

File No. 130418

Committee Item No. 5

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Sub-Committee

Date: 05/22/2013

Board of Supervisors Meeting

Date: _____

Cmte Board

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OTHER

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Completed by: Victor Young

Date May 17, 2013

Completed by: Victor Young

Date _____

1 [Lease - Sega Food Groups, Inc. - 133 O'Farrell Street - Annual Base Rent of \$180,000]

2
3 **Resolution authorizing the Municipal Transportation Agency to execute a retail lease**
4 **agreement with Sega Food Groups, Inc., and Ramin Vahabi for approximate 1,127**
5 **square feet of retail space at 133 O'Farrell Street, for a 10-year term, plus two five-**
6 **year extension options, at an initial annual base rent of \$180,000 with annual**
7 **increases.**

8
9 WHEREAS, The Ellis O'Farrell Garage, owned by the City and County of San
10 Francisco, a municipal corporation, and managed by the San Francisco Municipal
11 Transportation Agency (SFMTA), offers three retail spaces, one of which is currently vacant;
12 and

13 WHEREAS, Sega Food Groups, Inc. (Sega) and Ramin Vahabi (together, Tenant)
14 desire to lease the vacant retail space designated as 133 O'Farrell Street and comprised of
15 approximately 1,125 square feet (Premises) for an initial term of 10 years with two (2) five-
16 year options to renew; and

17 WHEREAS, Over the past 10 years, Sega has successfully operated seven food and
18 beverage outlets in the very high traffic, high profile areas of the City; and

19 WHEREAS, Tenant desires to open a retail food and beverage outlet in the Premises
20 pursuant to a lease agreement negotiated by Tenant and SFMTA staff; and

21 WHEREAS, The lease Agreement provides an initial term of 10 years starting at the
22 base rent of \$15,000 per month, with annual rent increases of 3 percent and two five-year
23 extensions; and

24 WHEREAS, Over the 10-year initial term, the lease agreement will generate \$2.1
25 million in additional revenue; and

1 WHEREAS, Tenant shall pay the possessory interest taxes and all associated broker
2 fees and commissions; and

3 WHEREAS, No tenant improvement allowance or rent credits will be provided to
4 Tenant; and

5 WHEREAS, On May 7, 2012, the SFMTA Board of Directors passed a resolution
6 authorizing the Director of Transportation to execute the Lease Agreement and to forward to
7 the Board of Supervisors for final approval; now, therefore, be it

8 RESOLVED, That all actions heretofore taken by the officers of the City with respect
9 to the Lease are hereby approved, confirmed and ratified; and, be it

10 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of
11 Transportation of the SFMTA to enter into any amendments or modifications to the Lease
12 (including without limitation, the exhibits) that the Director of Transportation determines, in
13 consultation with the City Attorney, are in the best interest of the City, do not increase the
14 rent or otherwise materially increase the obligations or liabilities of the City, are necessary or
15 advisable to effectuate the purposes of the Lease or this Resolution, and are in compliance
16 with all applicable laws, including City's Charter; and, be it

17 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of
18 Transportation to approve the Lease Agreement between the City and County of San
19 Francisco and Sega Food Groups, Inc. (Sega) and Ramin Vahabi.

Item 5
File 13-0418

Departments:
San Francisco Municipal Transportation Agency

EXECUTIVE SUMMARY

Legislative Objective

- The proposed resolution would approve a new agreement between the San Francisco Municipal Transportation Agency (SFMTA), as landlord, and Sega Food Groups, Inc. and Ramin Vahabi, together as tenant, for 1,127 square feet of retail space in the Ellis-O'Farrell Garage at 133 O'Farrell Street for a 10-year term from July 1, 2013 through June 30, 2023 and includes two five-year options to extend.

Key Points

- The Ellis-O'Farrell Garage is a City-owned parking garage under the jurisdiction of the SFMTA, located at 123 O'Farrell Street, with approximately 950 parking spaces and approximately 11,029 square feet of retail space divided into three separate spaces including: (a) 4,534 square feet currently leased as a jewelry store located at 121 O'Farrell Street; (b) 1,127 square feet currently vacant and available for rent lease located at 133 O'Farrell Street (subject of the proposed resolution); and (c) 5,368 square feet currently leased to a restaurant located at 44 Ellis Street.
- SFMTA previously had a lease for the Ellis-O'Farrell Garage with a non-profit corporation, Ellis-O'Farrell Parking Corporation, who advertised and selected a tenant for the 133 O'Farrell Street retail space through a commercial real estate broker prior to the termination of the lease on January 31, 2013. SFMTA assumed management of the Ellis-O'Farrell Garage on February 1, 2013 and entered into negotiations with Sega and Ramin Vahabi for the proposed lease. The SFMTA Board of Directors approved the proposed lease at the May 7, 2013 meeting.
- Under the proposed agreement Sega would operate a food and beverage retail store with no on-site cooking that includes a) on-site preparation of Blue Bottle Coffee beverages, (b) bottled beverages, (c) beer and wine, (d) off-site prepared local pastries, and (e) organic sandwiches and salads.
- Sega, as the tenant, will be responsible for the payment of all tenant improvements necessary to convert the 1,127 square feet of retail space into a food and beverage outlet.

Fiscal Impacts

- Under the proposed new lease agreement, the initial monthly rent is \$15,000 (or approximately \$13.31 per square foot per month) and the initial annual revenue from the lease is \$180,000. However due to the tenant improvement provision included in the agreement that allows for the base rent payments to commence 90 days from delivery of the premises, subject to completion of the tenant improvements, the first-year annual rental revenue is estimated to be approximately \$135,000 (\$180,000 less \$45,000, or three months of \$15,000 in rent).
- The proposed initial rent of \$13.31 per square foot per month exceeds the rent per square foot per month for the other two leased retail spaces in the Ellis-O'Farrell Garage.
- Over the ten-year initial lease term, the new lease agreement will be estimated to generate \$2,018,498 in rental revenues to the SFMTA, including the three percent annual rent increases.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT / BACKGROUND**Mandate Statement**

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

Background

The Ellis-O'Farrell Garage is a City-owned parking garage under the jurisdiction of the San Francisco Municipal Transportation Agency (SFMTA), located at 123 O'Farrell Street. The Ellis-O'Farrell Garage is fully managed by the SFMTA as of February 1, 2013.¹ The Ellis-O'Farrell Garage has approximately 950 parking spaces and approximately 11,029 square feet of retail space. The approximate 11,029 of retail space is divided into three separate spaces including: (a) 4,534 square feet currently leased as a jewelry store located at 121 O'Farrell Street; (b) 1,127 square feet currently vacant and available for lease located at 133 O'Farrell Street (subject of the proposed resolution); and (c) 5,368 square feet currently leased to a restaurant located at 44 Ellis Street.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve a new ten-year lease agreement at the Ellis-O'Farrell Garage between the San Francisco Municipal Transportation Agency (SFMTA), as landlord, and Sega Food Groups, Inc. (Sega) and Ramin Vahabi, together as tenant, for 1,127 square feet of retail space at 133 O'Farrell Street from July 1, 2013 through June 30, 2023. The proposed lease agreement includes two five-year options to extend.

The Ellis-O'Farrell Garage was previously operated by a non-profit corporation, the Ellis-O'Farrell Parking Corporation, under a lease agreement with the SFMTA, which terminated on January 31, 2013 (File 13-0057). The Ellis-O'Farrell Parking Corporation advertised through a commercial real estate broker from June 2012 through November 2012 for a tenant for the 133 O'Farrell Street retail space after the space became vacant in May 2012. During that six month period, the commercial real estate broker received two responses to lease the site, with one responder withdrawing following initial negotiations, and the remaining response from Sega and Ramin Vahabi, who is the owner of Sega.

SFMTA assumed management of the Ellis-O'Farrell Garage on February 1, 2013 and entered into negotiations with Sega and Ramin Vahabi for the proposed lease. SFMTA staff submitted the proposed lease agreement to the SFMTA Board of Directors for approval at the May 7, 2013 meeting. According to the SFMTA staff report, staff recommended approval of the proposed lease "due to the successful track record of the prospective tenant and favorable terms being offered."

¹ Resolution 39-13 was retroactively approved by the Board of Supervisors on February 12, 2013.

The proposed resolution would approve the new ten-year lease agreement, as follows:

Term	10 years (estimated July 1, 2013 through June 30, 2023)
Rent	\$15,000 per month Approximately \$13.31 per square foot per month Commences 90 days from delivery of premises to allow for tenant improvements
Annual rent increases	3 Percent
Utilities and services	Paid by Tenant
Tenant Improvements	Paid by Tenant, allows 90 days from delivery of premises to complete tenant improvements
Other Provisions	Tenant pays all broker fees and commissions and possessory interest tax
Options to Extend	Includes two five-year options to extend

Under the proposed agreement Sega would operate a food and beverage retail store with no on-site cooking. According to Mr. Michael Robertson, SFMTA's Deputy Director of Off-Street Parking, Sega plans to provide the following: (a) on-site preparation of Blue Bottle Coffee beverages, (b) bottled beverages, (c) beer and wine, (d) off-site prepared local pastries, and (e) organic sandwiches and salads. Mr. Robertson reports that the previous occupant of the retail space at 133 O'Farrell Street was a retail jeweler, and as such, it will be necessary for Sega, as the tenant, to provide improvements to the premises to convert the available 1,127 square feet of retail space into a food and beverage outlet. As noted in Table 1 above, Sega, as the tenant, will be responsible for the payment of all improvements.

FISCAL IMPACTS

Under the proposed resolution, SFMTA would enter into a new ten-year lease agreement, with two five-year options to extend, with Sega for 1,127 square feet of retail space at 133 O'Farrell Street, which is part of the SFMTA Ellis-O'Farrell Garage. Under the proposed new lease agreement, the initial monthly rent is \$15,000 (or approximately \$13.31 per square feet per month) and the initial annual revenue from the lease is \$180,000. However due to the tenant improvement provision included in the agreement that allows for the base rent payments to commence 90 days from delivery of the premises, subject to completion of the tenant improvements, the first-year annual rental revenue is estimated to be approximately \$135,000 (\$180,000 less \$45,000, or three months of \$15,000 in rent). Over the ten-year lease term, the new lease agreement is estimated to generate \$2,018,498 in rental revenues to the SFMTA, including the three percent annual rent increases.

According to Mr. Robertson the proposed initial rent of approximately \$13.31 per square foot per month for the space at 133 O'Farrell Street, was negotiated between SFMTA and Sega. As shown in Table 2 and Table 3 below, the proposed rent of \$13.31 per square foot per month exceeds the rent per square foot per month for the other two leased retail spaces in the Ellis-O'Farrell Garage.

Table 2: Comparison of Rent between the Subject Property at 133 O' Farrell Street and the Existing SFMTA Leased Property at 121 O'Farrell Street		
Retail Space	Square Feet of Lease Space	Rent per Square Foot per Month
133 O'Farrell Street (Subject Lease for Food and Beverage Store)	1,127	\$13.31
121 O'Farrell Street (Existing Jewelry Store Lease)	4,534	<u>\$7.60</u>
Difference	3,407	\$5.71
Percentage Increase		75%

Table 3: Comparison of Rent between the Subject Property at 133 O' Farrell Street and the Existing SFMTA Leased Property at 44 Ellis Street		
Retail Space	Square Feet of Lease Space	Rent per Square Foot per Month
133 O'Farrell Street (Subject Lease for Food and Beverage Store)	1,127	\$13.31
44 Ellis Street (Existing Restaurant Lease)	5,368	<u>\$6.31</u>
Difference	4,241	\$7.00
Percentage Increase		111%

RECOMMENDATION

Approve the proposed resolution.



May 6, 2013

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

RE: Execution of the Lease Agreement between the San Francisco Municipal Transportation Agency and Sega Food Group, Inc. and Ramin Vahabi (together, tenant)

Dear Members of the Board of Supervisors:

Attached for your consideration is a Resolution authorizing the execution of the lease agreement (Lease) between the San Francisco Municipal Transportation Agency (SFMTA) and Sega Food Groups, Inc. (Sega) and Ramin Vahabi (together, Tenant).

Background

The Ellis-O'Farrell Garage is located at 123 O'Farrell Street and provides nearly 950 parking spaces and three retail lease spaces. The facility is now fully managed by the SFMTA, as a result of the termination of the lease with the non-profit corporation effective February 1, 2013. One of the retail spaces, measuring about 1,125 square feet and designated as 133 O'Farrell Street (Premises), is currently available for lease.

Sega is well established in the Union Square and Yerba Buena areas. Over the past 10 years, Sega has successfully operated food and beverage outlets in very high-traffic, high-profile areas such as:

1. Caffé Bellini – 235 Powell Street
2. Caffé Bellini – San Francisco Shopping Center Food Court
3. Caffé Bellini – 17 Powell Street
4. Caffé Bellini – USCF Parnassus Campus Food Court
5. Caffé Central – Bloomingdale's Shopping Center Food Court
6. Powell St Pizza & Pasta – 239 Powell Street
7. BurgerHouse – 237 Powell Street
8. Metreon Food Court – (coming soon)

Tenant desires to lease the Premises and open a retail food and beverage outlet with no on-site cooking. The outlet will feature on-site preparation of "Blue Bottle" coffee beverages, bottled beverages, beer and wine options, paired with local pastries, organic sandwiches and salads.

Under this agreement, Tenant would lease the Premises for an initial term of 10 years with two five-year options to renew. The base rent will initially be \$15,000 (\$13.33 per sq. ft.) per month, or \$180,000 (\$160 per sq. ft.) annually. The Lease stipulates an annual rent increase of three percent. Additionally, Tenant shall pay any applicable possessory interest tax and all broker fees and commissions for the Premises.

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 Premises was previously occupied by a retail jeweler. It will be necessary for Tenant to perform leasehold improvements to transform the Premises from a retail space to a food and beverage outlet; however, the Lease does not provide for any tenant improvement allowance or rent credits. The Lease allows Tenant 90 days from delivery of the Premises to complete all improvements. After 90 days, base rent payments shall commence.

The approval of the Lease by the SFMTA Board of Directors and the Board of Supervisors will result in additional revenue of \$180,000 annually. Over the 10-year initial term, the Lease will generate approximately \$2.1 million in new revenue. This action will also add another high-quality merchant to the garage and the Union Square area.

Funding Impact

Execution of the Lease will result in additional revenue of \$180,000 in the first year and higher revenue in subsequent years. Over the 10-year initial term, the Lease will generate approximately \$2.1 million.

Alternatives Considered

The staff evaluated pros and cons of accepting this proposal from Tenant versus continuing to market the Premises. Staff supports execution of the Lease due to the successful track record of the prospective tenant and favorable terms being offered. No other proposal has been received during the last four months.

SFMTA Board of Directors' Approval

The SFMTA Board will be hearing this item at its May 7, 2013 Board meeting. A resolution authorizing the Director of Transportation to execute a Lease Agreement is expected to be received at that time.

Recommendation

The SFMTA recommends approving the Lease between the SFMTA and Tenant and authorizing the Director of Transportation to execute the Lease.

If you have any questions regarding this matter, please contact Amit Kothari, Director of SFMTA's Off-Street Parking Section, at 701-4462 or amit.kothari@sfmta.com.

Sincerely,



Edward D. Reiskin
Director of Transportation

Attachments

ELLIS-O'FARRELL GARAGE

COMMERCIAL LEASE

between

CITY AND COUNTY OF SAN FRANCISCO,
acting by and through its MUNICIPAL TRANSPORTATION AGENCY
as Landlord

and

SEGA FOOD GROUP, INC., a California corporation, & Ramin Vahabi, an individual
dba Caffe Central,
as Tenant

For the lease of
133 O'Farrell Street
San Francisco, California

May 15, 2013

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- EXHIBIT A – Floor Plan
- EXHIBIT B – Notice of Commencement Date
- EXHIBIT C – [Intentionally blank]
- EXHIBIT D – Utilities and Services
- EXHIBIT E – Rules and Regulations

COMMERCIAL LEASE

THIS LEASE (the "Lease"), is entered into by and between the landlord and tenant specified in the Basic Lease Information (hereinafter "**Landlord**" and "**Tenant**", respectively) as of the date ("**Lease Date**") specified in the Basic Lease Information.

1. BASIC LEASE INFORMATION

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

Lease Reference Date:	May 1, 2013
Landlord:	CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, by and through its Municipal Transportation Agency
Tenant:	SEGA FOOD GROUP, INC., a California corporation, & Ramin Vahabi, an individual (and permitted successors and assigns)
Tenant's Trade Name:	Caffe Central
Retail Center (<u>Section 2.1</u>):	Ellis-O'Farrell Garage 133 O'Farrell Street, San Francisco, California
Premises (<u>Section 2.1</u>):	Space on the ground floor of the Retail Center designated as 133 O'Farrell Street, as depicted on the floor plan attached as <u>Exhibit A</u> .
Rentable Area of Premises(<u>Section 2.1</u>):	Approximately 1,127 square feet.
Term (<u>Section 3.1</u>):	Estimated commencement date: July 1, 2013; Expiration date: June 30, 2023
Options to Extend (<u>Section 27.1</u>):	Two (2) five (5) year options to extend
Base Rent (<u>Section 4.1</u>):	Initial Annual Base Rent: \$180,000.00 (\$159.72 per sq. ft.) Initial monthly payments: \$15,000.00 (\$13.31 per sq. ft.)
Rent Adjustment Increases and Dates	Annual Base Rent shall be increased by 3%

(Section 4.2):	each anniversary of the Initial Rent Date (as defined in Section 4.1).
Use (Section 5.1):	Retail food/beverage outlet with no on-site cooking.
Tenant Improvements (Section 6.1):	To be performed by Tenant at its sole cost
Utilities and Services (Section 10.1):	To be borne by Tenant alone.
Security Deposit (Section 23):	Twenty-Five Thousand Dollars (\$25,000).
Notice Address of City (Section 28.1):	San Francisco Municipal Transportation Agency 1 South Van Ness Avenue San Francisco, California 94103 Attn: Amit Kothari, Director of Off-Street Parking
With a copy to:	<hr/> Office of the City Attorney 1390 Market Street, 6 th Floor San Francisco, California 94102-4682 Attn: Stephanie Stuart Deputy City Attorney Re: 133 O'Farrell Fax No.: (415) 554-4755 Amit Kothari Phone: 415.701.4462 Michael Robertson Phone: 415.701.5230
Key Contact for SFMTA:	235 Powell Street San Francisco, CA 94102 Fax No.: 415-765-9913 Ramin Vahabi Phone: 415-271-3988
Alternate Contact for City:	
Address for Tenant (Section 28.1):	
Key Contact for Tenant:	
Alternate Contact for Tenant:	
Telephone No.:	
Other Noteworthy Provisions:	Tenant will pay all broker commissions. Rent shall commence ninety (90) days after the Commencement Date. Premises taken "as-is".

2. PREMISES; AS IS CONDITION

2.1. Lease Premises

Subject to the provisions of this Lease, City leases to Tenant and Tenant leases from City the premises ("Premises") identified in the Basic Lease Information and shown on the site plan

("Site Plan") attached hereto and incorporated herein by reference as Exhibit A. The Premises are located in the Ellis-O'Farrell Garage retail center ("Retail Center"). The rentable area of the Premises specified in the Basic Lease Information shall be conclusive for all purposes hereof. The Premises, land upon which the Premises are located and all other improvements on and appurtenances to such land are referred to collectively as the "Property." Tenant shall have the non-exclusive right to use, together with other tenants in the Premises, the lobbies, corridors, elevators, stairways and other public areas of the Premises and the Property (collectively, the "Common Areas"), and the non-exclusive right of access to and from the Premises by the main entrances to the Premises and the Property.

2.2. As Is Condition

TENANT ACKNOWLEDGES AND AGREES THAT THE PREMISES ARE BEING LEASED AND ACCEPTED IN THEIR "AS IS" CONDITION, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, AND SUBJECT TO ALL APPLICABLE LAWS, RULES AND ORDINANCES GOVERNING THEIR USE, OCCUPANCY AND POSSESSION. TENANT REPRESENTS AND WARRANTS TO 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. 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 PROPERTY, THE PRESENT OR FUTURE SUITABILITY OF THE PREMISES FOR TENANT'S BUSINESS, OR ANY OTHER MATTER WHATSOEVER RELATING TO THE PREMISES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

3. TERM

3.1. Lease Term

The Premises are leased for a term (the "Term") commencing on the date specified in the Basic Lease Information as the estimated commencement date (the "Estimated Commencement Date"), subject to the provisions of Section 3.3 (Delay in Delivery of Possession) and Section 3.4 (Delays Caused by Tenant) below, or such earlier date upon which Tenant is open for business at the Premises. The Term of this Lease shall end on the expiration date specified in the Basic Lease Information, unless sooner terminated pursuant to the provisions of this Lease. This Lease is subject to the Extension Option(s) set forth in Section 27.1 (Option to Extend Term). City shall deliver the Premises to Tenant on the Commencement Date in their then existing as is condition as further provided above, with no obligation of the City to make any improvements, repairs or alterations.

3.2. Confirmation of Commencement Date and Expiration Date

The dates on which the Term commences and terminates pursuant hereto are referred to respectively as the "Commencement Date" and the "Expiration Date." If the Commencement Date occurs on a date other than the Estimated Commencement Date, then promptly following the Commencement Date Tenant shall deliver to City a notice substantially in the form attached hereto as Exhibit B, confirming the actual Commencement Date, but Tenant's failure to do so shall not affect the commencement of the Term.

3.3. Delay in Delivery of Possession

If City is unable to deliver possession of the Premises to Tenant on or before the Estimated Commencement Date, then the validity of this Lease shall not be affected thereby and City shall not be liable to Tenant for any Claims (as defined in Section 18 below) resulting therefrom, and Tenant waives all provisions of any laws to the contrary. In such case, the Term and regular payments of Base Rent and Additional Charges shall not commence until City delivers possession of the Premises. If the Term commences later or earlier than the Estimated Commencement Date, this Lease shall nevertheless expire on the Expiration Date, unless sooner terminated pursuant to the provisions hereof.

3.4. Delays Caused by Tenant

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

4. RENT

4.1. Base Rent

Throughout the Term beginning on the Commencement Date, Tenant shall pay to City the annual Base Rent specified in the Basic Lease Information, provided that such sum shall be subject to escalation pursuant to Section 4.2 (Adjustments in Base Rent) (the "Base Rent"). The Base Rent shall be paid to City in advance, without prior demand and without any deduction, setoff or counterclaim whatsoever, in equal consecutive monthly payments on or before the first day of the Term and on or before the first day of each month thereafter. All sums payable by Tenant to City hereunder shall be paid in cash or by good (cashier's or certified) check to the City and County of San Francisco in care of the Director of Property at the primary address for City specified in the Basic Lease Information, or such other place as City may designate in writing. If the Commencement Date occurs on a day other than the first day of a calendar month, or the Expiration Date occurs on a day other than the last day of a calendar month, then the Base Rent for such fractional month shall be prorated based on a thirty (30) day month. Tenant shall pay to City the Base Rent for the first full month upon execution of this Lease. This first lease payment shall apply to the first month's rent due under this Lease. The first month's rent will be due ninety (90) days after the Commencement Date (the "Initial Rent Date").

4.2. Adjustments in Base Rent

On each anniversary of the Initial Rent Date, the Base Rent payable under this Lease shall be increased by three percent (3%) annually.

4.3. Additional Charges

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

4.4. Late Charges

If Tenant fails to pay any Rent or any portion of Rent within five (5) days following the due date, such unpaid amount shall be subject to a late payment charge equal to six percent (6%) of the unpaid amount in each instance. The late payment charge has been agreed upon by City and Tenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that City will incur as a result of any such failure by Tenant, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate City for its damages resulting from such failure to pay and shall be paid to City together with such unpaid amount.

4.5. Default Interest

Any Rent, if not paid within five (5) days following the due date, shall bear interest from the due date until paid at the rate of ten percent (10%) per year or, if a higher rate is legally permissible, at the highest rate an individual is permitted to charge under law (the "Interest Rate"). However, interest shall not be payable on late charges incurred by Tenant nor on any amounts on which late charges are paid by Tenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Tenant.

5. USE

5.1. Permitted Use

Tenant shall use and continuously occupy the Premises during the Term solely for retail food/beverage services. Tenant hereby agrees that no on-site cooking shall be permitted on the Premises. Landlord hereby agrees that Tenant may modify portions of its menu from time to time, but may not change its "café" use without Landlord's express written permission, which permission may be withheld in Landlord's sole discretion.

5.2. No Unlawful Uses, Nuisances or Waste

Without limiting the foregoing, Tenant shall not use, occupy or permit the use or occupancy of any of the 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 Property except identification signs in a location and size and design approved by City in its sole discretion.

6. TENANT IMPROVEMENTS

6.1. Tenant Improvement Work

Tenant shall be responsible, at no cost to the City, for performing any tenant improvement work at the Premises (such work is referred to as the "Tenant Improvement Work" or "Tenant Improvements") in accordance with plans and specifications that have been prepared by Tenant at its sole cost and submitted to and approved by City ("Plans") and in accordance with the standards contained in Section 7.1 (Tenant's Alterations) below. Tenant shall further be responsible, at no cost to the City, for obtaining all permits and licenses required in connection with the Tenant Improvements. No Tenant Improvement Work shall commence in the Premises unless and until this Lease is fully executed and until Tenant has submitted to City, and obtained City's approval of, the plans and specifications for such Tenant Improvement Work. Tenant shall not make any material change to the approved Plans or consent to any change order during the course of construction without first obtaining City's written approval. Tenant shall ensure that all work is performed in a manner that does not obstruct access to or through the Retail Center/Common Area and that does not interfere either with City's business being conducted in the Retail Center, other tenant's use of their premises or with any other work being undertaken within the Retail Center. Upon completion of the Tenant Improvements, Tenant shall furnish City with a copy of the final as-built plans and specifications along with a digital CAD file. No approval by City or any of its Agents of the Plans, any changes thereto or of any Alterations for purposes of this Lease shall be deemed to constitute approval of any federal, state or local regulatory authority with jurisdiction over the Premises or Tenant's use hereunder, and nothing herein shall limit Tenant's obligation to obtain all such regulatory approvals at no cost to the City.

7. ALTERATIONS

7.1. Tenant's Alterations

(a) General

Tenant shall not make or permit any alterations 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 Retail Center ("Retail Center Systems"), and shall not make or permit any alterations, installations, additions or improvements, structural or otherwise (collectively, together with any Tenant Improvements, the "Alterations"), in, to or about the Premises, without City's prior written consent in each instance. All Alterations shall be done at Tenant's expense in accordance with plans and specifications approved by City, only by duly licensed and bonded contractors or mechanics approved by City, and subject to any conditions that City may reasonably impose. With respect to any Alterations which would be visible from the exterior of the Retail Center, 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 under City's Charter Section 5.103. If the cost of any Alterations is in excess of Five Thousand Dollars (\$5,000), then Tenant shall pay to City an administrative fee equal to ten percent (10%) of the total "hard" costs of the work to compensate City for the costs of review.

Tenant shall require its contractor performing any Alteration to maintain insurance in amounts and in such form as City may reasonably require. City shall be named as additional insureds in the required policies. Any and all of the Alterations shall be completed in accordance with the plans approved by the City in writing and shall be carried out in a good, workmanlike and prompt manner, shall comply with state, federal and local law, and shall be subject to monitoring and inspection by City or its employees, agents or contractors.

(b) Asbestos

Without limiting Section 26.2 (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 and any asbestos related work, as defined in California Health & Safety Code Section 25914.1(b), is performed in compliance with all laws relating to asbestos, including but not limited to California Occupational Safety and Health (OSHA) regulations found in Title 8 of the California Code of Regulations, Sections 1502 and 1529. Additionally, Tenant shall distribute notifications to all employees and contractors as required pursuant to California Health & Safety Code Section 25915 et seq. informing them of the existence of ACM and that moving, drilling, boring, or otherwise disturbing ACM may present a health risk and should not be attempted by an unqualified employee. No Alterations affecting ACM-containing areas or any asbestos related work shall be performed without City's prior written consent in each instance.

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

Tenant, on behalf of itself and its Agents or Invitees, shall comply with all requirements of the San Francisco Building Code, Section 3407, and all other applicable present or future federal, state, local and administrative laws, rules, regulations, orders and other governmental requirements, the requirements of any board of fire underwriters or other similar body, any directive or occupancy certificate issued pursuant to any law by any public officer or officers acting in their regulatory capacity (collectively, "Laws"), including, without limitation, the California and United States Occupational Health and Safety Acts and their implementing regulations, when the work of improvement or alteration disturbs or removes exterior lead-based or "presumed" lead-based paint (as defined below). Tenant and its Agents or Invitees shall give to City three (3) business days prior written notice of any disturbance or removal of exterior lead-based or presumed lead-based paint. Further, Tenant and its Agents or Invitees, when disturbing or removing exterior lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter ("HEPA") local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool; and (e) heat guns operating above 1,100 degrees Fahrenheit. Paint on the exterior of buildings built before December 31, 1978, is presumed to be lead-based paint unless lead-based paint testing, as defined in Section 3407 of the San Francisco Building Code,

demonstrates an absence of lead-based paint on the exterior surfaces of such buildings. Under this Section, lead-based paint is "disturbed or removed" if the work of improvement or alteration involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on an exterior surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface. Notice to City under this Lease shall not constitute notice to the City's Department of Building Inspection required under Section 3407 of the San Francisco Building Code.

7.2. Title to Improvements

Except for Tenant's Personal Property (as described in the next section), or as may be specifically provided to the contrary in the approved Plans, all appurtenances, fixtures, improvements, equipment, additions, and other property attached or affixed to or installed in the Premises at the Commencement Date or during the Term, including, without limitation, the Tenant Improvements and any Alterations, shall be and remain City's property. Tenant may not remove any such property at any time during or after the Term unless City so requests as further provided in Section 24 (Surrender) below.

7.3. Tenant's Personal Property

All furniture, trade fixtures, office equipment and articles of movable personal property installed in the Premises by or for the account of Tenant, without expense to City, and that can be removed without structural or other damage to the Premises (collectively, "Tenant's Personal Property") shall be and remain Tenant's property. Tenant may remove its Personal Property at any time during the Term, subject to the provisions of Section 24 (Surrender of Premises) below. Tenant shall pay any taxes or other impositions levied or assessed upon Tenant's Personal Property, at least ten (10) days prior to delinquency, and shall deliver satisfactory evidence of such payment to City upon request.

7.4. City's Alterations of the Retail Center and Retail Center Systems

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 Retail Center or the Retail Center Systems, provided that any such alterations or additions shall not materially adversely affect the functional utilization of the Premises for the uses permitted hereunder.

8. REPAIRS AND MAINTENANCE

8.1. City's Repairs

City shall repair and maintain the structural portions of the Retail Center, including the Retail Center Systems, the elevators and the common areas; provided, however, Tenant shall reimburse City for any damage, excluding normal wear and tear, caused by any act or omission of Tenant, its Agents or Invitees (as such terms are defined in Section 28.5 (Parties and Their Agents) 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.

8.2. Tenant's Repairs

Tenant shall maintain, at no expense to City, 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) at no cost to the City,
- (b) by licensed contractors or qualified mechanics approved by City,
- (c) so that the same shall be at least equal in quality, value and utility to the original work or installation,
- (d) in a manner and using equipment and materials that will not interfere with or impair the operations, use or occupation of the Retail Center or the Retail Center Systems, and
- (e) in accordance with any applicable Building Rules and Regulations (as defined in Section 23.1 (Rules and Regulations)) and all applicable laws, rules and regulations. If the cost of any such repairs or replacements is in excess of Five Thousand Dollars (\$5,000) and is due to acts or omissions of Tenant, its Agents or Invitees, then Tenant shall pay to City an administrative fee equal to ten percent (10%) of the total "hard" costs of the work. Tenant hereby waives all rights to make repairs at City's expense under Sections 1941 and 1942 of the California Civil Code or under any similar law, statute or ordinance now or hereafter in effect.

9. LIENS AND ENCUMBRANCES

9.1. Liens

Tenant shall keep the Premises and the rest of the Property free from any liens arising out of any work performed, material furnished or obligations incurred by or for Tenant. In the event Tenant does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, City shall have, in addition to all other remedies, the right, but not the obligation, to cause the lien to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by City and all expenses incurred by it in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to City by Tenant upon demand. City shall have the right to post on the Premises any notices that City may deem proper for the protection of City, the Premises, and the Retail Center, from mechanics' and materialmen'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, materialmen's or other liens in connection with any Alterations, repairs or construction on the Premises, or materials furnished or obligations incurred by or for Tenant.

9.2. Encumbrances

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

10. UTILITIES AND SERVICES

10.1. Utilities and Services

Tenant shall pay the entire cost of all utilities and other services provided to the Premises including all water, gas, heat, lights, power, telephone service, garbage service, sanitary service, and all other services supplied to the Premises, whether the same are furnished or supplied by private individuals, public utilities or municipal corporations together with any tax thereon. Tenant has inspected the Premises and acknowledges the amount of electrical power and other utilities supplied to the Premises is sufficient for Tenant's intended use. Tenant, at its cost, shall be responsible for the installation of other utilities in the Premises. If such installation is an Alteration, Tenant shall comply with the requirements set forth in Section 7.1.

10.2. Floor Load

Without City's prior written consent, which City may give or refuse in its sole discretion, Tenant shall not place or install in the Premises any equipment that weighs in excess of the normal load-bearing capacity of the floors of the Retail Center. If City consents to the placement or installation of any such machine or equipment in the Premises, Tenant, at no cost to the City, shall reinforce the floor of the Premises, pursuant to plans and specifications approved by City and otherwise in compliance with Section 7.1 (Tenant's Alterations), to the extent necessary to assure that no damage to the Premises or the Retail Center or weakening of any structural supports will be occasioned thereby.

11. COMPLIANCE WITH LAWS AND RISK MANAGEMENT REQUIREMENTS

11.1. Compliance with Laws

Tenant shall promptly comply, at no cost to the City, with all present or future laws, ordinance, resolution, regulation, requirement, proclamation, order or decree of any municipal, county, state or federal government or other governmental or regulatory authority relating to the Premises or the use or occupancy thereof (the "Legal Requirements") and with any and all recorded covenants, conditions and restrictions affecting the Property or any portion thereof, whether in effect at the time of the execution of this Lease or adopted or recorded at any time thereafter and whether or not within the present contemplation of the parties. Tenant further understands and agrees that it is Tenant's obligation, at no cost to the City, to cause the Premises and Tenant's uses thereof to be conducted in compliance with the Americans With Disabilities Act, 42 U.S.C. Section 12101 et seq. Any Alteration made by or on behalf of Tenant pursuant to the provisions of this Section shall comply with the provisions of Section 8.2 (Tenant's Repairs) above. The parties acknowledge and agree that Tenant's obligation to comply with all Legal Requirements as provided herein is a material part of the bargained for consideration under this Lease. Tenant's obligation under this Section shall include, without limitation, the responsibility of Tenant to make substantial or structural repairs and Alterations to the Premises (including any of the Tenant Improvements or any of Tenant's Alterations), regardless of, among other factors,

the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or City, the degree to which the curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Legal Requirement involved, and whether the Legal Requirement involved is related to Tenant's particular use of the Premises.

11.2. Regulatory Approvals

(a) Responsible Party

Tenant understands and agrees that Tenant's use of the Premises and construction of the Tenant Improvements permitted hereunder 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 written consent of City under this Lease. Tenant shall bear all costs associated with applying for and obtaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval; provided, however, any such condition that could affect use or occupancy of the Property or City's interest therein must first be approved by City in its sole discretion. Any fines or penalties levied as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Tenant, and City shall have no liability, monetary or otherwise, for any such fines or penalties. Tenant shall Indemnify City and the other Indemnified Parties hereunder against all Claims (as such terms are defined in Section 18.2 below) arising in connection with Tenant's failure to obtain or failure by Tenant, its Agents or Invitees to comply with the terms and conditions of any regulatory approval.

(b) City Acting as Owner of Real Property

Tenant further understands and agrees that City is entering into this Lease in its capacity as a property owner with a proprietary interest in the 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 approvals from City officials, 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 applicable laws, as provided further above.

11.3. Compliance with City's Risk Management Requirements

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

12. SUBORDINATION

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

13. INABILITY TO PERFORM

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

14. DAMAGE AND DESTRUCTION

14.1. Damage and Destruction

If the Premises or the Retail Center is damaged by fire or other casualty, then City shall repair the same provided that funds for such repairs are appropriated by the SFMTA Board of Directors, in its sole discretion, for such purpose and that such repairs can be made within two hundred ten (210) days after the date of such damage (the "Repair Period"). In the event such conditions are satisfied, this Lease shall remain in full force and effect except that Tenant shall be entitled to a proportionate reduction of Base Rent and Additional Charges during the period of such repairs based upon the extent to which such damage and the making of such repairs materially interferes with Tenant's use or occupancy of the Premises.

City shall use its best efforts to notify Tenant within ninety (90) days after the date of such damage whether or not such repairs can be made within the Repair Period, and City's determination thereof shall be binding on Tenant. If such repairs cannot be made within the Repair Period, City shall have the option to notify Tenant of:

(a) City's intention to repair such damage and diligently prosecute such repairs to completion within a reasonable period after the Repair Period, subject to the Board of Supervisor's appropriation of all necessary funds, in which event this Lease shall continue in full force and effect and the Base Rent and Additional Charges shall be reduced as provided herein; or

(b) City's election to terminate this Lease as of a date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by City. In case of termination, the Base Rent and Additional Charges shall be reduced as provided above, and Tenant shall pay such reduced Base Rent and Additional Charges up to the date of termination.

If at any time during the last twelve (12) months of the Term of this Lease, the Premises or the Retail Center is damaged or destroyed, then either City or Tenant may terminate this Lease by giving written notice to the other party of its election to do so within thirty (30) days after the date of the occurrence of such damage; provided, however, Tenant may terminate only if such damage or destruction substantially impairs its use or occupancy of the Premises for the uses permitted hereunder. The effective date of termination shall be specified in the notice of termination, which date shall not be more than thirty (30) days from the date of the notice.

Notwithstanding anything to the contrary in this Lease, City shall have no obligation to repair the Premises or the Retail Center in the event the damage or destruction is attributable to any act or omission of Tenant, its Agents or Invitees. In no event shall City be required to repair any damage to Tenant's Personal Property or any paneling, decorations, railings, floor coverings, or any Tenant Improvements or Alterations installed or made on the Premises by or at the expense of Tenant. In the event the Premises or the Retail Center is substantially damaged or destroyed and City intends to rebuild for public purposes inconsistent with this Lease, City may terminate this Lease upon written notice to Tenant.

14.2. Waiver

City and Tenant intend that the provisions of this Section 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, Section 1933, subdivision 4 and Sections 1941 and 1942, of the Civil Code of California or under any similar law, statute or ordinance now or hereafter in effect.

15. EMINENT DOMAIN

15.1. Definitions

(a) "Taking" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under law. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

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

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

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

15.2. General

If during the Term or during the period between the execution of this Lease and the Commencement Date, there is any Taking of all or any part of the 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.

15.3. Total Taking; Automatic Termination

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

15.4. Partial Taking; Election to Terminate

(a) 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:

(1) the partial Taking renders the remaining portion of the Premises untenable or unsuitable for continued use by Tenant,

(2) 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

(3) 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.

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

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

15.5. Rent; Award

Upon termination of this Lease pursuant to an election under Section 15.4 above, then: (i) Tenant's obligation to pay Rent shall continue up until the date of termination, and thereafter shall cease, except that Rent shall be reduced as provided in Section 15.6 below for any period during which this Lease continues in effect after the Date of Taking, and (ii) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease and any Improvements Pertaining to the Realty), and Tenant shall have no claim against City for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to movable Tenant's Personal Property.

15.6. Partial Taking; Continuation of Lease

If there is a partial Taking of the Premises under circumstances where this Lease is not terminated in its entirety under Section 15.4 above, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the parties shall be as follows:

(a) Base Rent shall be reduced by an amount that is in the same ratio to the Base Rent as the area of the Premises taken bears to the area of the Premises prior to the Date of Taking; provided, however, in no event shall the monthly Base Rent be reduced to less than seventy-five percent (75%) of the monthly Base Rent immediately prior to the Date of Taking, and

(b) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease), and Tenant shall have no claim against City for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to movable Tenant's Personal Property.

15.7. Temporary Takings

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

16. ASSIGNMENT AND SUBLETTING

16.1. Restriction on Assignment and Subletting

Tenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Tenant), voluntarily or by operation of law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the 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, as provided hereinbelow. Notwithstanding the foregoing, Tenant may Assign this Lease or Sublet any or all portions of the Premises to any Tenant's Affiliate (as defined below) without obtaining the consent of City by giving City written notice of its intent thereof at least fifteen (15) business days before the proposed effective date of such transfer. As used in this Section, the term "Tenant's Affiliate" shall mean, any of the following: (1) any person or entity owning, directly or indirectly, fifty percent (50%) or more of the ownership interests of Tenant (an "Owning Person"), (2) any entity, fifty percent (50%) or more of the ownership interests of which are owned, directly or indirectly, by any Owning Person, (3) any entity, fifty percent (50%) or more of the ownership interests of which are owned, directly or indirectly, by Tenant.

16.2. Notice of Proposed Transfer

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

16.3. City's Response

Within twenty (20) business days after City's receipt of the Notice of Proposed Transfer (the "Response Period"), City may elect, by written notice to Tenant, to:

(a) sublease the portion of the Premises specified in the Notice of Proposed Transfer on the terms and conditions set forth in such notice, except as otherwise provided in Section 16.4 (Sublease or Recapture Space), or

(b) terminate this Lease as to the portion (including all) of the Premises that is specified in the Notice of Proposed Transfer, with a proportionate reduction in Base Rent (a "Recapture").

If City declines to exercise either of its options provided above, then Tenant shall have ninety (90) days following the earlier of

(i) City's notice that it will not elect either such option or

(ii) the expiration of the Response Period, to enter into such Assignment or Sublease, subject to City's prior written approval of the proposed assignee or subtenant (collectively, Transferee") and the terms and conditions of the proposed Sublease or Assignment. However, seventy-five percent (75%) of any rent or other consideration realized by Tenant under any such Assignment or Sublease in excess of the Base Rent and Additional Charges payable hereunder (or the amount thereof proportionate to the portion of the Premises subject to such Sublease or Recapture) shall be paid to City, after Tenant has recovered any reasonable brokers' commissions and the reasonable cost of any leasehold improvements that Tenant has incurred in connection with such Sublease or Recapture. Tenant shall provide City with such information regarding the proposed Transferee and the Assignment or Sublease as City may reasonably request. City agrees that it will not unreasonably withhold its approval of any proposed Transferee.

If after City declines to exercise any of the foregoing options Tenant desires to enter into such Assignment or Sublease

(iii) on terms and conditions materially more favorable to Tenant than those contained in the Notice of Proposed Transfer or

(iv) with a Transferee that is currently a tenant or other occupant of the Retail Center, then Tenant shall give City a new Notice of Proposed Transfer, which notice shall state the terms and conditions of such Assignment or Sublease and identify the proposed Transferee, and City shall again be entitled to elect one of the options provided in clauses (a) and (b) at any time within twenty (20) business days after City's receipt of such new Notice of Proposed Transfer.

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

Notwithstanding the foregoing, if any event of default by Tenant is outstanding hereunder at the time of Tenant's Notice of Proposed Transfer (or if any event shall have occurred which with the giving of notice or the passage of time or both would constitute such a default), then City may elect by notice to Tenant to refuse to consent to Tenant's proposed Transfer and pursue any of its right or remedies hereunder or at law or in equity.

16.4. Sublease or Recapture Space

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

(a) In the case of a Sublease,

(i) City shall have the right to use the portion of the Premises covered by the Notice of Proposed Transfer (the "Sublease Space") for any legal purpose,

(ii) the rent payable by City to Tenant shall be the lesser of

(1) the amount in the Notice of Proposed Transfer or

(2) the Base Rent payable by Tenant under this Lease at the time of the Sublease (or the amount thereof proportionate to the Sublease Space if for less than the entire Premises),

(iii) City may make alterations and improvements to the Sublease Space and may remove any such alterations or improvements, in whole or in part, prior to or upon the expiration of the Sublease, provided that City shall repair any damage or injury to the Sublease Space caused by such removal,

(iv) City shall have the right to further sublease or assign the Sublease Space to any party, without the consent of Tenant, and

(v) Tenant shall pay to City on demand any costs incurred by City in physically separating the Sublease Space (if less than the entire Premises) from the balance of the Premises and in complying with any applicable laws or regulations relating to such separation.

(b) In the case of Recapture,

(i) the portion of the Premises subject to the Recapture (the "Recapture Space") shall be deleted from the Premises for all purposes hereunder, and Tenant and City shall be relieved of all their rights and obligations hereunder with respect to the Recapture Space except to the extent the same would survive the Expiration Date or other termination of this Lease pursuant to the provisions hereof, and

(ii) City shall pay any cost incurred in physically separating the Recapture Space (if less than the entire Premises) from the balance of the Premises and in complying with any applicable governmental laws or regulations relating to such separation.

16.5. Effect of Sublease or Assignment

No Sublease or Assignment by Tenant nor any consent by City thereto shall relieve Tenant, or any guarantor, of any obligation to be performed by Tenant under this Lease. Any Sublease or Assignment not in compliance with this Section shall be void and, at City's option, shall constitute a material default by Tenant under this Lease. The acceptance of any Base Rent or other payments by City from a proposed Transferee shall not constitute consent to such Sublease or Assignment by City or a recognition of any Transferee, or a waiver by City of any failure of Tenant or other transferor to comply with this Section. If there is an Assignment or Sublet, whether in violation of or in compliance with this Section, in the event of default by any Transferee, or any successor of Tenant, in the performance or observance of any of the terms of this Lease or any Sublease or Assignment agreement, City may proceed directly against Tenant without the necessity of exhausting remedies against such Transferee or successor.

16.6. Assumption by Transferee

Each Transferee (other than City) shall assume all obligations of Tenant under this Lease and shall be liable jointly and severally with Tenant for the payment of the Base Rent and Additional Charges, and for the performance of all the terms, covenants and conditions to be performed on Tenant's part hereunder. No Assignment shall be binding on City unless Tenant or Transferee has delivered to City a counterpart of the Assignment and an instrument in recordable form that contains a covenant of assumption by such Transferee satisfactory in form and substance to City. However, the failure or refusal of such Transferee to execute such instrument

of assumption shall not release such Transferee from its liability as set forth above. Tenant shall reimburse City on demand for any reasonable costs that may be incurred by City in connection with any proposed Sublease or Assignment, including, without limitation, the costs of making investigations as to the acceptability of the proposed Transferee and legal costs incurred in connection with the granting of any requested consent.

16.7. Indemnity for Relocation Benefits

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

17. DEFAULT; REMEDIES

17.1. Events of Default

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

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

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

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

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

17.2. Remedies

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

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

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

- (i) The reasonable cost of recovering the Premises; plus
- (ii) The reasonable cost of removing Tenant's Alterations, trade fixtures and improvements; plus
- (iii) All unpaid rent due or earned hereunder prior to the date of termination, less the proceeds of any re-letting or any rental received from subtenants prior to the date of termination applied as provided in Section 17.2(b) below, together with interest at the Interest Rate, on such sums from the date such rent is due and payable until the date of the award of damages; plus
- (iv) The amount by which the rent which would be payable by Tenant hereunder, including Additional Charges under Section 4.3 above, as reasonably estimated by City, from the date of termination until the date of the award of damages, exceeds the amount of such rental loss as Tenant proves could have been reasonably avoided, together with interest at the Interest Rate on such sums from the date such rent is due and payable until the date of the award of damages; plus
- (v) The amount by which the rent which would be payable by Tenant hereunder, including Additional Charges under Section 4.3 above, as reasonably estimated by City, for the remainder of the then term, after the date of the award of damages exceeds the amount such rental loss as Tenant proves could have been reasonably avoided, discounted at the discount rate published by the Federal Reserve bank of San Francisco for member banks at the time of the award plus one percent (1%); plus
- (vi) Such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law, including without limitation any other

amount necessary to compensate City for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease which in the ordinary course of things would be likely to result therefrom.

(b) City has the remedy described in California Civil Code Section 1951.4 (a landlord may continue the lease in effect after the tenant's breach and abandonment and recover rent as it becomes due, if the tenant has the right to sublet and assign subject only to reasonable limitations), and may continue this Lease in full force and effect and may enforce all of its rights and remedies under this Lease, including, but not limited to, the right to recover rent as it becomes due. After the occurrence of an Event of Default, City may enter the Premises without terminating this Lease and sublet all or any part of the Premises for Tenant's account to any person, for such term (which may be a period beyond the remaining term of this Lease), at such rents and on such other terms and conditions as City deems advisable. In the event of any such subletting, rents received by City from such subletting shall be applied

(i) first, to the payment of the costs of maintaining, preserving, altering and preparing the Premises for subletting, the other costs of subletting, including but not limited to brokers' commissions, attorneys' fees and expenses of removal of Tenant's Personal Property, trade fixtures and Alterations;

(ii) second, to the payment of rent then due and payable hereunder;

(iii) third, to the payment of future rent as the same may become due and payable hereunder; and

(iv) fourth, the balance, if any, shall be paid to Tenant upon (but not before) expiration of the term of this Lease. If the rents received by City from such subletting, after application as provided above, are insufficient in any month to pay the rent due and payable hereunder for such month, Tenant shall pay such deficiency to City monthly upon demand. Notwithstanding any such subletting for Tenant's account without termination, City may at any time thereafter, by written notice to Tenant, elect to terminate this Lease by virtue of a previous Event of Default.

During the continuance of an Event of Default, for so long as City does not terminate Tenant's right to possession of the Premises and subject to Section 16 (Assignment and Subletting) and the options granted to City thereunder, City shall not unreasonably withhold its consent to an assignment or sublease of Tenant's interest in the Premises or in this Lease.

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

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

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

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

17.3. Waiver of Redemption

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

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

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

18. WAIVER OF CLAIMS; INDEMNIFICATION

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

(a) 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 or any part of the Retail Center adjacent to or connected with the Premises,

(ii) theft,

(iii) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination,

(iv) stopped, leaking or defective Retail Center Systems, (v) Retail Center defects, and

(v) any other acts, omissions or causes. Nothing in this Section shall relieve City from liability caused solely and directly by the gross negligence or willful misconduct of City or its Agents, but City shall not be liable under any circumstances for any consequential, incidental or punitive damages.

18.2. Tenant's Indemnity

Tenant, on behalf of itself and its successors and assigns, shall indemnify, defend and hold harmless ("Indemnify") City including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, and all of 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 attorney's fees), 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 Property, all regardless of the active or passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that such Indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Lease and further except only such Claims as are caused exclusively by the willful misconduct or gross negligence of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any Claim. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to 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 shall survive the termination of this Lease.

19. INSURANCE

19.1. Tenant's Insurance

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

(i) Commercial general liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, fire damage legal liability (of not less than Fifty Thousand Dollars (\$50,000)), personal injury, products and completed operations, and explosion, collapse and underground (XCU).

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

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

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

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

(vi) Such other insurance as is generally required by commercial owners of buildings similar in size, character, age and location as the Retail Center, as may change from time to time.

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

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

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

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

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

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

(f) All policies shall be endorsed to provide thirty (30) days' advance written notice to City of cancellation or intended non-renewal (or ten (10) days' advance written notice in case of nonpayment of premium), mailed to the address(es) for City set forth in the Basic Lease Information.

(g) Tenant shall deliver to City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to City, evidencing the coverage required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon City's request, and Tenant shall provide City with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. In the event Tenant shall fail to procure such insurance, or to deliver such policies or certificates, City may procure, at its option, without waiving any rights or remedies which City may have for Tenant's default hereunder, the same for the account of Tenant, and the cost thereof shall be paid to City within five (5) days after delivery to Tenant of bills therefor. The required evidence of insurance shall also include copies of endorsements to the applicable policy specifying:

(i) the additional insureds under Tenant's commercial general liability insurance policy(ies) specified in Section 19.1(a)(1) hereof;

(ii) that Tenant's commercial general liability insurance is primary and that any insurance available to City shall be excess and not contributory;

(iii) that the insurer recognizes that waiver of subrogation set forth in Section 19.4 hereof; and

(iv) that the insurer agrees not to cancel or reduce the coverage of the policy without providing at least thirty (30) days' prior written notice to City.

(h) 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.

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

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

19.2. Tenant's Personal Property

Tenant shall be responsible, at no cost to the City, for separately insuring Tenant's Personal Property.

19.3. City's Self Insurance

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

19.4. Waiver of Subrogation

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

20. ACCESS BY CITY

City reserves for itself and any of its designated Agents, the right to enter the Premises as follows:

- (i) on a regular basis without advance notice to supply any necessary or agreed-upon service to be provided by City hereunder;
- (ii) on an occasional basis, at all reasonable times after giving Tenant reasonable advance written or oral notice, to show the Premises to prospective tenants or other interested parties, to post notices of non-responsibility, to conduct any environmental audit of Tenant's use of the Premises, to repair, alter or improve any part of the Retail Center, Retail Center Systems or the Premises, and for any other lawful purpose; and
- (iii) on an emergency basis without notice whenever City believes that emergency access is required. City shall have the right to use any means that it deems proper to open doors in an emergency in order to obtain access to any part of the Premises, and any such entry shall not be construed or deemed to be a forcible or unlawful entry into or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof. Tenant shall not alter any lock or install any new or additional locking devices without the prior written consent of City. All locks installed in the Premises (excluding Tenant's vaults, safes or special security areas, if any, designated by Tenant in writing to City) shall be keyed to the Retail Center master key system, and City shall at all times have a key with which to unlock all such doors.

21. CERTIFICATES

21.1. Tenant's Estoppel Certificates

Tenant, at any time and from time to time upon not less than ten (10) days' prior notice from City, shall execute and deliver to City or to any party designated by City a certificate stating:

- (a) that Tenant has accepted the 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.

21.2. City's Certificates

City, at any time and from time to time upon not less than ten (10) days' prior notice from Tenant, shall execute and deliver to Tenant or to any party designated by Tenant a certificate stating:

- (a) the Commencement Date and Expiration Date of this Lease,
- (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications),
- (c) whether or not there are any defaults then existing under this Lease (and if so specifying the same),
- (d) the dates, if any, to which the Base Rent and Additional Charges have been paid, and
- (e) any other information that may be required.

22. RULES AND REGULATIONS

Tenant shall faithfully comply with the rules and regulations attached to this Lease as Exhibit E (Retail Center Rules and Regulations) and all modifications thereof and additions thereto that City may from time to time put into effect (the "Rules and Regulations"). City shall not be responsible for the non-performance of the Rules and Regulations by any other tenant or

occupant of the Retail Center. In the event of any conflict between any provision of this Lease and any provision of the Rules and Regulations, this Lease shall control.

23. SECURITY DEPOSIT

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

Should City use any portion of the Security Deposit to cure any default by Tenant hereunder, Tenant shall immediately replenish the Security Deposit to the original amount. If the Base Rent is increased pursuant to any of the provisions of this Lease, Tenant shall increase the amount of the Security Deposit accordingly. City's obligations with respect to the Security Deposit are solely that of debtor and not trustee. City shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on the Security Deposit. The amount of the Security Deposit shall in no way limit the liabilities of Tenant under any provision of this Lease.

24. SURRENDER OF PREMISES

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 Tenant Improvements and all Alterations approved by City in good order and condition, except for normal wear and tear after Tenant having made the last necessary repair required on its part under this Lease, and further except for any portion of the 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. Immediately before the Expiration Date or other termination of this Lease, Tenant shall remove all of Tenant's Personal Property as provided in this Lease, and repair any damage resulting from the removal; provided, City in its sole discretion shall have the right to reserve ownership of any telecommunications equipment, wire, cabling and/or conduit installed in the Premises or any other portion of the Retail Center by or on behalf of Tenant. If such removal is not completed at the expiration or other termination of this Lease, City may remove the same at Tenant's expense. Notwithstanding anything to the contrary in this Lease, City can elect at any time prior to the Expiration Date or within five (5) days after termination of this Lease, to require Tenant to remove, at Tenant's sole expense, all or part of the Tenant Improvements, Alterations or other improvements or equipment constructed or installed

by or at the expense of Tenant including, but not limited to, any telecommunications equipment, wires, cabling and/or conduit installed in the Premises or any other portion of the Retail Center by or on behalf of Tenant. Tenant shall promptly remove such items and shall repair, at no cost to the City, any damage to the Premises or the Retail Center resulting from such removal, or if Tenant fails to repair, City may do so, at Tenant's expense. Tenant's obligations under this Section shall survive the Expiration Date or other termination of this Lease. Any items of Tenant's Personal Property remaining in the Premises after the Expiration Date or sooner termination of this Lease may, at City's option, be deemed abandoned and disposed of in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by law.

Concurrently with the surrender of the 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 Tenant Improvements or other improvements or equipment which remain part of the Premises. The terms of this Section shall survive the expiration or sooner termination of this Lease.

25. [Intentionally Left Blank]

26. **HAZARDOUS MATERIALS**

26.1 Definitions

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

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

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

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

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

26.2 No Hazardous Materials

Tenant covenants and agrees that neither Tenant nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Property, or transported to or from the Property, with the sole exception that Tenant may keep 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 Articles 7 or 8 of this Lease that disturb or remove lead-based or presumed lead-based paint from the exterior or interior surfaces of 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, Retail Center or Property or the migration thereof from or to other property;

(b) all demands or claims made or threatened by any third party against Tenant or the Premises, Retail Center or Property 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 Property has occurred that may require any Investigation or Remediation; and

(d) all matters of which Tenant is required to give notice pursuant to Section 25359.7 of the California Health and Safety Code.

26.3 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 Property in violation of any applicable Environmental Laws, then, without limiting Tenant's Indemnity contained in Section 18.2, Tenant shall, on behalf of itself and its successors and assigns, Indemnify the Indemnified Parties, and each of them, from and against all Claims (including, without limitation, damages for decrease in value of the Premises or the Property, the loss or restriction of the use of rentable or usable space or of any amenity of the Premises or the Property and sums paid in settlement of claims, attorneys' fees, consultants' fees and experts' fees and costs) arising during or after the Term of this Lease and relating to such Release. The foregoing Indemnity includes, without

limitation, costs incurred in connection with activities undertaken to Investigate and Remediate Hazardous Material and to restore the Property to its prior condition, fines and penalties assessed for the violation of any applicable Environmental Laws, and any natural resource damages. Without limiting the foregoing, if Tenant or any of its Agents or Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or any other part of the Property, Tenant shall immediately and at no expense to City take any and all appropriate actions to return the Premises or the Property affected thereby to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Tenant by the City and continues at all times thereafter. Tenant shall afford City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, or other compromise or proceeding involving Hazardous Material.

26.4 Survival of Obligation

Tenant's obligations under this Section 26 shall survive the Expiration Date or other termination of this Lease.

26.5 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. 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.

27. SPECIAL PROVISIONS

27.1 Extension Option

(a) Option to Extend Term

City grants to Tenant two revocable options to extend the Term of this Lease as to the entire Premises only (the "Extension Options") for an additional five years (5) years (the "Extension Term") commencing upon the Expiration Date upon the following terms and conditions. Tenant may exercise the Extension Option at any time during the Term but if it determines to do so it must give written notice to City thereof not less than eighteen (18) months prior to the Expiration Date; however, City reserves the right to deny Tenant's exercise of the Extension Options. Any such notice by Tenant shall be irrevocable by Tenant. If any event of default by Tenant is outstanding hereunder either at the time of Tenant's exercise of the Extension Options or at any time prior to the first day of the Extension Term (or if any event shall have occurred which with the giving of notice or the passage of time or both would

constitute such a default), then City may elect by notice to Tenant to reject Tenant's exercise of the Extension Option, whereupon the Extension Option shall be null and void.

(b) Base Rent and Other Terms

If Tenant elects to exercise the Extension Options, then the lease for the Premises during the Extension Term shall cover the entire Premises and shall be upon all of the terms, covenants and conditions of this Lease, except that Base Rent hereunder shall be adjusted to 95% the Prevailing Market Rate, but not less than current base rent, as follows:

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

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

(iii) If Tenant provides City with its determination of the Prevailing Market Rate pursuant to Section 27.1(b)(ii) above, then within thirty (30) days following Tenant's notice to City, the parties shall attempt in good faith to meet no less than two (2) times, at a mutually agreeable time and place, to attempt to resolve in good faith any such disagreement as to the Prevailing Market Rate. The parties may, by an instrument in writing, mutually agree to extend such forty-five (45)-day consultation period for a reasonable period to resolve their disagreement if the parties are negotiating in good faith and would be unable to resolve their differences within such forty-five (45)-day period.

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

(1) Appointment of Appraisers

Each party shall appoint one (1) appraiser within thirty (30) days after the final date for agreement on the Prevailing Market Rate in accordance with Section 27.1(b)(iii) above. Upon selecting its appraiser, each party shall promptly notify the other party in writing of the name of the appraiser selected. Each such appraiser shall be

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

(2) Appraisal Instructions

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

(3) "Baseball" Appraisal

If the higher appraised Prevailing Market Rate is more than one hundred ten percent (110%) of the lower appraised Prevailing Market Rate, then the first two appraisers shall agree upon and appoint an independent third appraiser within thirty (30) days after both of the first two (2) appraisals have been submitted to the parties, in accordance with the following procedure. The third appraiser shall have the minimum qualifications as required of an appraiser pursuant to subsection (i) above, and shall also have experience acting as a third appraiser of disputes involving commercial real estate or real estate development opportunities, including ground leases and rental valuation. The two appraisers shall inform the parties of their appointment at or before the end of such thirty (30)-day appointment period. Each party shall have the opportunity to question the proposed third appraiser, in writing only, as to his or her qualifications, experience, past working relationships with the parties, and any other matters relevant to the appraisal set forth in this Lease. Either party may, by written notice to the other party and the two appraisers, raise a good faith objection to the selection of the third appraiser

based on his or her failure to meet the requirements of this Section. In such event, if the two (2) appraisers determine that the objection was made in good faith, the two (2) appraisers shall promptly select another third appraiser, subject again to the same process for the raising of objections. If neither party raises a good faith objection to the appointment of the third appraiser within ten (10) days after notice of his or her appointment is given, each such party shall be deemed to have waived any issues or questions relating to the qualifications or independence of the third appraiser or any other matter relating to the selection of the third appraiser under this Lease. If for any reason the two appraisers do not appoint such third appraiser within such thirty (30)-day period (or within a reasonable period thereafter not to exceed twenty (20) days in the event a good faith objection is made as provided above), then either party may apply to the Writs and Receivers Department of the Superior Court of the State of California in and for the County of San Francisco for appointment of a third appraiser meeting the foregoing qualifications. If the Court denies or otherwise refuses to act upon such application within sixty (60) days from the date on which the party first applies to the Court for appointment of the third appraiser, either party may apply to the American Arbitration Association, or any similar provider of professional commercial arbitration services, for appointment in accordance with the rules and procedures of such organization of an independent third appraiser meeting the foregoing qualifications.

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

(4) Conclusive Determination

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

(5) Fees and Costs; Waiver

Each party shall bear the fees, costs and expenses of the appraiser it selects under Section 27.1(b)(iv)(1) and of any experts and consultants used by that appraiser. The fees, costs and expenses of the third appraiser under Section 27.1(b)(iv)(3) shall be shared equally by City and Tenant. Each party waives any claims against the appraiser appointed by the other party, and against the third appraiser, for negligence, malpractice or similar claims in the performance of the appraisals or arbitration contemplated by this Section.

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

28. GENERAL PROVISIONS

28.1 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 telefacsimile to the telephone number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither party may give official or binding notice by facsimile. Tenant shall promptly provide City with copies of any and all notices received regarding any alleged violation of laws or insurance requirements or any alleged unsafe condition or practice.

28.2 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.

28.3 Amendments

Neither this Lease nor any terms or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. No waiver of any breach shall affect or alter this Lease, but each and every term, covenant and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof. Whenever this Lease requires or permits the giving by City of its consent or approval, the Director of Property, or his or her designee shall be authorized to provide such approval, except as otherwise provided by applicable law, including the Charter. Any amendments or modifications to this Lease, including, without limitation, amendments to or modifications to the exhibits to this Lease, shall be subject to the mutual written agreement of City and Tenant, and City's agreement may be made upon the sole approval of the Director of Property, or his or her designee; provided, however, material amendments or modifications to this Lease (i) changing the legal description of the 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 Director of Transportation.

28.4 Authority

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

28.5 Parties and Their Agents; Approvals

The words "City" and "Tenant" as used herein shall include the plural as well as the singular. If there is more than one Tenant, the obligations and liabilities under this Lease

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

28.6 Interpretation of Lease

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

28.7 Successors and Assigns

Subject to the provisions of this Lease relating to Assignment and Subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of City and Tenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any sale, assignment or transfer by City named herein (or by any subsequent landlord) of its interest in the Retail Center 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.

28.8 Brokers

Tenant hereby acknowledges that it has engaged the services of a real estate broker in connection with the leasing of the Premises, 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 Tenant. 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.

28.9 Severability

If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the

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

28.10 Governing Law

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

28.11 Entire Agreement

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

28.12 Attorneys' Fees

In the event that either City or Tenant fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the non-prevailing party in such dispute, as the case may be, shall pay the prevailing party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For purposes of this Lease, the terms "court costs and reasonable attorneys' fees" shall mean the fees and expenses of counsel to the Parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "court costs and attorneys' fees" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, mediation, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. For the purposes of this Lease, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

28.13 Holding Over

If Tenant retains possession of any portion of the Premises after the expiration or the earlier termination of this Lease, then unless City expressly agrees to the holdover in writing, Tenant shall pay City, on a month-to-month basis Base Rent equal to two hundred percent (200%) of the latest Base Rent payable by Tenant hereunder prior to such expiration, together with an amount estimated by City for the monthly Additional Charges payable under this Lease,

and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term and any Extension Options). Any failure by Tenant to surrender, discontinue using, or, if required by City, any failure to remove any property or equipment following written demand for the same by City, shall constitute continuing possession for purposes hereof. Tenant acknowledges that the foregoing provisions shall not serve as permission for the Tenant to hold over, nor serve to extend the term of this Lease beyond the end on the term hereof. Any holding over without City's consent shall constitute a default by Tenant and entitle City to exercise any or all of its remedies as provided herein, notwithstanding that City may elect to accept one or more payments of Rent, and whether or not such amounts are at the holdover rate specified above or the rate in effect at the end of the Term of this Lease.

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

28.14 Time of Essence

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

28.15 Cumulative Remedies

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

28.16 Survival of Indemnities

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

28.17 Signs

Tenant agrees that it will not erect or maintain, or permit to be erected or maintained, any signs, notices or graphics upon or about the Premises which are visible in or from public corridors or other portions of any common areas of the Retail Center or from the exterior of the Premises, without City's prior written consent, which City may withhold or grant in its sole discretion.

28.18 Relationship of the Parties

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

28.19 Light and Air

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

28.20 No Recording

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

28.21 Options Personal

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

28.22 Public Transit Information

Tenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Tenant employed on the 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 Retail Center and encouraging use of such facilities, all at Tenant's sole expense.

28.23 Taxes, Assessments, Licenses, Permit Fees and Liens

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

(b) Tenant agrees to pay taxes of any kind, including possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Tenant's usage of the Premises that may be imposed upon Tenant by law, all of which shall be paid when the same become due and payable and before delinquency.

(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) San Francisco Administrative Code Sections 23.38 and 23.39 require that the City and County of San Francisco report certain information relating to this Lease, and any renewals thereof, to the County Assessor within sixty (60) days after any such transaction, and that Tenant report certain information relating to any assignment of or sublease under this Lease to the County Assessor within sixty (60) days after such assignment or sublease transaction.

Tenant agrees to provide such information as may be requested by the City to enable the City to comply with this requirement.

28.24 Non-Liability of City Officials, Employees and Agents

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

28.25 Wages and Working Conditions

Tenant agrees that any person performing labor in the construction of the Tenant Improvements and any Alterations 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 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 to the Premises.

28.26 Non-Discrimination in City Contracts and Benefits Ordinance

(a) Covenant Not to Discriminate

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

(b) Subleases and Other Subcontracts

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

(c) Non-Discrimination in Benefits

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

(d) HRC Form

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

(e) Incorporation of Administrative Code Provisions by Reference

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

28.27 No Relocation Assistance; Waiver of Claims

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

28.28 MacBride Principles - Northern Ireland

The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the

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

28.29 Tropical Hardwood and Virgin Redwood Ban

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

28.30 Pesticide Prohibition

(a) 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
 - (1) 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,
 - (2) describes the steps Tenant will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance and
 - (3) 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.

28.31 First Source Hiring Ordinance

The City has adopted a First Source Hiring Ordinance (Board of Supervisors Ordinance No. 264 98) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions. Within thirty (30) days after the City and County of San Francisco's Municipal Transportation Agency adopts a First Source Hiring Implementation and Monitoring Plan in accordance with the First

Source Hiring Ordinance, Tenant shall enter into a First Source Hiring Agreement that meets the applicable requirements of Section 83.9 of the First Source Hiring Ordinance.

28.32 Sunshine Ordinance

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

28.33 Conflicts of Interest

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

28.34 Charter Provisions

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

28.35 Drug-Free Workplace

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

28.36 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.

28.37 Counterparts

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

28.38 Effective Date

This Lease shall become effective on the date upon which this Lease is duly executed and delivered by the parties hereto.

28.39 Requiring Health Benefits for Covered Employees

Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Lease as though fully set forth. The text of the HCAO is available on the web at <http://www.sfgov.org/olse/hcao>. Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee, Tenant shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Tenant chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if the Tenant is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with subsection (a) above.

(c) Tenant's failure to comply with the HCAO shall constitute a material breach of this Lease. City shall notify Tenant if such a breach has occurred. If, within thirty (30) days after receiving City's written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Tenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

(d) Any Subcontract entered into by Tenant shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Tenant shall notify City's Purchasing Department when it enters into such a Subcontract and shall certify to the Purchasing Department that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Tenant shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Tenant based on the Subcontractor's failure to comply, provided that City has first provided Tenant with notice and an opportunity to obtain a cure of the violation.

(e) Tenant shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Tenant's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

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

(g) Tenant shall keep itself informed of the current requirements of the HCAO.

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

(i) Tenant shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least five (5) business days to respond.

(j) City may conduct random audits of Tenant to ascertain its compliance with HCAO. Tenant agrees to cooperate with City when it conducts such audits.

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

28.40 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.

28.41 Preservative-Treated Wood Containing Arsenic

As of July 1, 2003, Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this 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.

28.42 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.

28.43 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.

28.44 Cooperative Drafting

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

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

LANDLORD:
SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY

TENANT:
SEGA FOOD GROUP, INC.,
a California corporation

Recommended:

By: _____
Name: _____
Its: President

Amit M. Kothari
Director of Off-Street Parking

RAMIN VAHABI, an individual

Approved:

Edward D. Reiskin
Director of Transportation

Approved as to Form:
Dennis H. Herrera, City Attorney

Deputy City Attorney

San Francisco Municipal Transportation Agency
Board of Directors

Resolution No: _____

Adopted: _____

Attest: _____
Secretary, SFMTA Board of Directors

EXHIBIT A

FLOOR PLAN(S)

CONSISTING OF ____ PAGE(S)

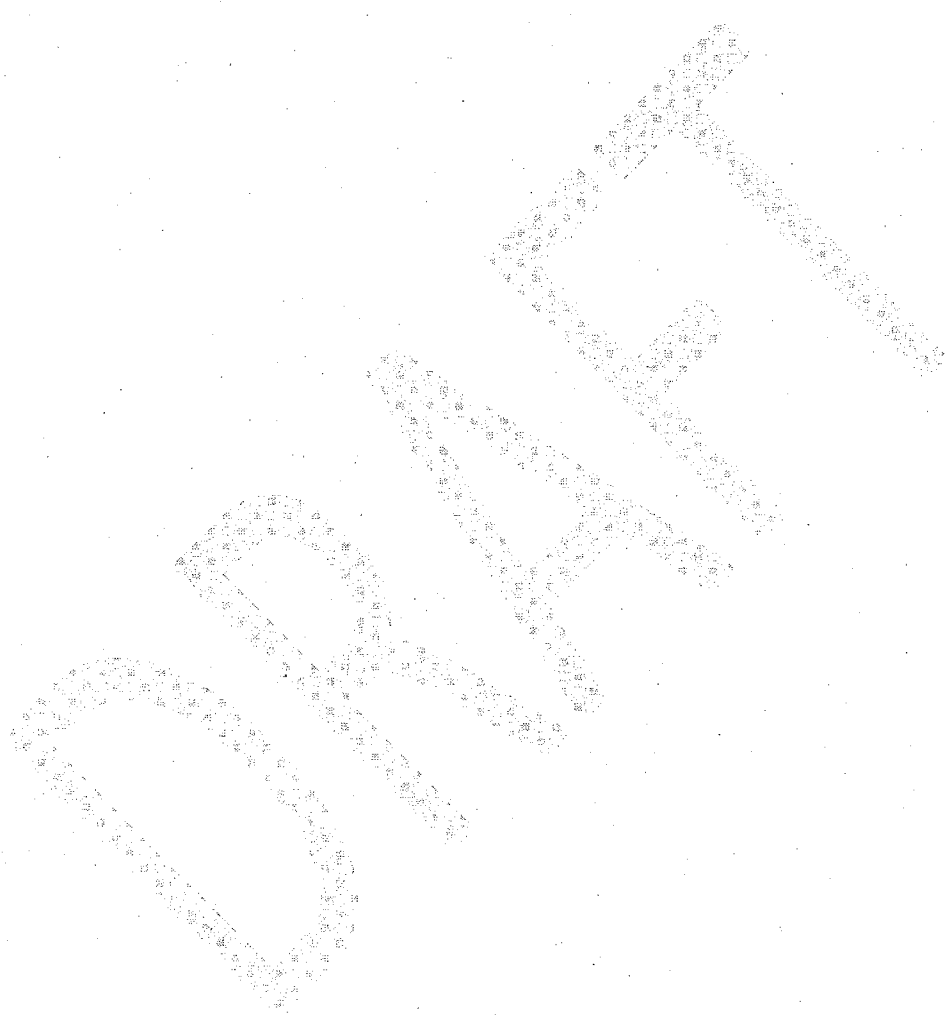


EXHIBIT B

NOTICE OF COMMENCEMENT DATE

[Date]

Mr. Ramin Vahabi
SEGA FOOD GROUP, INC

Acknowledgement of Commencement Date, Lease Between _____
_____(Tenant), and the City and County of San Francisco (Landlord), for the
Premises located at 133 O'Farrell Street, San Francisco, CA.

Dear Mr. Vahabi:

This letter will confirm that for all purposes of the Lease, the Commencement Date (as defined in Section 3.2 of the Lease) is _____, 2013.

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

Very truly yours,

Edward D. Reiskin
Director of Transportation

Agreed:

By: _____

Dated: _____

EXHIBIT C

INTENTIONALLY LEFT BLANK



EXHIBIT D

INTENTIONALLY LEFT BLANK



EXHIBIT E

RULES AND REGULATIONS

1. The sidewalks, halls, passages, exits, entrances, elevators and stairways of the Retail Center shall not be obstructed by Tenant or used by it for any purpose other than for ingress to and egress from the Premises. City shall in all cases retain the right to control and prevent access to the halls, passages, exits, entrances, elevators, escalators and stairways that are not for the use of the general public, and City shall in all cases retain the right to control and prevent access thereto of all persons whose presence in the judgment of City would be prejudicial to the safety, character, reputation and interests of the Retail Center and its tenants, provided that nothing herein contained shall be construed to prevent such access to persons with whom Tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities. Tenant shall not go upon the roof of the Retail Center, except in areas that City may designate as "Common Areas" from time to time.
2. No sign, placard, picture, name, advertisement or notice visible from the exterior of the Premises shall be installed or displayed by Tenant on any part of the outside or inside of the Retail Center without the prior written consent of City. City shall have the right to remove, at Tenant's expense and without notice, any sign installed or displayed in violation of this rule. All approved signs or lettering on doors shall be printed, painted, affixed or inscribed at the expense of Tenant by a person approved by City, which approval will not be unreasonably withheld. Material visible from outside the Retail Center will not be permitted.
3. The Premises shall not be used for the storage of merchandise held for sale to the general public or for lodging. No cooking shall be done or permitted by Tenant on the Premises, except that use by Tenant of Underwriters' Laboratory-approved microwave oven and portable equipment for brewing coffee, tea, hot chocolate and similar beverages shall be permitted, provided that such use is in accordance with all applicable federal, state and local laws, codes, ordinances, rules and regulations.
4. Tenant shall not employ any person or persons other than the janitor of City for the purpose of cleaning the Premises, unless otherwise agreed to by City in writing. Except with the written consent of City, no person or persons other than those approved by City shall be permitted to enter the Retail Center for the purpose of cleaning same. Tenant shall not cause any unnecessary labor by reason of Tenant's carelessness or indifference in the preservation of good order and cleanliness. Janitor service will not be furnished on nights when rooms are occupied after 9:00 p.m. unless, by agreement in writing, service is extended to a later hour for specifically designated rooms.
5. City will furnish Tenant with two (2) keys to the Premises, free of charge. City may make a reasonable charge for such additional keys and for having locks changed. Tenant shall not make or have made additional keys without City's prior written consent, which consent shall not be unreasonably withheld or delayed. Tenant shall not alter any lock or install any new or additional locking devices without the prior written consent of City. All locks installed in the Premises, excluding Tenant's vaults and safes, or special security areas (which shall be designated by Tenant in a written notice to City), shall be keyed to the Retail Center master key system. City may make reasonable charge for any additional lock or any bolt (including labor) installed on any door of the Premises. Tenant, upon the termination of its tenancy, shall deliver to City all keys to doors in the Premises. If Tenant loses any keys, Tenant shall pay City for the cost of re-keying the Premises.

6. The elevators to be used for the loading of freight shall be available to Tenant in accordance with such reasonable scheduling as City shall deem appropriate. Tenant shall schedule with City, by written notice given no less than forty-eight (48) hours in advance, its move into or out of the Retail Center, which moving shall occur only on weekend days if required by City; and Tenant shall reimburse City upon demand for any additional security or other charges incurred by City as a consequence of such moving. The persons employed by Tenant to move equipment or other items in or out of the Retail Center must be acceptable to City. The floors, corners and walls of elevators and corridors used for the moving of equipment or other items in or out of the Retail Center must be adequately covered, padded and protected, and City may provide such padding and protection, at Tenant's expense, if City determines that such measures undertaken by Tenant or Tenant's movers are inadequate. City shall have the right to prescribe the weight, size and position of all equipment, materials, supplies, furniture or other property brought into the Retail Center. Heavy objects shall, if considered necessary by City, stand on wood strips of such thickness as is necessary to properly distribute the weight of such objects. City will not be responsible for loss of or damage to any such property from any cause, and all damage done to the Retail Center by moving or maintaining Tenant's property shall be repaired at the expense of Tenant.
7. Tenant shall not use or keep in the Premises or the Retail Center any kerosene, gasoline or flammable, combustible or noxious fluid or materials or use any method of heating or air conditioning other than those limited quantities necessary for the operation and maintenance of normal office equipment. Tenant shall not use, keep or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to City or other occupants of the Retail Center by reason of noise, odors, and/or vibrations, or interfere in any way with other tenants or those having business in the Retail Center.
8. City reserves the right to exclude from the Retail Center between the hours of 6 p.m. and 8 a.m. and at all hours on Saturdays, Sundays, and legal holidays all persons who do not present a pass to the Retail Center signed by City and properly in the possession of the person presenting such pass. City will furnish passes to persons for whom Tenant requests the same in writing. Tenant shall be responsible for all persons for whom it requests passes and shall be liable to City for all acts of such persons. City shall in no case be liable for damages for any error with regard to the admission to or exclusion from the Retail Center of any person. In the case of invasion, mob, riot, public excitement or other circumstances rendering such action advisable in City's opinion, City reserves the right to prevent access to the Retail Center during the continuance of same by such action as City may deem appropriate, including closing any doors in the Retail Center.
9. The directory of the Retail Center will be provided for the display of the name and location of tenants and a reasonable number of the principal officers and employees of tenants, and City reserves the right to exclude any other names therefrom. Any additional name that Tenant shall desire to place upon the directory must first be approved by City and, if so approved, a charge will be made for each such name.
10. Tenant shall not cut or bore holes for wires in the partitions, woodwork or plaster of the Premises. Tenant shall not affix any floor covering to the floor of the Premises in any manner except as approved by City.
11. No curtains, draperies, blinds, shutters, shades, screens or other coverings, hangings or decorations shall be attached to, hung or placed in, or used in connection with any window of the Retail Center without City's prior written consent. In any event, with the prior written consent of City, such items shall be installed on the office side of City's standard window covering and shall in no way be visible from the exterior of the Retail Center.

12. Tenant shall see that the doors of the Premises are closed and locked and that all water faucets, water apparatus and utilities are shut off before Tenant or Tenant's employees leave the Premises, so as to prevent waste or damage, and for any default or carelessness in this regard Tenant shall make good all injuries sustained by other tenants or occupants of the Retail Center or City. On multiple-tenancy floors, all tenants shall keep the doors to the Retail Center corridors closed at all times except for ingress and egress, and all tenants shall at all times comply with any rules or orders of the fire department with respect to ingress and egress.
13. The toilet rooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed, no foreign substance of any kind whatsoever shall be deposited therein. The expense of any breakage, stoppage or damage resulting in any violation of this rule shall be borne by Tenant.
14. Except with City's prior consent, Tenant shall not sell, or permit the sale from the Premises of, or use or permit the use of any sidewalk or mall area adjacent to the Premises for the sale of, newspapers, magazines, periodicals, theater tickets or any other goods, merchandise or service, nor shall Tenant carry on, or permit or allow any employee or other person to carry on, business in or from the Premises for the service or accommodation of occupants or any other portion of the Retail Center, nor shall the Premises be used for manufacturing of any kind, or for any business or activity other than that specifically provided for in Tenant's lease.
15. Tenant shall not install any radio or television antenna, loudspeaker, or other device on or about the roof area or exterior walls of the Retail Center. Tenant shall not interfere with radio or television broadcasting or reception from or in the Retail Center or elsewhere.
16. Tenant shall not use in any space, or in the common areas of the Retail Center, any hand-trucks except those equipped with rubber tires and side guards or such other material-handling equipment as City may approve. No other vehicles of any kind shall be brought by Tenant into the Retail Center or kept in or about the Premises.
17. Tenant shall store all its trash and garbage within the Premises until removal of the same to such location in the Retail Center as may be designated from time to time by City. No material shall be placed in the Retail Center trash boxes or receptacles if such material is of such nature that it may not be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage in the City of San Francisco without being in violation of any law or ordinance governing such disposal.
18. All loading and unloading of merchandise, supplies, materials, garbage and refuse shall be made only through such entryways and freight elevators and at such times as City shall designate. In its use of the loading areas of the Retail Center, Tenant shall not obstruct or permit the obstruction of said loading areas, and at no time shall Tenant park vehicles therein except for immediate loading and unloading purposes.
19. Canvassing, soliciting, peddling or distribution of handbills or any other written material in the Retail Center is prohibited and Tenant shall cooperate to prevent the same.
20. Tenant shall immediately, upon request from City (which request need not be in writing), reduce its lighting in the Premises for temporary periods designated by City, when required in City's judgment to prevent overloads of the mechanical or electrical systems of the Retail Center.
21. City reserves the right to select the name of the Retail Center and to make such change or changes of name as it may deem appropriate from time to time, and Tenant shall not refer

to the Retail Center by any name other than: (i) the name as selected by City (as the same may be changed from time to time), or (ii) the postal address approved by the United States Post Office. Tenant shall not use the name of the Retail Center in any respect other than as an address of its operation in the Retail Center without the prior written consent of the City.

22. Tenant assumes all responsibility for protecting its Premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry closed.
23. No vending machine shall be maintained or operated within the Premises or the Retail Center without City's prior written consent.
24. All incoming mail and package deliveries shall be received at the area in the Retail Center designated by City for such purposes and distributed through means established by City. No messenger or other delivery personnel shall be permitted to enter any area of the Retail Center other than the area designated by City for the pick-up and receipt of such deliveries.
25. City reserves the right to exclude or expel from the Retail Center any person who is, in the judgment of City, intoxicated or under the influence of alcohol or other drug or who is in violation of any of the Rules or Regulations of the Retail Center.
26. No animal or bird shall be permitted in the Premises or the Retail Center, except for seeing eye dogs when in the company of their masters.
27. The requirements of Tenant will be attended to only upon application by telephone or writing or in person at the management office of the Retail Center. Employee of City shall not perform any work or do anything outside of their regular duties unless under special instructions from City.
28. City may waive any one or more of these Rules and Regulations for the benefit of any particular tenant or tenants, but no such waiver by City shall be construed as a waiver of these Rules and Regulations in favor of any other tenant or tenants, nor prevent City from thereafter enforcing any such Rules and Regulations against any or all of the tenants of the Retail Center.
29. Wherever the word "Tenant" occurs in these Rules and Regulations, it is understood and agreed that it shall mean Tenant's associates, agents, clerks, employees and visitors. Wherever the word "City" occurs in these Rules and Regulations, it is understood and agreed that it shall mean City's assigns, agents, officers, employees and visitors.
30. These Rules and Regulations are in addition to, and shall not be construed in any way to modify, alter or amend, in whole or part, the terms, covenants, agreements and conditions of any lease of premises in the Retail Center.
31. City reserves the right to make such other and reasonable rules and regulations as in its judgment may from time to time be needed for the safety, care and cleanliness of the Retail Center, and for the preservation of good order therein.
32. Tenant shall be responsible for the observance of all the foregoing Rules and Regulations by Tenant's employees, agents, clients, customers, invitees and guests.

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: SEGA Food Group, Inc. and Ramin Vahabi, an individual	
<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>	
<ol style="list-style-type: none"> 1. Ramin Vahabi is the only member of the Board of Director. 2. Ramin Vahabi is Sega Food Group, Inc. CEO CFO and COO 3. Ramin Vahabi has 100% ownership of Sega Food Group, Inc. 4. N/A 5. N/A 	
Contractor address: 235 Powell Street, San Francisco CA 94102	
Date that contract was approved: <i>(By the SF Board of Supervisors)</i>	Amount of contracts: \$2.1 million over 10 years
Describe the nature of the contract that was approved: Retail lease for 133 O'Farrell Street. 10 year lease, with 2 five year options	
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

