

SERVICE STATION SITE LEASE

between

CITY AND COUNTY OF SAN FRANCISCO,
as Landlord

and

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

For the lease of
598 Portola Drive
San Francisco, California

June 8, 1994

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SERVICE STATION SITE LEASE

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

City and Tenant hereby covenant and agree as follows:

1 BASIC LEASE INFORMATION

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

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

Adjustment
Dates (Section 4.2):

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

Additional Rent
(Section 4.3)

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

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

Use (Section 5.1):

Gasoline Service Station

Utilities and Services
(Article 10):

Tenant responsible for all utilities and services.

Security
Deposit (Article 21):

\$10,000

Notice Address of City
(Section 24.1):

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

and to:

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

Key Contact for City:

Claudine O. Venegas

Telephone No.:

(415) 554-9872

Address for Tenant
(Section 24.1):

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

2 PROPERTY; AS IS CONDITION

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

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

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

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

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

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

3 TERM ✓

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

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

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

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

4 RENT

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

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

The Consumer Price Index Urban Wage Earners and Clerical Workers (base years 1982-1984 = 100) for San Francisco-Oakland-San Jose area published by the United States Department of Labor, Bureau of Labor Statistics ("Index") published most immediately preceding the Adjustment Date ("Adjustment Index"), shall be compared with the Index published most immediately preceding the Commencement Date ("Beginning Index").

If the Adjustment Index has increased over the Beginning Index, the Base Rent payable on and after the Adjustment Date shall be set by multiplying the Base Rent by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Beginning Index. In no event shall the monthly Base Rent on or after the Adjustment Date be less than 3% or more than 6% of the monthly Base Rent in effect immediately prior to the Adjustment Date.

If the Index is changed so that the base year differs from that used as of the date most immediately preceding the Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in

order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

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

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

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

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

"Monthly Gross Fuel Delivery Factor" shall mean the Monthly Gross Fuel Deliveries amount for any month multiplied by one hundred and eighty-nine one hundredths cents (\$0.0189) for Lease Years one (1) through five (5), and two and eighty-three one hundredth cents (\$.0283) for Lease Years six (6) through ten (10).

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

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

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

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

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

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

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

City for its damages resulting from such failure to pay and shall be paid to City together with such unpaid amount.

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

5 ✓ USE

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

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

6 ✓ ALTERATIONS

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

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

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

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

7 ✓ REPAIRS AND MAINTENANCE

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

8 ✓ HAZARDOUS MATERIALS

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

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

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

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

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

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

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

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

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

8.4 Underground Storage Tanks.

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

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

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

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

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

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

9 LIENS AND ENCUMBRANCES

9.1. Liens. Tenant shall keep the Property free from any liens arising out of any work performed, material furnished or obligations incurred by or for Tenant. In the event Tenant does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, City shall have, in addition to all other remedies, the right, but not the obligation, to cause the lien to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by City and all expenses

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

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

10 UTILITIES AND SERVICES

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

11 COMPLIANCE WITH LAWS AND RISK MANAGEMENT REQUIREMENTS

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

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

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

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

12 SUBORDINATION

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

13 INABILITY TO PERFORM

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

14 EMINENT DOMAIN

14.1 Definitions.

(a) "Taking" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for

any public or quasi-public use under law. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

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

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

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

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

14.4 Partial Taking; Election to Terminate.

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

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

(c) Either party electing to terminate under the provisions of this Section 14 shall do so by giving the other party written notice to the other party before or within thirty

(30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth day after such written notice is given or the Date of Taking.

✓ 14.5 Rent; Award. Upon termination of this Lease pursuant to an election under Section 14.4 above, then: (i) Tenant's obligation to pay Rent shall continue up until the date of termination, and thereafter shall cease, except that Rent shall be reduced as provided in Section 14.6 below for any period during which this Lease continues in effect after the Date of Taking, and (ii) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease), and Tenant shall have no claim against City for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property.

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

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

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

15 ASSIGNMENT AND SUBLETTING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 DEFAULT; REMEDIES

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

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

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

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

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

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

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

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

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

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

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

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

17 INDEMNIFICATION

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

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

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

18 INSURANCE

18.1 Tenant's Insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 ACCESS BY CITY

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

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

20 TENANT'S CERTIFICATES

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

21 SECURITY DEPOSIT

Upon execution of this Lease, Tenant shall deposit the sum specified as the security deposit in the Basic Lease Information (the "Security Deposit") to secure Tenant's faithful performance of all terms, covenants and conditions of this Lease. Tenant agrees that City may (but shall not be required to) apply the Security Deposit in whole or in part to remedy any damage to the Property caused by Tenant, its Agents or Invitees, or any failure of Tenant to perform any other terms, covenants or conditions contained herein, without waiving any of City's other rights and remedies hereunder or at law or in equity and without any obligation. Should City use any portion of the Security Deposit to cure any default by Tenant hereunder, Tenant shall immediately replenish the security deposit to the original amount. If the Base Rent is increased pursuant to any of the provisions of this Lease, Tenant shall increase the amount of the Security Deposit accordingly. City's obligations with respect to the Security Deposit are solely that of debtor and not trustee. City shall

not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on the Security Deposit. The amount of the Security Deposit shall in no way limit the liabilities of Tenant under any provision of this Lease.

22 SURRENDER OF PROPERTY

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

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

23 EXTENSION OPTION

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

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

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

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

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

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

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

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

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

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

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

24 GENERAL PROVISIONS

24.1 Notices. Any notice given under this Lease shall be effective only if in writing and given by delivering the notice

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TENANT:

M. CHARIB
Michael Gharib
d/b/a TWIN PEAKS MOBIL

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

Frank M. Jordan
Mayor
Jan Lum, Acting
Clerk of Board of Supervisors

RECOMMENDED:

Director of Public Health

[Signature]
Director of Property

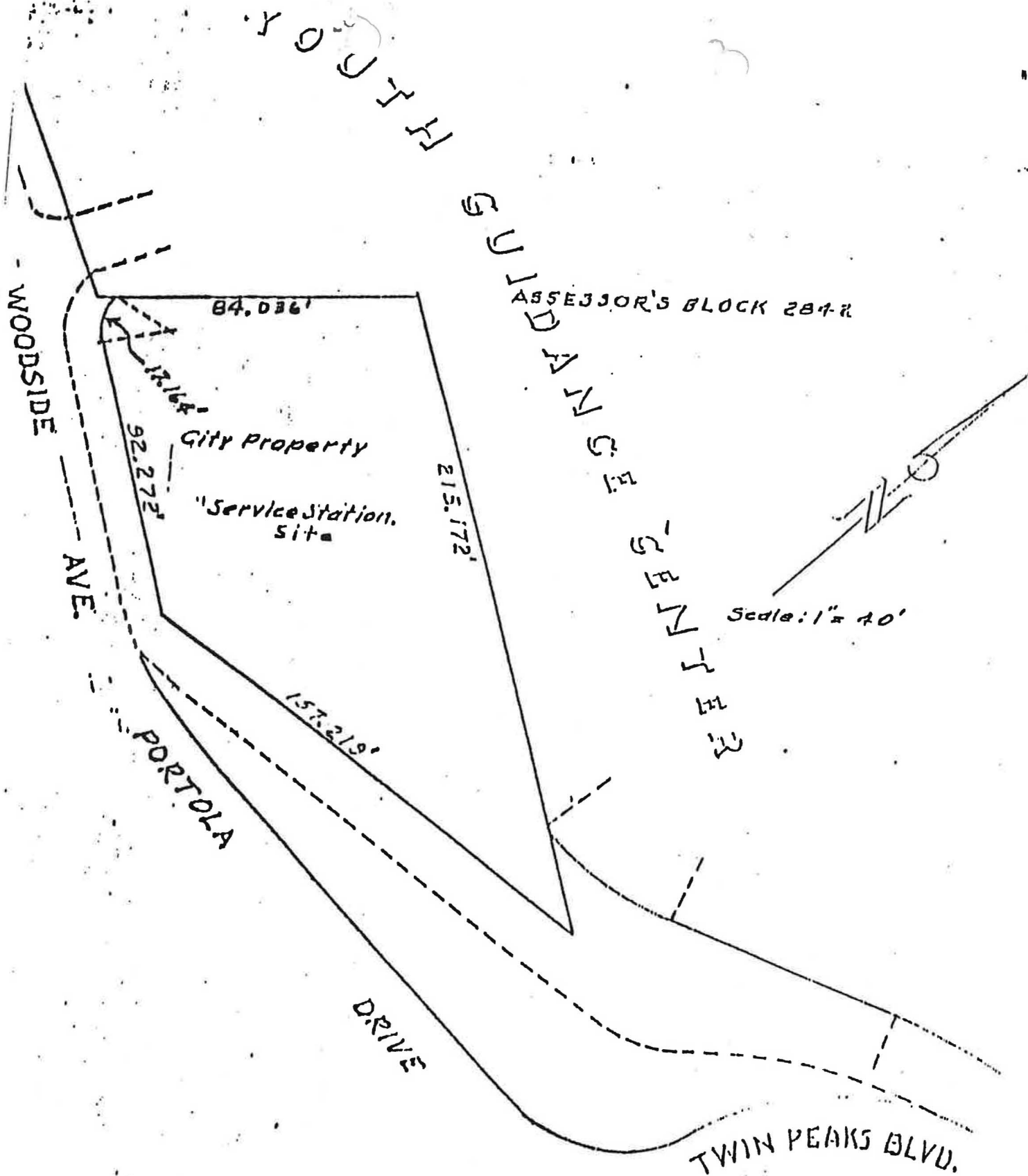
APPROVED AS TO FORM:
LOUISE H. RENNE, City Attorney

By [Signature]
Deputy City Attorney

EXHIBIT A

DESCRIPTION AND MAP OF PROPERTY

A16U/060894



FILE NO. 65-94-11

ORDINANCE NO. 379-94

[Lease of Real Property]

AUTHORIZING AND APPROVING A NEGOTIATED LEASE WITH MICHAEL GHARIB,
DBA TWIN PEAKS MOBIL, OF CERTAIN CITY-OWNED LAND AT THE NORTHEAST
CORNER OF PORTOLA DRIVE AND WOODSIDE AVENUE, WITHOUT COMPETITIVE
BIDDING, ~~AND RATIFYING PREVIOUS ACTIONS.~~

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

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

(REAL ESTATE)
BOARD OF SUPERVISORSPage 1 of 2
June 14, 1994

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

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

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

APPROVED AS TO FORM:

LOUISE H. RENNE
City AttorneyBy: June Griggs
Deputy City Attorney

RECOMMENDED:

J. M. de la Torre
Director of Public HealthHarry J. Johnson
for Director of Property(REAL ESTATE)
BOARD OF SUPERVISORSPage 2 of 2
June 14, 1994