Director but not later than five months (December 1) prior to the date the budget shall be in effect (May 1) The Director will approve or conditionally approve (with proposed changes) such Annual Budget no later than thirty (30) days (April 1) before the budget is scheduled to go into effect. Tenant will promptly revise the Annual Budget in accordance with the changes proposed by the Director and resubmit such revised Annual Budget for approval or disapproval by the Director.

8.2 Annual Audit and Periodic Operating Reports.

(a) City shall arrange for an annual audit of Tenant's operations in the Premises in accordance with generally accepted accounting principles and otherwise in a form required by City. Tenant shall fully cooperate with such audit. City shall provide a copy of the final audit report to the Tenant within fifteen (15) days of the completion of the audit. Tenant shall implement findings and recommendations of the audit within thirty (30) days of the receipt of the audit, or inform the SFMTA in writing of Tenant's proposed implementation timeline and reasoning behind a delayed implementation. SFMTA and Tenant shall cooperate to establish a reasonable timeline for promptly implementing such findings and recommendations, and Tenant shall use diligent, good faith efforts to implement the findings and recommendations within the agreed timeline and shall provide SFMTA with monthly written reports detailing any outstanding issues.

(b) Within twenty (20) days after the end of each calendar month during the term of this Lease or within such other period specified by the Director,

Tenant shall submit to the Director a correct, detailed and complete statement in writing, on a form approved by the Director, showing all Gross Revenues and Parking Taxes received and all Operating Expenses incurred during such month. Such statement shall be signed and verified by representatives of Tenant under oath and forwarded to the Director. Tenant agrees to keep full, true and accurate books, records and accounts at all times during the term of this Lease of the Gross Revenues and Parking Taxes received, the Operating Expenses incurred, the details of operation and of such other matters and to render such reports thereon as may be required by the Director from time to time. City and its representatives shall at all times have the right to inspect, examine and audit all such records and all accounts established and maintained under this Lease.

8.3 Operation Shall Conform to Budget. Tenant will operate the Premises within the approved Annual Budget both as to overall amount budgeted and within the maximum amount established for each budget line item, and shall use diligent, good faith efforts to inform City at the earliest possible date if Tenant anticipates that it will request approval to exceed the Annual Budget for any line item. Within parameters established by the Director, offsets between budget line items will be limited to emergencies or other exigent circumstances. Any additions or changes in line items of the Annual Budget shall be allowed only upon the written approval of the Director. Tenant's failure to manage and operate the Premises within the approved Annual Budget shall constitute a material breach of this Lease.

8.4 Creation of Accounts. Tenant shall establish and maintain special accounts designated as the Revenue Account (Revenue Account) and the Corporations Operating Account (Operating Account) and the Corporate Employee Payroll Account (Payroll Account). On the first day of the fourth (4th) year of the initial Term of this Lease, Tenant shall establish a Capital Expenditures Account (Capital Account). Such accounts shall be held by a financial institution approved by the Controller of the City. At City's request, Tenant shall respect any limit on the size of the funds held in any account(s) as shall be established from time to time by the Controller for City with the goal of ensuring that Tenant is afforded full FDIC deposit insurance coverage for the deposits in such account(s). Funds from the operation of the Premises shall not be commingled with other funds. Tenant shall cause each person who has authority to withdraw or transfer funds from any account to be bonded or otherwise insured.

8.5 Capital Account. The Capital Account, established beginning the fourth year of the initial Term, shall be used by Tenant to provide for expenditures for the cost of Alterations and Capital Improvements described in under Section 10. Periodically, but not more than monthly, based on its accounting records, Tenant shall estimate the amount of "Net Revenues" (meaning Gross Revenues less Operating Expenses) received from the operation of the Premises for the City's fiscal year to date. Subject to City's review and approval of Tenant's estimate of Net Revenues, City shall authorize transfer from the Revenue Account to the Capital Account in the amount of \$45,833 (Forty-Five Thousand Eight Hundred Thirty-Three Dollars) per month. In the event the monthly amount creates an excess in the Capital Account above the limit stated below, the monthly amount will be reduced by the excess amount and no credit will be provided on subsequent monthly transfers.

City shall approve expenditures from the Capital Account as part of the approval of the Annual Budget or by resolution of the SFMTA Board of Directors. All disbursements from the Capital Account shall require the joint signatures of two (2) current members of the Board of Directors of Tenant and the Corporation's Manager.

Based on City's review of Tenant's annual audit for the City's fiscal year in accordance with Section 8.2 (a), the balance in the Capital Account shall be adjusted each such fiscal year to ensure that the amount transferred to the Capital Account does not exceed \$550,000 (Five Hundred Fifty Thousand Dollars) for such fiscal year. In the event of a deficiency in the Capital Account, and subject to City's prior written approval, moneys shall be transferred from the Revenue Account to the Capital Account. In the event of a surplus in the Capital Account such excess shall be transferred from the Capital Account to the SFMTA. Notwithstanding the foregoing, in no event shall the balance in the Capital Account exceed \$1,650,000 (One Million Six Hundred Fifty Thousand Dollars).

8.6 Gross Revenues, Deposits and Transfers. All Gross Revenues collected or received by Tenant arising out of operations of the Premises shall be deposited in the Revenue Account upon receipt. Such deposits shall be made no later than the next Banking Day such amounts are collected if such day is a Banking Day or, if such day is not a Banking Day, on the next succeeding Banking Day. Tenant's failure to deposit Gross Revenues on a timely basis shall constitute a material breach of this Lease.

"Banking Day" shall mean any day which is not a Saturday or Sunday or a day on which banking institutions are authorized or required by law to be closed for commercial banking purposes in San Francisco, California, or by the Federal Reserve System.

"Gross Revenues" shall mean (a) all revenue received by Tenant from whatever source arising out of its Lease of the Premises including, without limitation, commercial rents and interest earned on investments or deposits; plus (b) all revenues from whatever source, received from and related to, parking operations on the Premises and activities incidental to parking operations including, but not limited to, the following: (1) all revenues received from the operation of the Premises for daily and monthly parking of any vehicle therein; (2) the commission paid to, or on behalf of, Tenant for revenue collected from pay telephones, automatic teller machines and the sale of merchandise in vending machines on the Premises, (3) all charges of any character made by Tenant or any operator for the rendering of any service or work of any kind conducted in, on, about, or from the Premises, (4) the gross amounts of all deposits forfeited by parking customers at the Premises and retained or received by Tenant or any operator in connection with the operation of the Premises, (5) all interest received from the Gross Revenues deposited in the Revenue Account and the Capital Expenditures Account, (6) fees collected for storage rental and (7) the value of any in-kind services received by Tenant or any operator in exchange for a benefit derived from the use of the Premises and (8) any Parking Tax collected.

"Parking Taxes" shall mean the Tax on Occupancy of Parking Space in Parking Stations, as imposed by Article 9 of the San Francisco Business and Tax Regulations Code, beginning with Section 601 thereof, and any successor ordinances or amendments thereto, or another federal, state or local tax or fee imposed on the occupancy of parking spaces.

Subject to reasonable provision for the transfer of funds to the Capital Account as provided below, funds (including all interest accrued on such funds) remaining in the Revenue Account shall be transferred to the SFMTA no later than the twentieth (20th) day of each month or at such other more frequent periodic intervals as specified in writing by the Director. All interest accrued on any other account held by Tenant

relating to the Premises shall be transferred to the SFMTA no later than thirty (60) days after Corporation's fiscal year ending April 30.

8.7 Payment of Operating Expenses. Periodically, but at least once each month, City will authorize the withdrawal and transfer of funds from the Revenue Account for the purpose of paying Operating Expenses, including Tenant's employee salaries, payroll expense and Parking Taxes due included in the Annual Budget. Disbursements from the Revenue Account for the purpose of paying Operating Expenses and from the Corporate Employee Payroll Account for purpose of paying Corporation employee salaries and payroll expenses shall require the joint signatures of two (2) current members of the Board of Directors of Tenant and the employee of Tenant that is responsible for supervising the day to day operation of the Premises (the "Corporation Manager").

"Operating Expenses" shall mean all direct and indirect operating and routine maintenance and repair expenses incurred in the operation of the Premises, including, without limitation, the following: (1) reasonable salaries, payroll taxes and other payroll expenses, including Tenant's employee salaries and payroll expenses; (2) charges for utility services; (3) expenses for repair and maintenance of equipment and furnishings, including, without limitation, a full service, 24 hour elevator repair contract if the Premises contains one or more elevators; (4) expenses for routine maintenance and repair and for cleaning of the Premises, including, without limitation, expenses related to vandalism or other damage to gates, equipment, supplies or the Premises; (5) the cost of parking tickets, supplies and equipment; (6) license and permit fees not related to an Alteration; (7) the cost of insurance attributable to insuring Tenant's property used in the operation of the Premises and insuring Tenant against liability relating to the management and operation of the Premises; (8) the cost of Workers' Compensation Insurance and fidelity and surety bonds; (9) deductible amounts required under any of the insurance policies insuring Tenant; (10) sales taxes and all other taxes resulting from operation of the Premises, except Parking Taxes, (11) real property taxes and possessory interest taxes; (12) the cost of courier deposit services, and (13) all other costs and expenses approved by City in accordance with Section 8.8 (d), including administrative expenses, amounts paid as a fee or otherwise to any professional operator employed by Tenant, legal expenses, and "Tenant's Organizational Expenses," which shall mean the reasonable costs of operating the entity which is Tenant under this Lease. Tenant shall operate Tenant's corporate entity in an efficient manner that is consistent with best practices for non-profit organizations using commercially reasonable efforts to operate in a manner that is efficient and consistent with Tenant's mission, corporate purposes, applicable laws and this Lease, at all times avoiding lavish, extravagant or excessive expenditures. Operating Expenses shall not include any charges or allowances for depreciation or amortization of Tenant's interest in the Premises.

8.8. Reimbursement Process for Operating Expenses. Operating Expenses incurred in the operation of the Premises shall be processed for payment or reimbursement as follows:

(a) **Requisitions.** Tenant shall prepare and process, or shall cause to be prepared and processed, requisitions that itemize each Operating Expense for which payment or reimbursement is being requested. Each requisition for Operating Expenses, together with supporting documentation, shall be approved by at least two (2) members of the Board of Directors of Tenant, the Corporation Manager and the

Operator. The requisition, approved by Tenant, then shall be submitted to the Director for the Director's review and approval. Approval by the Director shall constitute authorization for the withdrawal of funds from the Revenue Account for payment of the Approved Operating Expense and Parking Tax. Tenant promptly will initiate the withdrawal and disbursement procedures.

(b) **Supporting Documentation.** (i) Each item of Operating Expense in a requisition submitted by Tenant will be evidenced by an original invoice accompanying the requisition. The time frame of Tenant's requisition preparation and submittal shall allow adequate review and approval time so as to avoid late payment charges. Tenant will be responsible for the payment of late fees, penalties and similar late payment charges. (ii) All requests for payments for reimbursable salary, wages and benefits will be accompanied by: a payroll record showing the employee name, social security number and work classification; straight time and overtime hours worked for each payroll period; and records which include all "calendar year to date" wages for each employee.

(c) **Operating Expense Warranty.** In preparing and submitting certified requisitions, Tenant warrants to the City that each item for which payment is being requested is an Operating Expense authorized under an existing Annual Budget line item and that the requested payment, together with all previous payments under the subject line item, will not exceed the maximum line item expenditure authorized under the Annual Budget.

(d) **Third Party Contracts.** City will not approve reimbursement of any expenditure for professional services (including legal and accounting services) or products procured by Tenant (including expenses incurred under any operating agreement) unless the expense was made pursuant to applicable sections of this lease and/or the SFMTA Parking Facility Operation and Management Regulations. With respect to legal fees, Tenant shall provide a reasonably detailed statement showing costs incurred, including names of persons performing the work, hourly rates for such person(s), the total number of hours spent by person(s), and a brief non-confidential description of the work performed.

8.9 Litigation and Legal Expenses. Unless expressly authorized by the Director in writing, Tenant shall not commence, maintain, or otherwise participate in any legal proceedings concerning the Site or the Premises, including but not limited to prosecuting actions, cross-actions or counter-actions for unlawful detainer, tort or breach of contract where the costs of said litigation, including but not limited to attorney's fees, are paid from Gross Revenues or are otherwise reimbursed from funds or revenues of the City. Without limiting the foregoing, Tenant shall not (i) engage any "collection agencies" to collect any rent or other income arising out of the use or operation of the Site, or (ii) terminate any sublease or lockout any subtenant, without, in each instance, the prior written approval of the Director. If so directed by the Director, Tenant shall seek to settle or otherwise resolve any such litigation in a manner to maximize the reduction of litigation costs where said costs are or would be paid from Gross Revenues or are or would be otherwise reimbursed from funds or revenues of the City however the Director shall retain final authority over the conduct of any such proceedings.

8.10. Parking Tax Payment. The Tenant shall pay or cause to be paid all Parking Taxes from amounts held in the Revenue Account in accordance with the requisition process outlined above.

9. EMERGENCY EXPENDITURES.

Tenant may make emergency expenditures to safeguard the Premises due to emergency or exigent circumstances, as provided in the SFMTA Parking Facility Operation and Management Regulations.

10. ALTERATIONS AND CAPITAL IMPROVEMENTS

10.1. Permitted Alterations or Capital Improvements. Tenant shall not make or permit any alterations or capital improvements to the Premises or to the heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security and other mechanical, electrical, communications systems of the Premises ("Building Systems"), and shall not make or permit any alterations, installations, additions or capital improvements, structural or otherwise (collectively, "Alterations or Capital Improvements"), in, to or about the Premises, without City's prior written consent in each instance. All Alterations or Capital Improvements shall be done 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 impose. With respect to any Alterations or Capital Improvements that would be visible from the exterior of the Premises, Tenant shall obtain the prior written approval of City's Arts Commission to the extent the Arts Commission has jurisdiction over the design of such proposed Alterations or Capital Improvements under City's Charter Section 5.103. If the Alteration relates to an expansion, change in use, construction, Tenant shall also post a sign in accordance with the Citizen's Right to Know Act of 1998 (Chapter 79 of the City's Administrative Code).

10.2 Asbestos. Without limiting Section 25.2 (No Hazardous Materials) below, in the event that asbestos-containing materials ("ACM") are determined to exist in or about the Premises, Tenant shall ensure that all Alterations or Capital Improvements 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 or Capital Improvements affecting ACM-containing areas or any asbestos related work shall be performed without City's prior written consent in each instance.

10.3 Tenant's Alterations or Capital Improvements that Disturb or Remove Lead Based Paint. Tenant, on behalf of itself and its Agents or Invitees (as such terms are defined in Section 16.2 below), 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.

10.4 Ownership of Alterations or Capital Improvements. Unless otherwise provided by express written agreement, all appurtenances, fixtures, improvements, equipment, alterations, additions, and other property attached or affixed to or installed in the Premises at the Commencement Date or during the Term, including, without limitation, any tenant improvements and any Alterations or Capital Improvements, shall be and remain City's property. Alterations or Capital Improvements of the Premises, except trade fixtures of any subtenants, shall become the property of City and shall remain upon and be surrendered with the Premises. Tenant may not remove any such property at any time during or after the term of this Lease unless the City so requests as further provided under Section 29.

10.5 City's Alteration or Capital Improvements of the Premises. City reserves the right at any time to make alterations, additions, repairs, deletions or improvements to the common areas or any other part of the Premises or the Building Systems, provided that any such alterations or additions shall not materially adversely affect the functional utilization of the Premises for the uses permitted hereunder and pay for such Alterations or Capital Improvements from the Capital Account.

10.6 Non-responsibility of City. Tenant agrees that if it or any subtenant shall make any Alterations or Capital Improvements, they shall not commence until fifteen (15) days after City has received written notice from Tenant stating the commencement date of the installation of the Alterations or Capital Improvements, in order that the City may post appropriate notices of non-responsibility. Tenant will at all times permit such notices to be posted and to remain posted for the time required by law.

10.7 Construction/Acquisition of Capital Improvements. At the request of City and for Tenant proposed Capital Improvements approved by the City and subject to the availability of sufficient uncommitted funds in the Capital Account, Tenant shall acquire, install, construct and complete items of capital improvements to the Premises. Such items of capital improvement shall be provided (i) in strict accordance with plans and specifications approved in advance by City, (ii) by duly licensed and bonded contractors or mechanics approved by City, (iii) in a good and professional manner, where applicable, in accordance with Section 10. Prior to the acquisition or commencement of any work, Tenant shall procure all required permits and approvals and shall promptly deliver copies of such approvals and permits to the City upon receipt. No material change from the plans and specifications approved by City may be made

without prior consent. City shall have the right to inspect the work progress of the capital improvements at all times. Upon completion of the capital improvements, Tenant shall furnish City with a complete set of final as-built plans and specifications or specification of installed equipment. All approved costs and expenses incurred by Tenant in the performance of the obligations set forth in this Section shall be deemed to be a "Capital Improvement Expenditure" under this Lease, and such expenses will be paid from the Capital Account. All capital improvements to the Premises shall be owned by the City.

10.8 Repairs and Maintenance.

(a) **City's Repairs.** City shall repair and maintain the structural portions of the Premises, including the Building Systems, the elevators and the common areas; provided, however, Tenant shall seek reimbursement on behalf of City for any damage, excluding normal wear and tear, caused by any act or omission of Tenant's Agents or Invitees (as such terms are defined in Section 26.5 (Parties and Their Agents; Approvals) below). For the purpose of making any such repairs, City may use structures in the Premises where reasonably required by the character of the work to be performed, provided that such work shall not block the main entrance to the Premises nor unreasonably interfere with Tenant's business. Tenant waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned thereby.

(b) **Tenant's Repairs.** Tenant shall maintain the Premises (including, without limitation, the floors, interior plumbing, electrical wiring, fixtures and equipment) in good repair and working order and in a clean, secure, safe and sanitary condition. Tenant shall promptly make all repairs and replacements: (a) by licensed contractors or qualified mechanics approved by City, (b) so that the same shall be at least equal in quality, value and utility to the original work or installation, (c) in a manner and using equipment and materials that will not interfere with or impair the operations, use or occupation of the Premises or the Building Systems, and (d) in accordance with all applicable laws, rules and regulations, including the SFMTA Parking Facility Operation and Management Regulations. 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.

11. LIENS AND ENCUMBRANCES

11.1. **Liens.** Tenant shall pay all costs for construction done by it or caused to be done by it on the Premises. Tenant shall keep the Premises and all interests therein free and clear of all mechanics' liens and claims of mechanics' liens resulting from construction done by or for Tenant. Tenant shall have the right to contest the correctness or the validity of any such lien if, immediately on demand by the City, Tenant procures and records a lien release bond issued by a corporation authorized to issue surety bonds in California in an amount equal to one and one half times the amount of the claim of lien. The surety bond shall meet the requirements of Civil Code Section 3143 and shall provide for the payment of any sum that the claimant may recover on the claim (together with costs of suit, if claimant recovers in the action).

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

11.3 Non-Responsibility Notices. Tenant shall inform its own contractors and shall ensure that all subtenants inform their contractors that the Premises and the Site are public property and are not subject to mechanics liens or other encumbrances. City shall have the right to post on the Premises any notices that City may deem proper for the protection of City, the Premises, and the Site, 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 Premises. 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 or Capital Improvements, repairs or construction on the Premises, or materials furnished or obligations incurred by or for Tenant.

12. UTILITIES AND SERVICES

12.1. Utilities and Services. Tenant shall make all arrangements for and pay from the Revenue Account as an Operating Expense for all utilities and services furnished to or used by it, including, but not limited to, gas, electricity, water, telephone service and trash collection, and for all connection charges, provided, however, that City may elect to furnish some or all of the utility services required by Tenant and, in such event, Tenant shall pay to City the prevailing rates for all such utility services furnished to or used by Tenant together with reasonable charges for the connection and maintenance of such utility services.

12.2. 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 Premises 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 Tenant is required or elects to make Alterations or Capital Improvements to any part of the Premises in order to comply with such mandatory or voluntary controls or guidelines, such compliance and the making of such Alterations or Capital Improvements shall in no event entitle Tenant to any damages, relieve Tenant of the obligation to pay all amounts or to perform each of its other covenants hereunder or constitute or be construed as a constructive or other eviction of Tenant.

12.3 Interruption of Services. City's obligation to provide utilities and services for the Premises are subject to SFMTA Parking Facility Operation and Management Regulations and applicable Law (including the rules or actions of the public utility company furnishing the utility or service), and shutdowns for maintenance and repairs, for security purposes, or due to strikes, lockouts, labor disputes, fire or other casualty, acts of God, or other causes beyond the control of City. In the event of an interruption in, or failure or inability to provide any service or utility for the Premises for any reason, such interruption, failure or inability shall not constitute an eviction of Tenant, constructive or otherwise, or impose upon City any liability whatsoever, including, but not limited to, liability for consequential damages or loss of business by Tenant. Tenant hereby waives the provisions of California Civil Code Section 1932(1) or any other applicable existing or future Law permitting the termination of this Lease due to such interruption, failure or inability.

13. OPERATION AND CONDITION OF PREMISES

Tenant agrees to maintain and keep the Premises clean and in good condition and repair, to operate therein a first class public parking garage during the term of this Lease and not to vacate or abandon the Premises during the Term.

14. OPEN MEETINGS/SUNSHINE

14.1. **Open Meetings.** All meetings of the Board of Directors of Tenant during the term of this Lease shall be open and shall comply, as nearly as practical, with Chapter 67 of the Administrative Code of the City. A failure to comply with this Section 14 shall, at the option of the City, result in (i) termination of this Lease, (ii) removal of members of the Board of Directors of the Tenant, or (iii) sanctions being imposed. Tenant shall give City written notice of each meeting, including special meetings, of its Board of Directors.

14.2. **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 14 will be made available to the public upon request.

15. RATES, CHARGES, RULES AND REGULATIONS

15.1. **Parking Rates and Rules.** For all vehicles parked in the Premises, Tenant is authorized and directed to charge and collect parking fees according to parking rates established by the SFMTA. From time to time, the Parking Rates charged at the Premises may be adjusted by the appropriate legislative body. In such event, the Director shall give written notice of the new Parking Rates to Tenant. Such notice shall specify the effective date of the new rates. Upon receiving such notice, Tenant shall take such measures necessary to implement the new Parking Rates on the effective date. Tenant shall not have any right to adjust the authorized Parking Rates or collect any other rates, fees or charges at the Premises without the prior written consent of City. If and to the extent required by the Director, Tenant shall assist and cooperate with SFMTA in implementing the policies of SFMTA's *SFpark* Program, including but not limited to placement of electronic signage where and as determined by the Director, and the implementation of variable pricing of rates.

15.2. Revenue Control and Parking Receipts.

(a) City shall have the right in its sole discretion to direct Tenant and Tenant shall cooperate with and implement such direction to install a Parking Access Revenue and Control System (PARCS) or PARCS equipment selected by the SFMTA.

(b) Tenant shall comply, and shall require the operator to comply, with the San Francisco Police Code Sections 4901-4916 and San Francisco Business and Tax Regulation Code Article 22 and Section 6.6-1, which require parking stations to provide receipts to occupants, and to have certain signage, all as more fully set forth therein. Any violation of these requirements shall be deemed a breach of this Lease, and City shall have all rights and remedies set forth above Codes as well as the rights and remedies set forth in this Lease, including but not limited to, the right to terminate this Lease.

16. WAIVER OF CLAIMS; INDEMNIFICATION

16.1. 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 Premises by or from any cause whatsoever including, without limitation, (i) any act or omission of persons occupying adjoining premises, (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 16 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.

16.2. 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, the SFMTA, 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 Premises; (b) any default by Tenant in the observation or performance of any of the terms, covenants or conditions of this Lease to be observed or performed on Tenant's part; (c) the use or occupancy or manner of use or occupancy of the Premises by Tenant, its Agents or Invitees or any person or entity claiming through or under any of them; (d) the condition of the Premises; (e) any construction or other work undertaken by Tenant on the Premises 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 Premises or the Site, 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 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 City and continues at all times thereafter. Tenant's obligations under this Section 16 shall survive the termination of this Lease.

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.

Any costs of an Indemnified Party incurred pursuant to any Claim not payable from insurance maintained by the Tenant shall be deemed a Tenant Cost.

17. INSURANCE

17.1. **Tenant's Insurance.** As a pre-approved Operating Expense, Tenant shall procure and keep in effect or shall cause to be procured and kept in effect at all times during the Term insurance as follows:

(a) Property insurance on an all risk form, excluding earthquake and flood, but including sprinkler leakage, in the amount of one hundred percent (100%) of the replacement value of the Premises which value is estimated at Seventy-Six million dollars (\$76,000,000). Said policy shall also insure against business interruption, including coverage for the City, in an amount not less than one hundred percent (100%) of Gross Revenues for thirty six (36) months. Any deductible under such policy shall not exceed \$10,000 for each occurrence. The policy shall contain a standard replacement cost endorsement providing for full replacement and no deduction for depreciation and a stipulated amount endorsement. Such policy shall include the City as named insured. Upon request by the City, Tenant shall obtain earthquake coverage under such property insurance policy, the cost thereof to be an Operating Expense.

(b) Boiler and machinery insurance, comprehensive form, in an amount of \$1,000,000 with respect to loss of or damage to insured objects, and \$7,500 expediting expense insuring ventilating and electrical equipment and any other equipment or machinery typically insured under such a policy, with any deductible not to exceed \$10,000 for each loss. Such policy shall include the City as named insured.

(c) Commercial general liability insurance with limits not less than \$2,000,000 each occurrence and \$4,000,000 aggregate, combined single limit for bodily injury and property damage, or in such greater amount and limits as the City may reasonably require from time to time, including coverage for contractual liability, personal injury, broad form property damage, products and completed operations. Any deductible under such policy shall not exceed \$10,000 for each occurrence.

(d) Business automobile liability insurance with limits not less than \$1,000,000 for each occurrence combined single limit for bodily injury and property damage, including coverage for owned, non-owned and hired automobiles, as applicable. Any deductible under such policy shall not exceed \$10,000 for each occurrence.

(e) Garage keeper's legal liability insurance with limits not less than \$2,000,000 for each occurrence combined single limit for loss and damage to vehicles in Tenant's care, custody or control caused by fire, explosion, theft, riot, civil commotion, malicious mischief, vandalism or collision, with any deductible not to exceed \$1,000 for each occurrence, and coverage for non-automobile property customarily left in the custody of a garage with a limit of \$5,000.

(f) Worker's Compensation Insurance in amounts as required by State law, and Employers' Liability Insurance, with limits not less than \$1,000,000 for each accident, covering all employees employed in or about the Premises to provide statutory benefits as required by the laws of the State of California. Said policy/ies shall be endorsed to provide that the insurer waives all rights of subrogation against the City.

(g) Director and Officer Liability Insurance with limits not less than \$1,000,000.

17.2. Additional Requirements.

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

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

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

(1) Name as additional insured the City and County of San Francisco, its officers, agents and employees, except as otherwise agreed to by City in writing.

(2) That such policies are primary insurance to any other insurance available to the additional insured, 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 insured 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.

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

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

(f) 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 Premises, then Tenant shall, at City's request, increase the amounts or coverage carried by Tenant to conform to such general commercial practice.

(g) Tenant's compliance with the provisions of this Section shall in no way relieve or decrease Tenant's liability under Section 16.2 of this Lease, or any of Tenant's other obligations under this Lease.

(h) 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.

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

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

17.4 Bonds. As of the effective date hereof, if requested in writing by City, Tenant shall furnish or cause to be furnished to the City, and shall maintain throughout the term of this Lease, and pay the cost thereof as part of Tenant's Operating Expenses, the following fidelity, surety and Parking Tax bonds made payable to the City and naming the City as obligee, as its interests may appear.

(a) Blanket fidelity bond covering all officers and employees of Tenant employed at the Premises, with a limit of \$400,000, and any deductible not to exceed \$5,000 for each loss; and

(b) Parking tax bond in the amount required by the San Francisco Business and Tax Regulation Code Section 6.6-1.

17.5 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 building, the Premises or otherwise.

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

17.7 Miscellaneous Insurance and Bond Matters.

(a) Two copies of each performance and fidelity bond, and two copies of, each original policy of the property insurance and the boiler and machinery insurance, shall be provided to the City upon the mutual execution of this Lease, unless such bonds or insurance are to be provided by a professional operator in which case such bonds and insurance shall be provided at the time of execution of the agreement with such professional operator. Two copies of each certificate of all other insurance shall be provided to the City upon mutual execution of this Lease, and complete copies of any insurance policies obtained pursuant to this Lease shall be provided to the City if requested at any time.

(b) The City reserves the right to cancel any or all of the insurance required under this Lease and to replace such canceled insurance with one or more master insurance policies providing similar insurance coverage and covering any or all of the parking garages owned or leased by the City. In the event such a master insurance policy replaces a policy of insurance or a portion of a policy of insurance required to be carried by a professional operator pursuant to an operating agreement the premium for which was considered an Operating Expense, then the amount of such premium shall thereafter be deducted from the management fee payable to such professional operator under an operating agreement.

(c) Upon City's request, Tenant shall provide evidence satisfactory to the City that Tenant has adequately provided for Social Security and Unemployment Compensation benefits for Tenant's employees employed at the Premise.

(d) Tenant shall comply with the provisions of any insurance covering Tenant, Operator, or the Premises, with any notices, recommendations or directions issued by an insurer under such insurance policies so as to not to adversely affect the insurance coverage or the cost thereof.

(e) In the event that Tenant receives notice that any insurance or bonds are to be or have been cancelled or non-renewed, Tenant shall immediately notify City, in writing, of this threatened cancellation or non-renewal. If Tenant does not provide to the Director satisfactory written certification of renewed or replacement insurance or bonds within five (5) business days of the receipt (if delivered) or mailing date of the aforementioned written notice to City, then City shall have the right to (i) obtain the required insurance or bonds on behalf of Tenant and to deduct the premiums from the Revenue Account, and/or (ii) solely at the City's option, terminate this Lease.

18. DESTRUCTION

18.1 Destruction Due to Risk Covered by Insurance. If, during the term of this Lease, the Premises are totally or partially destroyed from a risk required to be covered by the insurance described in Section 17, rendering the Premises totally or partially inaccessible or unusable, Tenant shall apply the proceeds of such insurance as instructed in writing by City.

18.2 Destruction Due to Risk Not Covered by Insurance. If, during the term of this Lease, the Premises are totally or partially destroyed from a risk not required to be covered by the insurance described in Section 17, rendering the Premises totally or partially inaccessible or unusable, Tenant shall, to the extent feasible, continue to operate the Premises in substantially the same manner as they were being operated immediately before destruction. Such destruction, in and of itself, shall not terminate this

Lease; provided, City shall have the right to terminate this Lease following and damage or destruction, at City's sole discretion, by delivering to Tenant written notice of termination which shall take effect on the date set forth in the notice.

18.3 Waiver. City and Tenant intend that the provisions of this Section 18 govern fully in the event of any damage or destruction and accordingly, City and Tenant each hereby waives the provisions of Section 1932, subdivision 2 and Section 1933, subdivision 4, of the Civil Code of California or of any similar law, statute or ordinance now or hereafter in affect.

19. EMINENT DOMAIN

19.1 Definitions.

"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.

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

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

"Improvements Pertaining to the Realty" means machinery or equipment installed for use on the Site 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 property in place considered as part of the realty should be compared with its value if it were removed and sold.

19.2 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 Premises 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.

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

19.4 Partial Taking; Election to Terminate. If there is a Taking of any portion (but less than all) of the Premises, then this Lease shall terminate in its entirety under either of the following circumstances: (i) if all of the following exist: (A) the partial Taking renders the remaining portion of the Premises untenable or unsuitable for continued use by Tenant, (B) the condition rendering the Premises untenable or unsuitable either is not curable or is curable but City is unwilling or unable to cure such condition, and (C) Tenant elects to terminate; or (ii) if City elects to terminate; provided,

however, that this Lease shall not terminate if Tenant agrees to, and does, pay full Rent and Additional Charges, without abatement, and otherwise agrees to, and does, fully perform all of its obligations hereunder.

If there is a partial Taking of a substantial portion of the Premises but not the Site, City shall have the right to terminate this Lease in its entirety.

Either party electing to terminate under the provisions of this Section 19 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.

19.5 Compensation. If, during the term of this Lease there is any taking of all or any part of the Premises or any interest in this Lease by condemnation, all funds and other compensation received from such taking shall belong to the City, and Tenant shall have no right or interest in any such funds or proceeds.

20. ASSIGNMENT AND SUBLETTING

20.1 Assignment. 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 Premises or its leasehold estate hereunder (collectively, an "Assignment"), or permit or license any portion of the Premises to be used or occupied by anyone other than itself, or sublet any portion of the Premises (collectively, "Sublease"), without City's prior written consent in each instance, which the City may withhold in its sole discretion. No assignment shall be effective unless the assignee shall execute an assumption agreement in form, scope and substance satisfactory to City, assuming all the obligations of Tenant hereunder. No subletting shall be effective unless the subtenant shall execute an agreement which provides that the sublease is subject and subordinate to the terms of this Lease. Retail subleases shall be further governed by the provisions of Section 6.2 and Exhibit B.

20.2 Consent. Consent to any assignment, subletting, mortgage or other encumbrance, shall not be deemed to constitute consent to any other attempted assignment, subletting; mortgage or other encumbrance.

20.3 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 or bond issue secured by the Premises (or revenues generated by the Premises), 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 Premises, or any part thereof, or City's interest therein, without the necessity of executing any instrument to effectuate such subordination; provided, however, upon 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 Landlord. 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 Subsection 20.3 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.

21. DEFAULT

21.1 **Tenant's Default.** The occurrence of any of the following shall constitute a default by Tenant:

(a) Abandonment and vacation of the Premises (failure to occupy and operate the Premises for five (5) consecutive days shall be deemed an abandonment and vacation).

(b) 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.

(c) Failure to abide by budget limits and obtain the Director's approval of expenditures that are not in the approved budget.

(d) Failure to ensure the security of revenues, failure to transmit revenues to the SFMTA or deposit revenues in accounts as required under this Lease, in failure to account accurately for revenues and expenditures, misappropriation of any funds, failure to put funds in the appropriate account, failure to adequately account for funds received or spent in any statement to the City,.

(e) Tenant's mismanagement of the Premises (as determined by City in its sole discretion), or Tenant's negligence, fraud, or misfeasance, or malfeasance (as determined by City in its sole discretion).

(f) Failure by Tenant to comply with any other covenant, condition or representation made under this Lease where 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;

(g) Failure of the Tenant to (i) qualify as a an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), or corresponding provisions of prior law, (ii) be exempt from federal income taxes under Section 501(a) of the Code, (iii) avoid qualification as a private foundation under Section 509(a) of the Code, or (iv) qualify as a nonprofit public benefit corporation pursuant to Section 5110 et seq. of the Corporation's Code of the State of California, or failure to maintain such tax-exempt status.

(h) Either: (1) the failure of Tenant to pay its debts as they become due, or the written admission of Tenant of its inability to pay its debts, or a general

assignment by Tenant for the benefit of creditors; or (2) the filing by Tenant of a petition in voluntary bankruptcy seeking reorganization, arrangement, liquidation, or other relief under any state or federal law relating to bankruptcy, insolvency, or reorganization or seeking or consenting to the appointment of a trustee, receiver, or liquidator of Tenant or of any substantial part of Tenant's assets; or (3) entry by a court of competent jurisdiction of an order, judgment or decree declaring Tenant an insolvent or adjudging Tenant a bankrupt, or appointing a trustee or receiver for Tenant or of the whole or any substantial part of the Premises, or approving a petition filed against Tenant seeking reorganization of Tenant under any applicable law or statute of the United States of America or any state thereof, if such order, judgment or decree shall not be vacated or set aside or stayed within sixty (60) days from the date of the entry thereof; or (4) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, unless such seizure is discharged within ten (10) days.

21.2 Notice. Notices given by the City under this Section 21 shall specify the alleged default and the applicable Lease provisions, and shall demand that Tenant perform the provisions of this Lease or pay the rent or other amount that is in arrears, as the case may be, within the applicable period of time, or quit the Premises. No such notice shall be deemed a forfeiture or a termination of this Lease unless City so elects in the notice.

21.3 City's Remedies. If Tenant commits a default, City shall have the following remedies, in addition to all other rights and remedies allowed by law, or in equity:

(a) The right to terminate this Lease for cause, in which event Tenant shall immediately surrender possession of the Premises and pay to City all amounts held in any accounts established by this Lease, all other amounts constituting Gross Revenues, Parking Taxes, or Tenant's Costs and other amounts payable by Tenant under this Lease to the date of such termination.

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

(c) The rights and remedies provided by California Civil Code Section 1951.4 (continuation of Lease after breach and abandonment), allowing City to continue this Lease in effect and to enforce all its rights and remedies under this Lease, including the right to recover rent and other amounts as it becomes due, for so long as City does not terminate Tenant's right to possession, if Tenant has the right to sublet or assign, subject only to reasonable limitations. For purposes hereof, none of the following shall constitute a termination of Tenant's right of possession: acts of maintenance or preservation; efforts to relet the Premises or the appointment of a receiver upon City's initiative to protect its interest under this Lease; or withholding consent to an assignment or sublease, or terminating an assignment or sublease, if the withholding or termination does not violate the rights of Tenant specified in subdivision (b) of California Civil Code Section 1951.4. If City exercises its remedy under California Civil Code Section 1951.4,

City may from time to time sublet the Premises or any part thereof for such term or terms (which may extend beyond the term) and at such rent and upon such other terms as City may in its sole discretion deem advisable, with the right to make alterations and repairs to the Premises. Upon each such subletting, Tenant shall be liable for rent and other amounts due hereunder, as well as the cost of such subletting and such alterations and repairs incurred by City and the amount, if any, by which rent and other amounts owing hereunder for the period of such subletting (to the extent such period does not exceed the Term) exceeds the amount to be paid as rent and other amounts for the Premises for such period pursuant to such subletting. No action taken by City pursuant to this subsection shall be deemed a waiver of any default by Tenant, and City may at any time elect to terminate this Lease for such previous default.

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

21.4 Waivers. 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 Law to redeem the Premises or to continue this Lease after being dispossessed or ejected from the Premises. Tenant further waives all claims for damages that may be caused by City's re-entering and taking possession of the Premises or removing and storing Tenant's personal property pursuant to this Section 21, 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.

21.5 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 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's obligations under this Section shall survive the termination of this Lease.

22. CITY'S ENTRY ON PREMISES

(a) City and its authorized representatives shall have the right to enter the Premises at any time for any of the following purposes:

(1) To determine whether the Premises are in good condition and whether Tenant is complying with its obligations under this Lease.

(2) To observe the operations of the Premises.

(3) To do any necessary maintenance and to make any restoration to the Premises that City has the right or obligation to perform.

(4) To serve, post, or keep posted any notices required or allowed under the provisions of this Lease.

(5) To shore the foundations, footings, and walls of the Premises and to erect scaffolding and protective barricades around and about

the Premises, but not so as to prevent entry to the Premises, and to do any other act or thing necessary for the safety or preservation of the Premises if any excavation or other construction is undertaken or is about to be undertaken on any adjacent property or nearby street.

(b) City may enter the Premises at any time, without notice, in the event of an emergency. City shall have the right to use any and all means which City may deem proper to open the doors in an emergency in order to obtain entry to the Premises. Any entry to the Premises by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of the Premises, or an eviction of Tenant from the Premises or any portion of them.

(c) City shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of City's entry on the Premises as provided in this Section 22, except damage to Tenant's property (if any) resulting from the gross negligence or willful misconduct of City or its authorized representatives.

(d) City shall use reasonable efforts to conduct its activities on the Premises as allowed in this Section 22 in a manner that will cause the least possible inconvenience, annoyance, or disturbance to Tenant and any approved subtenants.

(e) Tenant shall not alter any lock or install any new or additional locking devices without the prior written consent of City. City shall at all times have a key with which to unlock all locks installed in the Premises (excluding Tenant's vaults, safes or special security areas, if any, designated by Tenant in writing to City).

23. CERTIFICATES

23.1 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 Premises, (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 and Additional Charges have been paid, and (g) any other information that may be required.

23.2 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 and Additional Charges have been paid, and (e) any other information that may be required.

24. COMPLIANCE WITH LAWS

24.1. Laws and Regulations.

(a) The terms and provisions of this Lease shall be governed by and be subject to the provisions of the Charter and Administrative Code of the City and County of San Francisco, as now existing or hereafter amended. Tenant, as a pre-approved Operating Expense or Capital Improvement cost, shall comply with all laws, judicial decisions, orders and regulations of federal, state, county and municipal governments and the departments, courts, commissions, boards and officers thereof pertaining to Tenant's use and occupation of the Premises in effect either at the time of execution of this Lease or at any time during the term and whether or not within the present contemplation of the parties.

(b) Tenant further understands and agrees that it is Tenant's obligation, as a pre-approved Operating Expense or Capital Improvement cost, to cause the Premises and Tenant's uses thereof to be conducted in compliance with the Americans With Disabilities Act, 42 U.S.C.A. §§ 12101 et seq. Any alteration or capital improvements made by or on behalf of Tenant pursuant to the provisions of this Section shall comply with the provisions of Section 10 of this Lease. The parties acknowledge and agree that Tenant's obligation to comply with all laws as provided herein is a material part of the bargained for consideration under this Lease. Tenant's obligation under this Section 24.1 shall include, without limitation, the responsibility of Tenant to make substantial or structural repairs and Alterations or Capital Improvements to the Premises, regardless of, among other factors, the relationship of the cost of curative action to the rent under this Lease, the length of the then remaining term hereof, the relative benefit of the repairs to Tenant or City, the degree to which the curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular law involved, and whether the law involved is related to Tenant's particular use of the Premises.

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

(d) Tenant understands and agrees that Tenant's use of the Premises and construction of Alterations and Capital Improvements may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Tenant shall be solely responsible for obtaining any and all such regulatory approvals. Tenant shall not seek any regulatory approval without first obtaining the express written consent of City under this Lease. Tenant shall bear all costs, as a Tenant Cost, associated with applying for and obtaining such regulatory approvals and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. All costs associated with applying for and obtaining any necessary or appropriate regulatory approval shall be deemed Tenant Costs. Tenant shall Indemnify City and the other Indemnified Parties hereunder against

all losses arising in connection with Tenant's failure to obtain or comply with the terms and conditions of any regulatory approval.

24.2 Non Discrimination in City Contracts and Benefits Ordinance

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

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

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

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

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

may be assessed against Tenant and/or deducted from any payments due Tenant. Such penalty shall be a Tenant Cost.

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

24.4 Tropical Hardwood and Virgin Redwood Ban. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Tenant shall not provide any items to the construction of tenant improvements or 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.

24.5 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 or the board on which that City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. 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 prospective party to the contract; each member of Tenant's board of directors, chairperson, 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 the each person, entity or committee described above.

24.6 Pesticide Prohibition. Tenant shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Tenant to submit to the SFMTA an integrated pest management ("IPM") plan

that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the terms of this Lease, (b) describes the steps Tenant will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance and (c) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. In addition, Tenant shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

Nothing herein shall prevent Tenant, through the SFMTA, from seeking a determination from the Commission on the Environment that Tenant is exempt from complying with certain portions of the Pesticide Ordinance as provided in Section 307 thereof.

24.7 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. Willful failure by Tenant to make such disclosure, if any, shall constitute grounds for the City's termination and cancellation of this Lease.

24.8 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 premises. Tenant agrees that any violation of this prohibition by Tenant, its Agents or assigns shall be deemed a material breach of this Lease.

24.9 First Source Hiring Plan. Tenant shall comply with the provisions of Chapter 83 of the San Francisco Administrative Code (the "First Source Hiring Program") which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry level positions. Within thirty (30) days after the SFMTA adopts a First Source Hiring Implementation and Monitoring Plan in accordance with the First Source Hiring Program, Tenant shall enter into a First Source Hiring Agreement meeting applicable requirements of Section 83.9 of the First Source Hiring Ordinance.

24.10 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) [Fifty Thousand Dollars (\$50,000) for nonprofits], but Tenant later enters into an agreement or agreements that cause Tenant's aggregate amount of all agreements with City to reach 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.

24.11 Wages and Working Conditions. Tenant agrees that any person performing labor in the construction of the tenant improvements and any Alterations or Capital Improvements to the Premises, which Tenant provides under this Lease, shall be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the San Francisco Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California. Tenant shall include in any contract for construction of such tenant improvements and Alterations or Capital Improvements 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 labor in the construction of such Tenant Improvement Work or any Alterations or Capital Improvements to the Premises.

24.12 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.

25. Environmental Requirements and Hazardous Materials

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

"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.

"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.

"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 Site 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.

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

25.2 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 Site, or transported to or from the Site, with the sole exception that Tenant may keep and use such substances in the Premises 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 Article 10 of this Lease that disturb or remove lead-based or presumed lead-based paint from the exterior or interior surfaces of the Premises, 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 Premises, or Site 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 Premises or Site relating to any loss or injury resulting from any Hazardous Materials; (c) any Release of Hazardous Material on or about the Premises or any other part of the Site 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.

25.3 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 Premises or any other part of the Site in violation of any applicable Environmental Laws, including but not limited to Chapter 36 of the San Francisco Building Code, 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 Premises or the Site, the loss or restriction of the use of rentable or usable space or of any amenity of the Premises or the Site 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 Site to its prior condition, fines

and penalties assessed for the violation of any applicable Environmental Laws, including but not limited to Chapter 36 of the San Francisco Building Code, 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 Premises or any other part of the Site, Tenant shall immediately and at no expense to City take any and all appropriate actions to return the Premises or the Site 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.

25.4 Survival of Obligation. Tenant's obligations under this Section 25 shall survive the Expiration Date or other termination of this Lease.

25.5 Hazardous Substance Disclosure. California law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Tenant is hereby advised that occupation of the Premises may lead to exposure to Hazardous Materials such as, but not limited to, gasoline, diesel and other vehicle fluids, vehicle exhaust, office maintenance fluids, tobacco smoke, methane and building materials containing chemicals, such as formaldehyde. Further, there are or are likely to be Hazardous Materials located on the Premises, including but not limited to copies of which have been delivered to or made available to Tenant. By execution of this Lease, Tenant acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Section 25359.7 and related statutes.

25.6 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.

25.7 Food Service Waste Reduction. Tenant agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Lease as though fully set forth herein. This provision is a material term of this Lease. By entering into this Lease, Tenant agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine. Without limiting City's other rights and remedies, Tenant agrees that the sum of One Hundred Dollars (\$100.00) liquidated damages for the first breach, Two Hundred Dollars (\$200.00) liquidated damages for the second breach in the same year, and Five Hundred Dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Lease was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's failure to comply with this provision.

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 Premises, or (ii) at the Premises if sent on or subsequent to Tenant's taking possession of the Premises, or (iii) at any place where Tenant or any Agent of Tenant may be found if sent subsequent to Tenant's vacating, abandoning or surrendering the Premises; or (b) City, at City's address set forth in the Basic Lease Information; or (c) to such other address as either City or Tenant may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days 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 email to the email address 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 or Additional Charges during the continuance of any such breach, and no acceptance of the keys to or possession of the Premises 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, 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, or his or her designee; provided, however, material amendments or modifications to this Lease (i) changing the legal description of the Premises, (ii) increasing the Term, (iii) increasing the Rent, (iv) changing the general use of the Premises 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 SFMTA Board of Directors and, where applicable, the City's Board of Supervisors.

26.4 Tenant's 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 unless otherwise provided in this Lease, subject to applicable law.

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

26.7 Brokers. Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the Lease contemplated 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.

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

governed by and subject to the provisions of the Charter of the City and County of San Francisco and applicable City ordinances and SFMTA regulations.

26.9 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.

26.10 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.

26.11 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.

26.12 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.

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

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

26.15 Intentionally Omitted

26.16 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.

26.17 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.

26.18 Exercise Of City's Rights. All rights, powers and privileges of City under this Lease, except as otherwise specified in this Lease, may be exercised, on behalf of City, by the Director, or his or her designee, without the approval or consent of the SFMTA Board Directors, or any other board, commission or officer of the City and County of San Francisco, except when such approval or consent is expressly required by the Charter or an ordinance of the City and County of San Francisco, this Lease or by other applicable law. Any designee of the Director must be specified in writing. Copies of such written designation shall be kept on file by the Director.

26.19 Successors. The terms, covenants and conditions contained in this Lease shall be binding on an inure to the benefit of the parties and their successors, except as provided in Section 20.

26.20 Status Of Parties On Termination. If a party elects to terminate this Lease as allowed herein, the parties shall be released from further liabilities and obligations on the date the Lease terminates provided, however that the Tenant may expend funds from the Capital Account to pay for the cost of any winding up or dissolution of the Tenant.

26.21 Surrender Of Premises; Quitclaim Deed. Upon the expiration date or other termination of the Term of this Lease, Tenant shall peaceably quit and surrender to City the Premises together with the Alterations or Capital Improvements approved by City in good order and condition, except for normal wear and tear after Tenant's having made the last necessary repair required on its part under this Lease, and further except for any portion of the Premises condemned and any damage and destruction for which Tenant is not responsible hereunder. The Premises 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. Notwithstanding anything to the contrary in this Lease, City can elect at any time prior to the expiration date of this Lease 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 Alterations or Capital Improvements, or equipment constructed or installed by or at the expense of Tenant. Tenant shall promptly remove such items and shall repair any damage to the Premises resulting from such removal. Such removal and repair shall be considered a Tenant Cost. Tenant's obligations under this Subsection 26.21 shall survive the expiration date or other termination of this Lease.

Tenant shall make an inventory of all its personal property and shall surrender to City all such personal property within the time periods stated in this Subsection 26.21.

Concurrently with the surrender of the Premises, Tenant shall, if requested by City, execute, acknowledge and deliver to City a quitclaim deed to the Premises 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 Alterations or Capital Improvements or equipment which remain part of the Premises. The terms of this Section shall survive the expiration or sooner termination of this Lease.

Upon the expiration or earlier termination of this Lease all funds in the accounts shall be transferred to City or City's designee.

27. INTERPRETATION OF LEASE

27.1 **Effective Date.** This Lease shall become effective on the later of (1) the date upon which SFMTA Board of Directors, and if applicable, the City's Board of Supervisors, in its (their) sole and absolute discretion, adopt a resolution approving this Lease in accordance with all applicable laws (ii) the date this Lease is duly executed and delivered by the parties hereto.

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

27.3 **Authority.** If Tenant signs as a corporation, 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.

27.4 **Interpretation of Certain Phrases and Terms.** The words "City" and "Tenant" as used herein shall include the plural as well as the singular. 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. When required by the context of this Lease, the singular shall include the plural.

27.5 **Captions and Subheadings.** 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.

27.6 **Arm's Length Transaction.** 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. Neither 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 the SFMTA's Board of Directors (and if required the San Francisco 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 the SFMTA Board of Directors (or the Board of Supervisors, if required) do not approve this Lease, in its/their sole discretion. Approval of this Lease by the director shall not be deemed to imply that such resolution will be enacted, nor will any such approval create any binding obligations on City.

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

27.8 Entire Agreement. This instrument, including the exhibits hereto, which are made apart 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 Premises, the Site 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.

27.9 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.

27.10 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.

27.11 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.

27.12 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.

27.13 Provisions are Covenants and Conditions. All provisions, whether covenants or conditions, on the part of Tenant shall be deemed to be both covenants and conditions.

27.14 Joint and Several Obligations. The term "party" shall mean City or Tenant; and if more than one person or entity is City or Tenant, the obligations imposed on that party shall be joint and several.

27.15 Counterparts. This Lease may be executed in two or more counter parts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.
Remainder of this page intentionally left blank

IN WITNESS WHEREOF, City and Tenant have executed this Lease as of

_____.


CITY	LESSEE GARAGE CORPORATION
Recommended:	
<hr/> Amit M. Kothari Director of Off-Street Parking San Francisco Municipal Transportation Agency	<hr/> Sidney Goodwill President City of San Francisco Uptown Parking Corporation
Approved:	
<hr/> Edward D. Reiskin Director of Transportation	
Authorized by:	
MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS	
Resolution No: _____	
Adopted: _____	
Attest: _____	
Approved as to form:	
Dennis J. Herrera City Attorney	
 11-30-2012	
Robert K. Stone Deputy City Attorney	

EXHIBIT A

Premises

For and in consideration of the agreements, conditions and terms of this Lease to be performed by Lessee, City hereby leases to Lessee and Lessee hereby hires and takes from City the real property or Site commonly known as the Sutter Stockton Garage in the City and County of San Francisco, State of California, described as follows:

BEGINNING at the point of intersection of the northerly line of Sutter Street with the easterly line of Stockton Street; running thence easterly along said line of Sutter Street 275 feet; thence at a right angle northerly 126 feet to the southerly line of Harlan Place; thence at a right angle westerly along said line of Harlan Place 23 feet and 1-3/8 inches to a point distant thereon 130 feet and 10-5/8 inches westerly from the westerly line of Grant Avenue; thence northerly at a right angle to said line of Harlan Place 23 feet to the northerly line of said Harlan Place; thence continuing northerly 58 feet and 0-1/2 of an inch to a point which is perpendicularly distant 130 feet and 8-1/8 inches westerly from the westerly line of Grant Avenue and also perpendicularly distant 67 feet and 11-1/2 inches southerly from the southerly line of Bush Street; thence easterly parallel with said southerly line of Bush Street 23 feet and 2-1/8 inches; thence at a right angle northerly 67 feet and a 11-1/2 inches to the southerly line of Bush Street; thence at a right angle westerly along said line of Bush Street 137 feet and 6 inches to a point distant thereon 137 feet and 6 inches easterly from the easterly line of Stockton Street; thence southerly at a right angle to said line of Bush Street 137 feet and 6 inches; thence at a right angle westerly 137 feet and 6 inches to the easterly line of Stockton Street; thence at a right angle southerly along said line of Stockton Street 137 feet and 6 inches to the point of beginning.

EXHIBIT B

Standard Commercial Real Estate Business Terms

All subleasing terms listed below shall be considered by tenant when negotiating use of commercial space within the Premises. The SFMTA reserves the right to approve, disapprove, alter or re-negotiate any and all terms or portions thereof.

1. Lessee
2. Lease Term
3. Rent (base and percentage)
4. Escalation
5. Renewal Options
6. Rent Credits and Allowances
7. Tenant Improvements (TI's)
8. Insurance
 - a) Worker's Compensation
 - b) Commercial General Liability
 - c) Business Automobile Liability
 - d) Professional Liability, if applicable
9. Utilities
10. Broker Fees
11. Appraisal Fees
12. Fair Market Value Appraisal
13. Late Charges
14. Remedies in the Event of Default

Additional business terms for cellular phone sites:

1. Interference
2. Second-tier Sublease Rent

SUTTER-STOCKTON PUBLIC PARKING SAN FRANCISCO 2, CALIFORNIA
LEASE

THIS INDENTURE, made this 5th day of May, 1959, by and between the CITY AND COUNTY OF SAN FRANCISCO, a California municipal corporation, hereinafter referred to as "City," first party and Lessor, and CITY OF SAN FRANCISCO UPTOWN PARKING CORPORATION, a California non-profit corporation, hereinafter referred to as "Lessee," second party,

W I T N E S S E T H :

WHEREAS:

1. The Parking Authority of the City and County of San Francisco, hereinafter referred to as "Authority," after careful investigation and study, and upon the basis of competent economic and engineering advice, adopted its Resolution No. 172 on January 23, 1957, finding and determining that additional off-street public parking facilities are needed immediately and are justified and should be located on the site hereinafter described, resolving and recommending that the Board of Supervisors of the City, hereinafter referred to as "Board," designate said site for a public parking facility, which site and use thereof were approved by City Planning Commission on March 1, 1956, as being in conformity with the Master Plan;

2. Board adopted its Resolution No. 18371 (Series of 1939) approved on October 16, 1957, finding and determining that said site is necessary and convenient for the use of the people of the City and should be acquired forthwith for a public parking site by City, approving and designating said site as a public off-street parking site, and requesting said Authority to submit a Joint Working Agreement to said Board setting forth the

acquisition of said site and the use thereof as a public off-street parking facility;

3. Said Authority on January 23, 1957, adopted its Resolution No. 174 approving a form of Joint Working Agreement for execution by itself and City, and said Board acting for City, on October 14, 1957, adopted its Resolution No. 18372 (Series of 1939) approving said form of Joint Working Agreement which was thereafter executed by said parties thereon on October 16, 1957, copies of which Agreement are on file with the Clerk of said Board and the Secretary of said Authority;

4. City will, on or about the date of completion of the construction of said facility, be the beneficial owner of all of the issued and outstanding shares of the capital stock of CITY OF SAN FRANCISCO UPTOWN PARKING CORPORATION, a California corporation (herein referred to as the "Corporation"), which stock will be held in trust for City by CROCKER-ANGLO NATIONAL BANK, a national banking association (herein referred to as the "Bank") pursuant to a Declaration of Trust, dated as of April 30, 1959, to be executed by Bank, concurrently with the vesting of ownership of said shares in Bank as Trustee in trust for the City;

5. Pursuant to assistance rendered to City by Corporation under the provisions of Section 32809 of the Streets and Highways Code of the State of California and an Agreement dated December 19, 1957, between City and Corporation, Corporation agreed, at its own cost and expense, to construct or cause said facility to be constructed in accordance with the drawings and specifications and Corporation has financed or will finance all or substantially all of the cost of construction of said facility by one or more loans to it which are or will be evidenced by one or more Construction Finance Note(s) of Corporation;

agree to pay all amounts payable by Corporation upon the indebtedness evidenced by each Construction Finance Note of Corporation, together with interest thereon, in accordance with the terms thereof and to execute a Deed or Deeds of Trust encumbering the Lessee's interest in this Lease as security for the payment of the indebtedness evidenced by each Construction Finance Note of Corporation, together with the interest thereon, in accordance with the terms thereof, designated by Corporation to be so secured;

7. Pursuant to said Agreement, all of the right, title and interest of the Lessee in and to the demised premises is subject to such subleases as have heretofore been made or may from time to time hereafter be made and entered into by Corporation of all areas within said facility which are incidental to the use thereof for public parking, including all thereof not immediately designed for off-street parking purposes, and the Lessee shall by this lease assume and agree to perform all of the obligations on the part of the Sublessor to be kept and performed under all such subleases of such areas so made by Corporation;

8. Corporation has heretofore or may hereafter cause facilities or improvements to be installed within said facility by any supplier of products therefor and/or may cause such supplier to participate in the financing of such facility and should such facilities be installed or financing be effected pursuant to arrangements between Corporation and such supplier, then all of the right, title and interest of the Lessee in and to said facility shall be subject to any Facilities Lease and/or contract for the purchase of supplies made by Corporation and such supplier and the Lessee hereof shall by the execution of this Lease assume and agree to perform all of the obligations of Corporation thereunder;

called for bids for the Lease and operation of said facility, which have been received by City, and an award has been made to Lessee, as the highest and best responsible and qualified bidder;

10. The following terms, when used in this Lease, are defined terms, used only as defined, and shall have the following respective meanings, viz:

The term "acceleration" means the exercise by the holder(s) of any Construction Finance Note of any option or election of such holder(s) under the terms of said Note or any Deed of Trust securing the payment of such Note to cause the principal indebtedness evidenced by such Note to become wholly due and payable prior to the time originally stated in such Note for the payment of such indebtedness.

The term "management expense" means and includes all administrative, general and managerial expenses incurred by Lessee and all salaries and other compensation payable to all officers, directors, stockholders and managerial employees of Lessee or any member of their respective families.

The term "Construction Finance Note" means and includes each promissory note(s), Bond(s), Debenture(s), or other evidence(s) of indebtedness which Corporation has executed or will execute in substantially the form and containing substantially the terms and provisions of each promissory note(s), Bond(s), Debenture(s) or other evidence(s) of indebtedness set forth or referred to in Exhibit A attached hereto or which may hereafter be issued by Corporation to evidence indebtedness which the Corporation has incurred or will incur to finance the cost of construction of said facility (as defined in said Agreement between City and Corporation) or refinance or pay in whole or in part any loan made to Corporation for such purpose.

The term "Deed of Trust" means and includes a deed of trust, mortgage, chattel mortgage, assignment of rents, or any or all of them.

The term "drawings and specifications" mean and refer to the drawings and specifications incorporated in said Agreement between the City and Corporation as Exhibit A thereto (together with all supplemental drawings and specifications therefor) which are now on file in the office of the Parking Authority of City.

Deed of Trust, including counsel fees, with respect to the foreclosure of such Deed of Trust, all sums expended or advanced by the Trustee or Beneficiary of such Deed of Trust prior to such foreclosure in accordance with the terms and provisions of such Deed of Trust, together with interest accrued thereon, which are secured by such Deed of Trust in accordance with its terms, and which shall not prior to such foreclosure have been repaid to the Trustee or Beneficiary of such Deed of Trust.

The term "foreclosure" means the vesting by foreclosure sale or Trustee's sale pursuant to the terms of any Deed of Trust in any person, firm or corporation (including but not limited to the Beneficiary of said Deed of Trust) of title to the Lessee's interest in this Lease.

The term "year" means that period commencing on January 1 and ending on December 31 of each calendar year except that if the term shall commence on any date other than January 1, then the first year shall mean the period commencing on the date possession is delivered and ending on the December 31st next succeeding and that the last year shall end at the end of said term.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

1. EXTENT OF LEASEHOLD.

For and in consideration of the agreements, conditions and terms of this Lease to be performed by Lessee, City hereby leases to Lessee and Lessee hereby hires and takes from City the real property in the City and County of San Francisco, State of California, described as follows:

BEGINNING at the point of intersection of the northerly line of Sutter Street with the easterly line of Stockton Street; running thence easterly along said line of Sutter Street 275 feet; thence at a right angle northerly 126 feet to the southerly line of Harlan Place; thence at a right angle westerly along said line of Harlan Place 23 feet and $1\text{-}\frac{3}{8}$ inches to a point distant thereon 130 feet and $10\text{-}\frac{5}{8}$ inches westerly from the westerly line of Grant Avenue; thence northerly at a right angle to said line of Harlan Place 23 feet to the northerly line of said Harlan Place; thence continuing northerly 58 feet and $0\text{-}\frac{1}{2}$ of an inch to a point which is perpendicularly distant 130 feet and $8\text{-}\frac{1}{8}$ inches westerly from the westerly line of Grant Avenue and

Bush Street 23 feet and 2-1/8 inches; thence at a right angle northerly 67 feet and 1-1/2 inches to the southerly line of Bush Street; thence at a right angle westerly along said line of Bush Street 137 feet and 6 inches to a point distant thereon 137 feet and 6 inches easterly from the easterly line of Stockton Street; thence southerly at a right angle to said line of Bush Street 137 feet and 6 inches; thence at a right angle westerly 137 feet and 6 inches to the easterly line of Stockton Street; thence at a right angle southerly along said line of Stockton Street 137 feet and 6 inches to the point of beginning.

together with any and all improvements now (or hereafter during the term) located upon said real property (said real property and all such improvements being herein referred to as the "demised premises"). Subject, however, to such subleases which Corporation has heretofore made or may hereafter make and enter into of all areas within the demised premises which are incidental to the use thereof for public off-street parking purposes, including all thereof not immediately designed for off-street parking purposes, and any lease of facilities and/or contract with any supplier of products which the Corporation has heretofore made or may hereafter make and enter into with any such supplier of products in exchange for the installation by any such supplier of improvements to the demised premises and/or the participation by such supplier in the financing of the construction of the demised premises.

2. TERM.

The term of this Lease shall be for the period of fifty (50) years from the date hereof, subject to prior termination as hereinafter provided in the event of default by Lessee, by mutual written consent or as provided in Paragraph 26 below.

3. PAYMENTS BY LESSEE FOR CITY'S ACCOUNT.

The Lessee agrees to pay to the Bank for the account of City for and on account of each year during the term

a sum equal to One Hundred Percent (100%) of an amount equal to (a) the gross receipts during such year less (b) the total of all amounts to be disbursed by Bank during such year pursuant to Subparagraphs (a), (b), (c) and (d) of Paragraph 4 of this Lease. All such payments shall be made by Lessee in lawful money of the United States of America, free from all claims, demands or set-offs against City of any kind or character whatsoever.

Any dispute with respect to the amount so payable by Lessee for and on account of any such year shall be submitted to and determined by the then City Controller whose determination shall be final.

The Lessee shall prepare or cause to be prepared prior to the commencement of the operation of said facility as a public garage a budget setting forth in reasonable detail the contemplated expenditures to be incurred in the operation of said facility during the first period of approximately twelve (12) months in which said facility will be operated and shall annually thereafter prepare a similar budget for each succeeding twelve (12) months' period. Two copies of each such budget shall be filed with the City Controller of the City and one copy of each such budget shall be filed with the Trustee under any Indenture securing any of the Construction Finance Notes referred to in Exhibit A. Such City Controller shall review the budget and make such recommendations with respect thereto as he may deem advisable and deliver a copy thereof to the Lessee and to the Trustee under any such Indenture. Each such budget shall be changed to conform to any recommendations of the City Controller and the Lessee shall conform to each such budget with such changes, if any, as shall have been recommended therein by the City Controller.

calendar month, render to City a correct, detailed and complete statement in writing on a form prescribed by the City Controller, showing all gross receipts in, on, about or from the demised premises during such month. Such statement shall be signed and verified under oath and forwarded to said Controller by United States mail.

The term "gross receipts" as used herein includes but is not limited to:

(1) The gross revenues received by or for the Lessee or any other person, firm or corporation from the operation of the demised premises for the parking of any vehicle therein or as a public facility;

(2) The selling price of all merchandise or other personal property of every description sold in, on, about or from the garage portions of the demised premises in the ordinary course of business by or for the Lessee or any other person, firm or corporation; provided, however, that the selling price of all such merchandise returned by the customer, after purchase, and accepted by the seller thereof so that the sale of such merchandise to such customer is canceled, shall be excluded; provided, further, that with respect to sales of cigarettes, coca cola, candy and similar items by vending machines only a sum equal to the amount paid to or for the Lessee or any other person, firm or corporation operating said facility or any part thereof, for and on account of such sales shall be included in gross receipts;

(3) All charges of any character made by or for the account of Lessee or any other person, firm or corporation for the rendition of any services or work of any kind in connection with any business conducted in, on, about or from the garage portions of the premises;

customers in connection with any business of Lessee or any other person, firm or corporation, in, on, about or from the garage portions of the premises;

(5) All orders accepted by or for Lessee or any other person, firm or corporation in, on, about or from the garage portions of the premises, but to be executed or filled for work to be performed at any other place, and all orders which are accepted at any other place but are to be executed or filled or the work to be performed by or for Lessee or any other person, firm or corporation in, on, about or from the garage portions of the premises; and

(6) All rents or other things of value paid to or to the order of the Lessee by any person, firm or corporation for or on account of the right to use any portion of the demised premises for uses incidental to public parking, whether by sublease, license or other arrangement, which rents shall be paid by each sublessee, licensee, or other occupant directly to the Bank.

There shall be excluded from the term "gross receipts" the selling price of all merchandise and all charges for services rendered in, on or from all areas within said facility which are incidental to public parking (including all thereof subleased by corporation) in the manner permitted by this Lease. The term "garage portions of the demised premises," for purposes of this paragraph, means the whole of the demised premises except such areas therein which are incidental to public parking and are not in fact used for the parking of vehicles or as a garage.

4. LESSEE'S PAYMENT OF AND SECURITY FOR EACH CONSTRUCTION FINANCE NOTE OF CORPORATION:

The Lessee agrees:

upon the indebtedness evidenced by such Construction Finance Note, together with the interest thereon, in accordance with the terms thereof;

(ii) On demand of any such holder concurrently with or after the execution of any such Note, to execute and deliver to such holder an instrument in writing and in form satisfactory to such holder stating that the Lessee has, by the execution of this Lease, agreed to pay all such amounts so payable upon the indebtedness evidenced by any such Construction Finance Note which shall set forth therein a copy of such Note;

(iii) To execute and acknowledge, as Trustor, a Deed or Deeds of Trust in such order of priority as may be designated by Corporation, each of which shall be substantially the form attached hereto as Exhibit B granting and assigning to the Trustee thereof, in trust, the Lessee's interest in this Lease as security for the payment of the indebtedness evidenced by each Construction Finance Note of the Corporation, together with the interest thereon, according to the terms thereof, designated by Corporation to be secured by and stated in such Deed of Trust to be secured and all other obligations secured by said Deed of Trust;

(iv) Not to cancel this Lease or amend, modify or alter any of its terms hereof without the written consent of Corporation and the holder(s) of each such Construction Finance Note; and

(v) To assume and perform all of the obligations of the Corporation under all subleases which the Corporation has heretofore made or may hereafter make and enter into of all space within the demised premises of areas incidental to off-street parking purposes (including all thereof not immediately designed for public parking) and under any facilities lease and/or contract for the purchase of supplies which the Corporation has made or may hereinafter make in exchange for the installation by such supplier of facilities in the demised premises and/or its participation in the financing of such facility;

provided, however, that after the foreclosure of any such Deed of Trust, any person, firm, or corporation (including but not limited to the Beneficiary of said Deed of Trust) who shall acquire title to the Lessee's interest in this Lease through such foreclosure shall have no personal liability for the payment of the indebtedness evidenced by any such Construction Finance Note and shall be obligated to pay such indebtedness solely from the gross receipts deposited with and to be disbursed by the Bank in accordance with this Paragraph 4 of this Lease. Each such Deed of Trust shall be executed in such order of priority and to such Trustee

holder(s) of each Construction Finance Note so designated by the Corporation to be secured thereby, as Beneficiary.

The Lessee's agreements in this Paragraph 4 are agreements with and enforceable by Lessor and made for the express benefit of and shall be directly enforceable by Corporation and the holder(s) of each such Construction Finance Note. Lessee shall not have any right of reimbursement or subrogation from or against the Corporation on account of any payments or obligations to be made or performed by Lessee pursuant to this Paragraph 4. If the Lessee should fail to execute any such Deed of Trust, then City at any time prior to the recordation in the Office of the Recorder of the City of such a Deed of Trust constituting an encumbrance upon the Lessee's interest in this Lease as security for the payment of any Construction Finance Note(s) of the Corporation stated to be secured thereby, may, at its option, terminate this Lease by written notice given to Lessee to that effect in which event the term of this Lease shall terminate on the giving of such notice.

The Lessee agrees to pay all gross receipts within one (1) business day after the receipt thereof to the Bank which is hereby irrevocably authorized and directed to disburse therefrom as of any particular time the following sums in the following order of priority at such time, to-wit:

(a) All amounts then payable by Corporation upon the indebtedness evidenced by each Construction Finance Note of Corporation, together with the interest thereon, in accordance with the terms thereof, which amounts shall, notwithstanding any foreclosure of any Deed of Trust securing the payment of the indebtedness evidenced by any such Note or the acceleration of such indebtedness remain nevertheless in all respects the same after any such foreclosure or acceleration as if no such foreclosure or acceleration had occurred.

All such amounts shall be disbursed first to the holder(s) of any such Note secured by a Deed of Trust constituting

in the order of priority of such Deed of Trust over any other Deed of Trust constituting such an encumbrance i.e., all amounts then so payable upon any Note(s) secured by a first Deed of Trust shall be paid prior to payment of any amount then so payable upon any Note(s) secured by a second Deed of Trust, and so on, until all amounts then so payable upon all such Notes which are so secured shall have been paid. After such amounts shall have been disbursed, all amounts then payable to the holder(s) of any such Note(s) which are unsecured shall be disbursed and, if there be more than one unsecured Note, prorated among the holders of all such Notes in the proportion which the unpaid balance of principal of each such unsecured Note bears to the total unpaid balance of principal of all such unsecured Notes.

In the event of the foreclosure of any such Deed of Trust, (i) such person, firm or corporation (including but not limited to the Beneficiary thereof) who shall acquire title to the Lessee's interest in this Lease through such foreclosure and his successors in interest shall thereafter be entitled to such amounts as would have been disbursed to the holder(s) of any Note secured by such Deed of Trust if such foreclosure had not occurred, (ii) the expenses of foreclosure of such Deed of Trust shall, for purposes hereof, become an amount payable upon the indebtedness evidenced by any Note secured by such Deed of Trust at the time of such foreclosure, and (iii) such foreclosure shall not otherwise affect the amounts to be so disbursed.

(b) To the Lessee, subject to examination, audit and approval by the City Controller, all normal and reasonable operating and maintenance expenses of the operation of the demised premises then payable or properly accrued in accordance with good accounting practice or payable within thirty (30) days thereafter, including but not limited to wages, and salaries, utilities, supplies, taxes, equipment rental, insurance, charges of Bank for acting hereunder, auditing fees, legal fees, and such other proper and necessary expenses that are customary in the operation of such a facility but, without otherwise limiting the generality of the foregoing, excluding therefrom

(1) all amounts payable by Lessee to Bank for the account of City pursuant to Paragraph 3 hereof;

(ii) any charge, allowance or expense for depreciation or amortization of the Lessee's interest in the demised premises or any other property, except personal property and equipment used in the operation of said garage and owned by the Lessee;

(iii) any interest;

(iv) any management expense; and

(v) any other expense not approved by the City Controller.

payable by it up to but not exceeding an amount equal to Ten Thousand Dollars (\$ 1,000.00) per year;

(d) To Corporation all necessary and reasonable operating expenses (other than amounts payable upon such Construction Finance Notes) approved by the City Controller incurred by it as a result of the assistance granted to City by Corporation in constructing or causing said facility to be constructed or performing its obligations under said Agreement with City and all taxes, if any, payable by it upon or with respect to said facility or the amounts to be paid under this Lease or said Agreement;

(e) To the Bank for the account of City all amounts payable by Lessee for and on account of any year under Paragraph 3 of this Lease; and

(f) To the Lessee any amount which shall remain, at the end of any year, after the disbursement of all amounts to be disbursed pursuant to the foregoing Subparagraphs (a) through (e), both inclusive, during such year.

All gross receipts so paid to the Bank shall be held by it in trust to be so disbursed. The Bank shall make all disbursements to be made pursuant to Subparagraphs (b) and (c) upon the basis of a certificate executed by the principal financial officer of Lessee and delivered to the Bank and shall make all disbursements to be made pursuant to Subparagraphs (a) and (d) upon the basis of a certificate executed by the principal financial officer of Corporation and delivered to the Bank; provided, however, that such certificates with respect to Subparagraphs (b) and (d) shall bear by endorsement thereon the approval of the Controller of the City or his duly authorized representative. Said disbursements shall be made by Bank on the basis of certificates certifying that such disbursements are then payable as hereinabove provided at any time held by Bank without regard to the foregoing provisions for priority of payments except with respect to such certificates as shall then be held by the Bank and the Bank

which held by it in accordance with the priorities hereinabove set forth to the extent of the funds then held by Bank. Bank may make disbursements pursuant to any certificate certifying such disbursements to be then payable as hereinafter provided which shall then be held by it if there are sufficient funds on hand to permit such disbursement and if the Bank shall not then have received a certificate that a disbursement having a higher priority is then payable, without regard to any knowledge which the Bank may have with respect to other payments that may thereafter become due or payable. The Lessee agrees to execute any instrument further defining the duties, responsibilities and liabilities of the Bank as fiscal agent hereunder and which shall be requested by the Bank and be approved by Corporation and City.

The amounts to be disbursed and all disbursements actually made pursuant to this Paragraph 4 shall be subject to examination, audit and approval by the City Controller, to whom any dispute with respect thereto shall be submitted and whose determination of such dispute shall be final. If said Controller shall determine any amount to have been improperly disbursed, then the amount of such improper disbursement shall be refunded to the Bank to be disbursed by it pursuant to this paragraph. The provisions of this paragraph of Paragraph 4 shall not affect in any way the rights or duties of the Bank which shall be governed exclusively by the provisions of the next preceding paragraph of this Paragraph 4.

The Bank shall render an annual accounting to City, the Lessee and the Corporation as soon as reasonably possible after

objected to by any of said persons within ninety (90) days after its rendition, said accounting shall be deemed correct in all respects and shall be final and binding upon the City, the Lessee and the Corporation. If Bank should at any time be unable or unwilling to act, then a Trustee shall be appointed to act in the place of Bank hereunder by written agreement of City, Lessee, Corporation and the holder of each Construction Finance Note, or if such an agreement is not executed within thirty (30) days, by the Superior Court of City, which in the absence of good cause to the contrary shall be a bank or trust company doing business in San Francisco.

5. USE OF LEASED PREMISES.

The demised premises shall (except as hereinafter provided in this paragraph) be used solely for the operation of a public automobile parking facility and for the incidental sale of petroleum and petroleum products, and shall be operated for the benefit and convenience of the public, who shall have the right to use said facility at all times herein mentioned at the established rates and charges as hereinafter provided except any areas incidental to public parking included therein and subleased by Corporation for uses incidental thereto; provided, however, that the portion of the demised premises devoted to such incidental use shall not exceed the amount permitted by law. Such incidental use of the demised premises shall be secondary to their primary use as a parking facility.

In the event of the inability of City to deliver possession at the time of commencement of this Lease (including but not limited to the construction of the demised premises)

damage caused thereby, nor shall this lease become void, but times for performance under the terms of this lease shall be extended for a time equal to the delay and in such event Lessee shall not be liable for any payment until such time as City shall deliver possession.

Lessee shall not do or permit anything to be done in or about the premises, or bring or keep anything therein, which will in any way conflict with any law, ordinance or rule or regulation which now or may hereafter be enacted or promulgated by any public authority, or create or suffer to be created a nuisance, or commit or suffer to be committed any waste upon the premises, or use, or allow the premises to be used, for any improper, immoral, unlawful or objectionable purposes, or obstruct the sidewalk in front of, within, or adjacent to the premises, or do or permit to be done anything in any way tending to disturb the occupants of the neighboring property.

6. ALTERATIONS AND IMPROVEMENTS.

All alterations and improvements that may be made by the Lessee shall comply with all building, electrical, health and fire codes of the City, and Lessee shall be allowed to make such alterations and improvements at its own expense; provided that plans for such work must be submitted to and approved in writing by the City's Director of Property and the Parking Authority before commencing such work. Unless otherwise provided by written agreement, all additions to, improvements and alterations of, the premises, except trade fixtures, shall become a part of the realty, and be the property of City and shall remain upon and be surrendered with the premises. Lessee agrees that if it shall

make any alterations or improvements, that it will so notify the City's Director of Property and the Parking Authority in writing and not take such action until five (5) days thereafter, in order that City may post appropriate notices of non-responsibility. Lessee will at all times permit such notices to be posted and to remain posted for the time required by law.

7. MAINTENANCE AND REPAIRS.

CITY agrees to turn over to Lessee upon the effective date hereof or as soon as it is possible for City to do so, the demised premises in good operating condition. Lessee has examined said premises and knows the condition thereof and accepts same as they now are or will consist of upon substantial completion of any improvements now under construction in substantial accordance with plans and specifications therefor now on file in the office of City's Director of Property. Lessee, at its own cost and expense, shall maintain said premises and every part or facility thereof in good order and repair and in good and safe condition, and at its own expense make all repairs necessary thereto, all of which obligations of Lessee shall be performed to the satisfaction of City's Director of Property and said Authority. Lessee waives the benefits of sub-sections 1 and 2 of section 1932 and of sections 1941 and 1942 of the California Civil

code and all rights to make repairs at the expense of City as provided in said sections. Upon termination of this Lease Lessee shall surrender the demised premises in as good condition as when received, except for ordinary wear and tear and damage by act of God, the elements, the public enemy or any casualty not included within the risks to be insured against under paragraph 15 hereof, which shall be deemed not included within Lessee's obligation to maintain, repair, or rebuild the demised premises.

8. UTILITIES, ETC.

Lessee shall pay the established charges for all utility services furnished to, or used by, Lessee on or about the premises, for connections to same, and for such other special services which it may require in the demised premises. Lessee shall furnish at its own cost and expense all electrical light bulbs or tubes used in or about the premises.

9. ADVERTISING SIGNS.

Lessee shall not erect or display or permit to be erected or displayed any sign or advertising matter of any kind on the demised premises without first obtaining the written consent of City's Director of Property, and Authority; provided, however, that Lessee shall at its own expense install and maintain suitable signs as are requested

as well as for other purposes, and that said facility is a joint project of City and Authority.

10. INGRESS AND EGRESS.

Lessee shall have and enjoy full rights of ingress to and egress from the demised premises for all uses of the demised premises as are specified in this lease, subject only to such interferences or disturbances beyond the control of City and to such reasonable rules and regulations as may be established by City respecting such use.

11. INSPECTION OF PREMISES.

Lessee will permit City, its respective agents or employees and the Authority and its agents or employees to enter into and upon the premises at all reasonable times for the purpose of inspecting the same.

12. RATES AND CHARGES.

It is agreed by Lessee that the public as a matter of right shall be entitled to use the demised premises as a public parking facility at all times during which said facility shall be operated subject to such rates, charges, regulations and restrictions as shall be initially fixed and established or from time to time thereafter modified by City. The rate of twenty-five cents (25¢) for the first hour and twenty cents (20¢) for each hour thereafter is hereby fixed and established by the City as the initial parking rate and charge to be made by the Lessee per automobile parked in said facility which said rate shall be effective except during any period in which a different rate or rates shall have been established by City and be in effect and during any such period said rate and charge shall be such as shall then have been established by City and

or any Deed or Trust securing the payment of any Construction Finance Note which constitutes an encumbrance upon the Lessee's interest in this Lease, City agrees to set and establish rates and charges for the parking of vehicles in the demised premises which shall be adequate to insure that the gross receipts deposited with the Bank during each year pursuant to the provisions of this Lease will at least equal an amount sufficient to permit Bank to disburse and pay therefrom all amounts to be disbursed by Bank during such year pursuant to subparagraphs (a), (b), (c) and (d) of paragraph 4 of this Lease, plus an additional amount equal to twenty per cent (20%) of the amount which the Bank is required to disburse therefrom pursuant to subparagraph (a) of paragraph 4 of this Lease during such year.

13. OPERATION AND CONDITIONS OF PREMISES.

Lessee agrees, at its own expense, to maintain and keep the demised premises in clean, good condition and repair, to operate the same continuously, and to be open not less than a sixteen (16) hour per day basis, in an efficient manner as a first-class parking garage during the demised term, and not to vacate or abandon the demised premises during the term hereof, and upon expiration of the demised term or sooner termination, as provided for in this Lease, to surrender the premises, including the garage structure and any and all fixtures and appurtenances to the City in good, clean and sanitary condition, and free and clear of all liens and encumbrances. Lessee shall at all times operate said garage on a basis of not less than ninety-five per cent (95%) customer parking in accordance with the following formula, namely, that the operation of said garage shall at all times be by complete customer parking except that not more than 5% of the vehicles parked

o'clock midnight may be parked, moved, or delivered to customers by employees of the Lessee.

14. MODIFICATION OF CERTAIN TERMS.

It is agreed by Lessee that City may from time to time establish and thereafter modify all rates and charges for parking of vehicles by Lessee or any other person, firm or corporation, and reasonable rules and regulations with respect to the hours and days of operation by Lessee, restrictions on all-day and monthly parking, and the public uses and purposes permissible on or in the demised premises, that Lessee will at all times comply therewith, and that this Lease and all of its terms and provisions with respect to such rates and charges, hours and days of operation, restrictions on all day and monthly parking and public uses and purposes are subject to modification in accordance with law, provided, however, that the provisions of this paragraph 14 with respect to rates and charges are subject to the provisions of paragraph 12 of this Lease.

15. EXPLOSION AND FIRE INSURANCE.

Lessee agrees to maintain at Lessee's own expense throughout the full term of this lease, policies of insurance against loss or damage by fire or explosion with extended coverage endorsement. If and when War Damage insurance is obtainable from the United States of America or an agency thereof or a corporation formed by the United States Government, policies of War Damage insurance shall be obtained on said structures and contents. All of said policies shall be at least in the amount of One Hundred (100%) per cent of the replacement cost of the improvements included within the demised premises and shall contain standard replacement

tion. Said policies shall name City and Lessee as parties insured, and, if there be a Deed of Trust constituting an encumbrance upon the Lessee's interest in this Lease, the New York Standard Mortgage Clause endorsement shall be added to said policies making loss thereunder payable to the mortgagee or beneficiary of said Deed of Trust in the order of priority of such Deed of Trust over any other Deed of Trust; provided, however, that all amounts payable which constitute payments of claims under such policies payable to any mortgagee or beneficiary of any Deed of Trust shall be payable to the Bank as Insurance Trustee, but in the event said Bank fails or refuses to so act, the Insurance Trustee shall be a San Francisco Bank or Trust company as designated by City's Controller.

Said policies shall contain either (a) waivers by the insurer of its right of subrogation given by said New York Standard Mortgage Clause, including any right the insurer may have to receive the assignment of the whole or any part of the Deed of Trust under the provisions of said New York Standard Mortgage Clause, or, in the alternative, such policies shall contain (b) the agreement of the insurer that its right of subrogation under said New York Standard Mortgage Clause shall not become effective until the insurer's claim of no liability for payment of loss or damage under the policy shall have been legally established and such subrogation shall not in any way impair the right of the mortgagee or beneficiary of the Deed of Trust to take such action under the provisions of the Deed of Trust as it deems necessary without consultation with the insurer, in order to re-

and interest, together with all other amounts due under said Deed of Trust, but less any sums paid by the insurer as to which the insurer's claim of no liability has been legally established, unless such sums have been paid over to the Insurance Trustee for the purposes herein provided.

Any payment by the insurer by which the insurer becomes subrogated to any rights of the mortgagee or beneficiary of any Deed of Trust to recover any sums from the mortgagor or trustor shall not constitute a payment of a claim under such insurance policies or under this Lease, and such policies shall so provide.

Duplicate originals or certified copies of such insurance policies shall be delivered upon commencement of coverage, to the City Controller, and shall contain "ten days prior notice to said Controller of cancellation or material change thereof" endorsement. Said policies shall be approved as to legal form by the City Attorney and as to insurers by the City Controller.

In the event of loss, the Insurance Trustee shall hold, apply and make available to the Lessee the net proceeds of such insurance to reimburse the Lessee according to the schedule of payments to be approved by City acting through the City Controller, Lessee and the Insurance Trustee for costs incurred by Lessee in reconstructing, repairing or restoring the damaged property, excepting, however, that the Insurance Trustee may deduct from such moneys reasonable charges for so acting and except that the Insurance Trustee shall withhold from each amount so to be paid by it Ten
_____ (10%) per cent thereof until the work of repair-

has been furnished to the Insurance Trustee and the City Controller that no lien or liability has attached or will attach to the demised premises or to the City or leasehold estate in connection with such repairing or rebuilding. Before beginning such repairs or rebuilding or letting any contracts in connection therewith, the Lessee, in the event loss shall exceed one hundred thousand dollars (\$100,000.), shall submit for the approval of the Board, which approval shall not be unreasonably withheld or delayed, plans and specifications therefor. Promptly after receiving such approval of said Plans and specifications, the Lessee shall begin repairs or rebuilding and shall prosecute the same to completion with diligence, subject, however, to any delay or postponement thereof due to act(s) of God, the public enemy, strike(s), fire(s), riot(s), boycott(s), injunction(s) or other cause beyond the reasonable control of Lessee. Such repairs or rebuilding shall be completed free and clear of mechanics' or other liens, conditional bills of sale and chattel mortgages and be in accordance with all requirements of laws, ordinances, regulations and orders of any Federal, State, municipal or other public authority relating thereto and with all requirements of the Pacific Fire Rating Bureau and of any liability insurance company insuring City and Lessee against liability for accidents in or connected with the demised premises. Upon compliance with the above requirements and after final approval by the City any surplus of net insurance proceeds shall be paid to Lessee by the Insurance Trustee.

Upon being advised by City, or the leasehold mort-

estate, during the course of construction or repair as aforesaid, of the occurrence of a default by the Lessee under the Lease or leasehold Deed of Trust, the Insurance Trustee shall upon presentation by the City, the leasehold mortgagee or beneficiary of the Deed of Trust, of such proof thereof as the Insurance Trustee shall require, refrain from paying to or for the benefit of the Lessee any insurance proceeds then or thereafter in the hands of the Insurance Trustee until it shall have received such proof as it may require that such default has been cured by the Lessee. In the event of any such default by the Lessee and the presentation of such proof by City, or the leasehold mortgagee or beneficiary of the Deed of Trust, to the Insurance Trustee, said Insurance Trustee shall hold, apply and make available to the leasehold mortgagee or beneficiary of the Deed of Trust the net proceeds of such insurance, subject to the deductions aforesaid if (i) the leasehold mortgagee or beneficiary of the Deed of Trust has become vested with all of the right, title and interest of the Lessee in and to this Lease or (ii) such leasehold mortgagee or beneficiary of the Deed of Trust is the holder of an irrevocable agency from the Lessee to enter upon the premises and take and hold possession of the same in the place and stead of the Lessee for the purpose of effecting such repairs, rebuilding and restoration, and such leasehold mortgagee or beneficiary of the Deed of Trust elects to so enter, any such right or agency or possession thereunder not to constitute such leasehold mortgagee or beneficiary of the Deed of Trust a lessee or sublessee under this Lease. A copy of any such irrevocable agency shall be

termination of this Lease the Insurance Trustee shall, on demand of the City pay over to the City the net proceeds of such insurance less the amount of its charges for acting as Trustee.

16. GARAGE KEEPER'S LIABILITY INSURANCE.

Lessee, at its own expense throughout the term of this Lease, shall furnish to City a standard form of garage keeper's legal liability insurance policy, subject to approval as to form by the City Attorney and as to insurer by the Controller, insuring the Lessee, City, Authority, the members of Authority, and the officers, agents and employees of each of them, and the Beneficiary and Trustee of any Deed of Trust constituting an encumbrance upon the Lessee's interest in this lease against loss from liability imposed by law for damage to parkers' vehicles by fire, explosion, theft, riot, civil commotion, vandalism or malicious mischief. The limit of liability shall be not less than \$75,000, and the liability resulting from acts of malicious mischief or vandalism may be subject to a deduction of \$25.00. A duplicate original policy or policies of such insurance shall be delivered to the City Controller upon commencement of operation of said garage and shall contain standard cross-liability and "ten days prior notice to Director of Property of cancellation or material change thereof" endorsements.

17. LIABILITY AND PROPERTY DAMAGE INSURANCE

Lessee shall throughout the term of this lease, at its own cost and expense, procure and maintain in full force and effect an insurance policy or policies in pro-

the officers, agents, and employees of each of them, and the Beneficiary and Trustee of any Deed of Trust constituting an encumbrance upon the Lessee's interest in this Lease, in a company or companies approved by the City Controller and in form approved by the City Attorney, indemnifying said parties against loss or liability for damages for personal injury, death or property damage occasioned by reason of the operations of Lessee upon, in and around the demised premises, with minimum liability limits of \$150,000 for personal injury or death of each person and \$500,000 for personal injury or deaths of two or more persons in each accident or event, and in a minimum amount of \$50,000 for damage to property resulting from each accident. If such insurance is provided by a policy or policies which also provide insurance for the Lessee or any one other than those above named, then such policy or policies shall contain a standard cross-liability endorsement. Said policy shall contain an endorsement that a written notice of cancellation or of any material change in said policy shall be delivered to said Director of Property ten (10) days in advance of the effective date thereof. A duplicate original of said policy shall be delivered to City Controller upon issuance.

18. INDEMNIFICATION.

City, Authority, the members of Authority, and the officers, agents, and employees of each of them shall not be liable to Lessee or to any other party whomsoever for any death, injury or damage that may result to any person or property by or from any cause whatsoever, in, on or about the demised premises or any part thereof. Lessee shall indemnify and

and the officers, employees and agents of each of them, harmless from and defend City, Authority, the members of Authority, and the officers, agents and employees of each of them, against any and all claims, liens and judgments for death of any person or damage to property whatsoever, occurring in, on or about the demised premises or any part thereof, and amounts paid by Lessee on account thereof which are not covered by insurance shall be deemed to be an operating expense of Lessee for purposes of paragraph 4 of this Lease.

19. TAXES, ASSESSMENTS AND LIENS.

Lessee agrees to pay whatever taxes of any kind may be assessed on this leasehold interest and other taxes, excises, licenses, permit fees, charges and assessments upon Lessee that may be provided by law, all of which shall be paid when the same become due and payable, or before delinquency.

This lease contemplates that title to the leased premises shall be vested in the City, and that the interest of City in and to said premises shall not be the subject of taxation. However, in the event that City's title and interest in and to said premises shall be taxed by reason of the sale of the property by City, or otherwise, the new Lessor or owner, its successors or assigns, agree to pay any taxes or assessments imposed by reason of their ownership or interest in the leased premises, and, in the event that the said new Lessor or owner, its successors or assigns, fail to pay any such taxes or assessments, it is agreed that Lessee may pay the same, for and on behalf of said new Lessor or owner, its successors or assigns, and deduct any

payable by Lessee or Bank for the account of City under this Lease.

20. DEFAULT BY OR BANKRUPTCY OR REORGANIZATION PROCEEDING BY OR AGAINST LESSEE.

If (a) Lessee or its assignee shall fail to pay, when due, any moneys payable hereunder, or to perform any of the other terms, covenants and conditions herein contained, or if (b) Lessee's interest herein or any part thereof, be assigned or transferred without the written consent of City, either voluntarily or by operation of law, or if (c) Lessee or assignee shall file any petition or institute any proceeding under the bankruptcy act, either as such act now exists or under any amendment thereof which may hereafter be enacted, or under any act or acts, State or Federal, dealing with or relating to the subject or subjects of bankruptcy or insolvency, or under any amendment of such act or acts, either as a bankrupt, or as an insolvent, or as a debtor, or in any similar capacity, wherein or whereby Lessee asks or seeks or prays to be adjudicated a bankrupt, or to be discharged from any or all of Lessee's debts or obligations, or offers to Lessee's creditors to effect a composition or extension of time to pay Lessee's debts or asks, seeks, or prays for a reorganization or to effect a plan of reorganization, or for a readjustment of Lessee's debts, or to effect a plan of readjustment of Lessee's debts, or for any other similar relief, or if any such petition or any such proceedings of the same or similar kind or character be filed or be instituted or taken against Lessee, or if a receiver of the business or of the property or assets of the Lessee shall be appointed by any

quest of City, or if the Lessee shall make a general or any assignment for the benefit of Lessee's creditors, or if (d) the Lessee or assignee shall abandon or vacate the premises, then Lessee or assignee shall be deemed to be in default hereunder.

If any such default shall continue for more than thirty (30) days after written notice of such default (including the nonpayment of any amount payable hereunder) to Lessee or any assignee (and to any beneficiary or mortgagee of record of any Deed of Trust of record or other record lien holder who may have a leasehold mortgage or Deed of Trust or to any trustee to whom the leasehold created hereby may have been assigned by a trust indenture), City in addition to such other rights or remedies as it may have, except as hereinafter in this paragraph provided, and unless such default consists of a failure to pay any amount payable upon any Construction Finance Note, shall have the right to terminate this Lease, and the immediate right of re-entry upon giving three (3) days' notice to Lessee, and thereupon may remove all persons and property from the leased premises.

It is agreed that: (i) the Lessee and any such mortgagee or other lien holder or trustee shall have the right to cure any such default within said thirty (30) days period by paying, performing or satisfying such term, covenant, or condition; (ii) if such default is of such a nature that it cannot be remedied within such thirty (30) day period then the Lessee and such mortgagee, other lien holder or trustee shall have such additional time as is reasonably necessary to cure such default, provided that it commences the curing of such default within the thirty (30) day period;

amount payable upon the indebtedness evidenced by any Construction Finance Note by reason of the gross receipts being insufficient or otherwise, then City shall not have the right to terminate this Lease or the right of re-entry.

In the event that the default is of such nature that it cannot reasonably be cured by any such mortgagee or other lien holder or trustee (including but not limited to the defaults specified under (b), (c) and (d) of this paragraph) the said thirty (30) day period above described shall be extended to correspond with the period reasonably required by such mortgagee, other lien holder or trustee, to accelerate principal due on said mortgage and to institute and to complete foreclosure proceedings and place said mortgagee, lien holder or trustee or successor, in possession of the premises under this lease. It is agreed that any such mortgagee, lien holder, or trustee described above, while not in possession of the premises, shall be exonerated from performing any covenant of this lease which can only be performed by a tenant in possession; it being intended that under such circumstances such mortgagee, or other lien holder or trustee, shall be liable for such performance, while but only while in possession of the demised premises and shall have the right to foreclose under the security. After such default shall have been cured or such mortgagee, or other lien holder or trustee, shall have entered into

City to terminate this Lease or re-enter upon the demised premises by reason of such default shall cease provided that any such default which can be cured shall have been cured within said thirty (30) day period or in the case of any default, other than the payment of money, which cannot reasonably be cured within said period of time, then within such additional period of time as is reasonably required for the curing of such default.

The foregoing right to terminate shall also be effective if Lessee shall be a partnership or joint venture and any individual, partner, or joint venturer, respectively, shall proceed or be proceeded against in the manner above set forth.

The foregoing remedies of City shall not be exclusive, but shall be cumulative and in addition to all remedies now or hereafter allowed by law or elsewhere provided for in this Lease.

21. ASSIGNMENT AND SUBLETTING.

This Lease may not be assigned by Lessee without the written consent of City, provided, however, that such consent shall not be unreasonably withheld by City. No assignment shall release the Lessee from the performance of its obligations hereunder nor shall any such assignment (except any assignment for security purposes hereinafter provided for) be made unless simultaneously with such assignment, there shall be delivered to City an instrument in writing executed by the assignee under which such assignee shall assume and agree to perform all of the obligations of Lessee under this Lease.

City agrees that Lessee may at any time assign,

ment or any indebtedness of Corporation which is evidenced by any Construction Finance Note of Corporation and any other obligation secured under the form of Deed of Trust attached hereto as Exhibit "B" and consents to any such security assignment, mortgage or encumbrance as security for the payment of such indebtedness and also to the transfer thereof to any transferee of the indebtedness so secured subject to this condition: that any such assignment, mortgage or encumbrance shall provide that the assignee, mortgagee or person in whose favor such encumbrance shall be made shall be obligated to perform the terms of this Lease on Lessee's part to be performed while, but only while, such assignee, mortgagee or other person is in such capacity in possession of the demised premises and any person, firm or corporation (including but not limited to such assignee, mortgagee or other person) who or which shall acquire title to the Lessee's interest in this Lease or the leasehold estate pursuant to foreclosure shall be bound by and obligated to perform all obligations of this Lease on the Lessee's part to be performed subsequent to such foreclosure and that no other or further assignment thereof shall be made without City's written consent. Lessee shall furnish City with copies of any indentures, contracts or agreements in connection therewith. City also consents to the assignment of the Lessee's interest in this Lease and leasehold interest by the holder of any indebtedness so secured upon the exercise of its remedies under the security instrument, provided that the assignee under such assignment shall deliver to City upon

signee shall assume and agree to perform all covenants of this Lease on the Lessee's part to be kept and performed.

The Lessee shall not sublet the demised premises or any part thereof without the written consent of City, which consent shall not be unreasonably withheld except that (a) after the foreclosure of any Deed of Trust constituting an encumbrance upon the Lessee's interest in this Lease, Lessee may sublet all or any part of the demised premises and (b) the Lessee may sublet such portion of the demised premises as, under the terms of this lease, the Lessee is permitted to use for uses incidental to public parking (excluding all areas subleased or to be subleased at any time or from time to time by corporation) to any person, firm or corporation in which the Lessee has no direct or indirect interest provided that each such sub-lease shall be entered into at a reasonable rate of rental substantially equivalent to the fair rental value of the portion of the demised premises so sub-leased which shall be included in the gross receipts. Any sublease shall be subject to all terms, covenants and provisions of this Lease.

The Lessee will notify City in writing of each sublease, giving the name of the sublessee, the purpose of the sublease, and the term for which it is granted, and the area so subleased.

A sublease hereunder shall not be for any period of time greater than the term of this Lease and shall end with the termination of this Lease howsoever the termination is caused.

22. NON-WAIVER OF DEFAULTS.

The waiver by City of any breach by Lessee of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof. No term, covenant or condition of this Lease can be waived except by the written consent of the City, and forbearance or indulgence by the City in any regard whatsoever shall

City shall be entitled to invoke any remedy available unto it under this lease or by law despite said forbearance or indulgence.

23. COMPLIANCE WITH LAWS.

Lessee shall abide by all laws and governmental orders or regulations and amendments thereto controlling or limiting in any way at the present or in the future Lessee's use of the demised premises during the term hereof.

24. LABOR AND MATERIALS.

All labor to be performed and materials to be furnished in the operations of the Lessee hereunder shall be at the cost and expense of Lessee, and City shall not be chargeable with, or liable for, any part thereof; and Lessee shall protect and defend City's property against liens of every character arising from Lessee's operations thereon.

25. RIGHTS ON TERMINATION.

Upon termination of this lease or upon re-entry under paragraph 20 hereof, all interests of Lessee or assignee, in and to the demised premises, the garage structure, and any and all appurtenances and fixtures shall forthwith cease and terminate.

Lessee agrees to immediately surrender the premises at the termination, expiration or cancellation of the tenancy herein created, in good condition, reasonable use and wear thereof and damage by act of God, the elements, the public enemy or any casualty not included within the risks to be insured against under paragraph 15 hereof excepted) and deliver to the City a good and sufficient quit-claim deed or other form of relinquishment, if and when requested. Upon surrender of the premises, either at the expiration of the term or otherwise. Lessee agrees to remove

26. OPTION I. TERMINATE LEASE.

In the event that all indebtedness evidenced by each Construction Finance Note of the Corporation, together with the interest thereon, in accordance with their respective terms shall have been fully paid prior to the expiration of the stated term of this Lease and there shall have been no foreclosure of any Deed of Trust securing the payment of such indebtedness, or, if in the judgment of City's Director of Property, it appears that all such indebtedness will have been paid within three hundred sixty-five (365) days and that no such foreclosure will occur, then and in either such event, City may, at its option, terminate this Lease by giving written notice to that effect to the Lessee in which event the term of this Lease shall terminate on the later to occur of (i) three hundred sixty-five (365) days after such notice shall be given, or (ii) the payment of all indebtedness evidenced by each Construction Finance Note of Corporation.

In the event that there shall be a foreclosure of any Deed of Trust securing the payment of the indebtedness evidenced by any Construction Finance Note of Corporation and the total of all payments upon the indebtedness evidenced by each such Construction Finance Note (including interest thereon) and all disbursements by bank pursuant to sub-paragraph (a) of paragraph 4 of this Lease, subsequent to such foreclosure to any person, firm or corporation (and his successors in interest) acquiring title to the Lessee's interest in this Lease through such foreclosure shall equal the total of the expenses of such foreclosure and all amounts which would have been paid upon the indebtedness evidenced by each Construction Finance Note of Corporation, together with the interest thereon, in accordance with the terms thereof, if no such foreclosure or acceleration of any

cordance with the terms thereof, then either the City or such person, firm or corporation (including but not limited to the Beneficiary of said Deed of Trust) who shall acquire title to the Lessee's interest in this Lease through such foreclosure and his successors in interest may, at his or its option, terminate this Lease by giving written notice to that effect in which event the term of this Lease shall terminate three hundred sixty-five (365) days after such notice shall be given.

27. CHARTER PROVISIONS--PARKING ORDINANCE NO. 9072.

All terms of this Lease shall be governed by and be subject to the fiscal and other provisions of City's charter and the provisions of Parking Ordinance No. 9072 as said Ordinance may hereafter be amended.

28. AGREEMENT MADE IN CALIFORNIA.

This Agreement shall be deemed to be made in and shall be construed in accordance with the laws of the State of California.

29. PARAGRAPH HEADINGS.

The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease.

30. NOTICES:

Except as otherwise provided herein, all notices to be given between the parties hereto shall be in writing and shall be deposited in the United States mail, postage prepaid and registered and addressed to City at the office of the City's Director of Property, City Hall, San Francisco, and a copy thereof shall likewise be forwarded to Parking Authority, 500 Golden Gate Avenue, San Francisco,

It is agreed by the parties hereto at said garage shall at all times be operated under the name "Sutter Stockton Garage" or some other name approved in writing by City.

32. EMINENT DOMAIN.

Any award made in eminent domain for taking or damaging the demised premises in whole or in part shall be paid to City and Lessee in accordance with their respective interests.

33. ENTIRE AGREEMENT.

This Agreement is the entire Agreement between the parties hereto and said parties will not recognize any agreement or promises claimed to have been made but which are not embodied herein.

34. SUCCESSORS AND ASSIGNS.

Subject to the provisions hereof relating to assignment, this Agreement shall bind and inure to the benefit of the successors and assigns of the parties hereto.

35. TIME.

Time is of the essence of this Lease. Wherever in this Lease the Lessee is required to do or perform any act or thing within a specified time and the Lessee shall be delayed in the doing or performance of any such act or thing by reason of Acts of God, the public enemy, strikes, fires, riots, boycotts or injunctions, then the time for doing such act or thing shall be extended for a period equal to the period of delay. And in the event that the Lessee shall be delayed due to any other cause or casualty beyond the control of the

... the execution of the lessee, be extended for a period equal to the period of ch delay.

IN WITNESS WHEREOF, the parties hereto have executed these presents in triplicate the day and year first hereinabove written.

LESSOR

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation,

ATTEST:

By Robert J. Dean
Clerk, Board of Supervisors

By [Signature]
Mayor

LESSEE

CITY OF SAN FRANCISCO UPTOWN
PARKING CORPORATION, a California
nonprofit corporation,

ATTEST:

By [Signature]
Secretary

By [Signature]
President

APPROVED:

PARKING AUTHORITY OF THE CITY
AND COUNTY OF SAN FRANCISCO

ATTEST:

By [Signature]
Secretary to Authority

By [Signature]
Chairman

APPROVED:

By [Signature]
Director of Property

APPROVED:

By [Signature]
Chief Administrative Officer

APPROVED AS TO LEGAL FORM:

DION R. HOLM, City Attorney

By [Signature]
Deputy City Attorney

On the 8th day of May, in the year One Thousand Nine Hundred Fif~~ty~~ Nine, before me, MARTIN MORGAN, County Clerk of the City and County of San Francisco, and ex officio Clerk of the Superior Court of the State of California, in and for the City and County of San Francisco, personally appeared HONORABLE GEORGE CHRISTOPHER, Mayor of the City and County of San Francisco, a municipal corporation, and ROBERT J. DOLAN, Clerk of the Board of Supervisors of the City and County of San Francisco, known to me to be the Mayor and the Clerk of the Board of Supervisors of the municipal corporation described in and who executed the within instrument and also known to me to be the persons who executed it on behalf of the municipal corporation therein named, and they and each of them acknowledged to me that such municipal corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco, State of California, the day and year in this Certificate first above written.

Martin Morgan

County Clerk of the City and County of San Francisco, State of California, and ex officio Clerk of the Superior Court of the State of California, in and for the City and County of San Francisco.

STATE OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO } ss.

On the 5th day of May, in the year One Thousand Nine Hundred Fifty Nine, before me, DOROTHY J. FELSTEAD, a Notary Public in and for said City and County of San Francisco, residing therein, duly commissioned and sworn, personally appeared MICHEL D. WEILL and EDWARD D. KEIL, known to me to be the President and Secretary, respectively, of City of San Francisco Uptown Parking Corporation, the corporation that executed the within instrument and also known to me to be the persons who executed the within instrument on behalf of the corporation therein named and acknowledged to me that such corporation executed the same pursuant to a resolution of its Board of Directors.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the City and County of San Francisco the day and year in this Certificate first above written.

Dorothy J. Felstead

NOTARY PUBLIC

in and for the City and County of San Francisco, State of California.

My Commission expires November 20, 1960.

TO

SUTTER-STOCKTON PUBLIC PARKING LEASE

The Construction Finance Notes referred to in the Lease to which this Exhibit is attached consist of the following Construction Finance Notes, to-wit:

1. An issue of Bonds of the City of San Francisco Uptown Parking Corporation, a California corporation, in the aggregate principal amount of Three Million Three Hundred Thousand Dollars (\$3,300,000.00), bearing interest at the rate of five and one-quarter percent (5 $\frac{1}{4}$ %) per annum, and issued or to be issued under and equally and ratably secured by a Bond Indenture executed or to be executed by the City of San Francisco Uptown Parking Corporation and Crocker-Anglo National Bank, as Trustee, a copy of which Indenture is attached hereto as Exhibit A-1. The form of said Bonds is set forth in said Indenture.
2. A Promissory Note, dated April 1, 1959, of the City of San Francisco Uptown Parking Corporation and payable to the order of Pacific National Bank of San Francisco in the principal sum of Two Hundred Fifty Thousand Dollars (\$250,000.00). A copy of said Promissory Note is attached to this exhibit as Exhibit A-2 and by this reference made a part hereof.
3. A Promissory Note, dated February 1, 1959, of City of San Francisco Uptown Parking Corporation and payable to the order of Crocker-Anglo National Bank in the principal sum of One Hundred Thirty Thousand Dollars (\$130,000.00). A copy of said Promissory Note is attached to this exhibit as Exhibit A-3 and by this reference made a part hereof.
4. All other Construction Finance Notes which may hereafter be issued by said City of San Francisco Uptown Parking Corporation to evidence indebtedness which said Corporation has incurred or may hereafter incur to finance the cost of construction of said facility (as defined in the Agreement referred to in Paragraph 5 on Page 2 of the Lease to which this Exhibit is attached) or refinance any Construction Finance Notes described in Paragraphs 1, 2 and 3 of this Exhibit A; provided that the terms of each such Construction Finance Note referred to in this Subparagraph 4 are approved by the Controller of the City and County of San Francisco.

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

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

Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: City of San Francisco Uptown Parking Corporation	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i>	
See attached.	
Contractor address: 444 Stockton Street, San Francisco CA 94108	
Date that contract was approved: <i>(By the SF Board of Supervisors)</i>	Amount of contract: \$1
Describe the nature of the contract that was approved: Lease for the Sutter Stockton Public Parking Garage	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

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

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

Print Name of Board

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

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

Date Signed

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

Date Signed

