

File No. 190193

Committee Item No. 8
Board Item No. 13

COMMITTEE/BOARD OF SUPERVISORS

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Date March 13, 2019

Board of Supervisors Meeting

Date March 19, 2019

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Completed by: Linda Wong Date March 8, 2019
Completed by: Linda Wong Date March 19, 2019

1 [Termination of Lease - Orchard Supply Company, LLC - 900 El Camino Real, Millbrae -
2 \$1,304,915]

3 **Resolution approving the terms and conditions of, and authorizing the General**
4 **Manager of the San Francisco Public Utilities Commission (SFPUC) to execute a**
5 **Termination of Lease between the City and County of San Francisco, through its Public**
6 **Utilities Commission, as Landlord, and Orchard Supply Company, LLC, as Tenant, for a**
7 **portion of SFPUC Parcel 29, representing approximately 4.438 acres of land in Millbrae,**
8 **California at a ground rental rate of approximately \$1,304,915 per year over the**
9 **remaining five-year term of the Lease, with a termination date of April 30, 2019.**

10
11 WHEREAS, The City and County of San Francisco (City) owns in fee certain real
12 property in Millbrae, California, under the jurisdiction of the San Francisco Public Utilities
13 Commission (SFPUC) designated as SFPUC Parcel 29, and also known as San Mateo
14 County APN 093-220-0101; and

15 WHEREAS, The City, acting through the SFPUC, entered into a Ground Lease dated
16 April 26, 1984 (Lease) with the predecessor of Orchard Supply Company, LLC (Tenant) for
17 the lease of a portion of such property consisting of approximately 4.7505 acres of land
18 commonly known as 900 El Camino Real, Millbrae (Premises) for an initial term of 30 years,
19 with two options to extend for periods of ten years each; and

20 WHEREAS, Tenant exercised the first option to extend the term of the Lease for 10
21 years, commencing on May 1, 2014, at an annual rent of \$1,117,432 subject to a CPI
22 adjustment on May 1, 2019, which is anticipated to increase the rent to an estimated
23 \$1,304,915 for the remainder of the Lease term; and

24 WHEREAS, The City and Tenant entered into a First Amendment to Ground Lease
25 dated August 4, 2016 (the "First Amendment") that reduced the size of the Premises by

1 13,623 square feet to accommodate the SFPUC's new groundwater storage and pump station
2 facility located on the Premises; and

3 WHEREAS, Total lost rent from the early termination of the lease is approximately
4 \$6,525,000; and

5 WHEREAS, Tenant has constructed substantial improvements on the Premises
6 including a retail store, warehouse, and restaurant; and

7 WHEREAS, Under the terms of the Lease, all of Tenant's improvements to the
8 Premises become the property, of the SFPUC upon early termination of the Lease, at
9 SFPUC's option; and

10 WHEREAS, Tenant desires to terminate the Lease and surrender the Premises as of
11 April 30, 2019; and

12 WHEREAS, The SFPUC desires to terminate the Lease and gain possession of the
13 Premises as of April 30, 2019; and

14 WHEREAS, The early termination of the Lease is expected to result in the following
15 significant utility benefits to the SFPUC: (i) the SFPUC will be able to use an existing
16 warehouse on the Premises as additional Utility Plumbers storage and workshop space, and
17 other storage to serve workers displaced by unsafe conditions at the old Utility Plumbers
18 shop, and thereby save the estimated costs (approximately \$1.3 million) of constructing a new
19 warehouse at its Millbrae Yard; (ii) future rent from a lease of the remaining lands and
20 improvements that will not be used for a new Utility Plumbers storage facility and workshop
21 (Remaining Premises) is expected to significantly exceed the lost ground rent because
22 Tenant's improvements will become the property of the SFPUC upon termination, enabling
23 the SFPUC to re-lease the Remaining Premises at full market rental rates, as opposed to the
24 current CPI-adjusted ground rent Tenant will pay over the remaining term of the Lease; (iii)
25 the SFPUC will benefit from the full retail rental income from the leasing of a restaurant

1 located on the Remaining Premises (under the terms of the Lease, the SFPUC does not
2 share in this sublease rent, currently estimated at \$150,000 per year); and (iv) termination of
3 the Lease will provide the SFPUC with greater flexibility to address persistent pedestrian
4 safety issues on El Camino posed by the current configuration of the driveway shared by both
5 the SFPUC's Millbrae Yard and Tenant; and

6 WHEREAS, The utility benefits from the early termination are projected to exceed the
7 total lost ground rent resulting from the early termination; and

8 WHEREAS, On January 22, 2019, the San Francisco Public Utilities Commission voted
9 to ratify, approve and authorize all actions heretofore taken by any City official in connection
10 with this Termination Agreement, approve the terms and conditions of this Termination
11 Agreement, and authorize the SFPUC to seek approval by the Board of Supervisors and
12 Mayor for the SFPUC General Manager to execute the Termination Agreement; now,
13 therefore, be it

14 RESOLVED, That the Board of Supervisors hereby ratifies, approves and authorizes all
15 actions heretofore taken by any City official in connection with this Termination Agreement;
16 and, be it

17 FURTHER RESOLVED, That the Board of Supervisors hereby approves the terms and
18 conditions of this Termination Agreement; and, be it

19 FURTHER RESOLVED, That the Board of Supervisors hereby authorizes the SFPUC
20 General Manager to enter into any amendments or modifications to this Termination
21 Agreement, including without limitation, the exhibits, that the General Manager determines, in
22 consultation with the City Attorney, are in the best interest of the City; do not materially
23 increase the obligations or liabilities of the City; are necessary or advisable to effectuate the
24 purposes and intent of the Termination Agreement or this resolution; and are in compliance
25 with all applicable laws, including the City Charter.

<p>Item 8 File 19-0193</p>	<p>Department: Public Utilities Commission (PUC)</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed resolution would approve (1) termination of the existing lease between SFPUC, as landlord, and Orchard Supply Company, LLC, as tenant as of April 30, 2019; (2) the terms and conditions of the termination agreement; and (3) amendments or modifications to the termination agreement by the SFPUC General Manager. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • In 1984, the Grace Retail Corporation (now Orchard Supply Company, LLC) entered into a ground lease with the City and County of San Francisco for a 206,932 square foot property owned by the San Francisco Public Utilities Commission (SFPUC) in the City of Millbrae. The term of the lease was for thirty years with two (2) ten-year options to extend the lease to April 2034. The Orchard Supply Company, LLC (Orchard Supply Company) exercised the first ten-year option to extend the lease to April 2024. The square footage of the ground lease was reduced by 13,623 in 2016 in order for SFPUC to use the land for the Regional Groundwater Storage and Recovery Project. • On August 22, 2018, Lowe’s Home Centers, LLC, the parent of Orchard Supply Company, announced that it would close all 99 Orchard Supply Company stores in California. In early November 2018, the SFPUC received a verbal offer to the SFPUC to terminate the lease. • The SFPUC plans to use the early termination of the lease to (1) use existing warehouse on the premises as additional utility plumbers’ storage and workshop space and (2) rent the additional structures to a new tenant. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • Under the existing lease, the annual rent paid by Orchard Supply to SFPUC is \$1,117,432 for the four year period from May 2014 to April 2019, which would increase by the Consumer Price Index (CPI) to \$1,304,915 beginning on May 1, 2019. • Based on annual rent of \$1,304,915 for the remaining five-year term of the existing lease from May 1, 2019 through April 30, 2024, the SFPUC will lose \$6,524,577. • The SFPUC estimates the loss in rent will be offset by two (2) new five-year leases at current fair market value. • Under the existing lease, the SFPUC did not receive any rent from the subtenant, Kentucky Fried Chicken. The SFPUC is currently negotiating a 12-month extension of the existing Kentucky Fried Chicken restaurant lease for a minimum of \$124,200 per year. Staff estimate it will take one year to issue a request for proposals and secure a new tenant. <p style="text-align: center;">Recommendation</p> <ul style="list-style-type: none"> • Approve the proposed resolution. 	

MANDATE STATEMENT

City Charter Section 9.118(c) states that any modification, amendment or termination of a lease that had an initial term of ten years or more, including options to extend, or that had anticipated revenues of \$1 million or more is subject to Board of Supervisors approval.

BACKGROUND

In 1984, the Grace Retail Corporation (now Orchard Supply Company, LLC) entered into a lease with the City and County of San Francisco for a 206,932 square foot property owned by the San Francisco Public Utilities Commission (SFPUC) in the City of Millbrae in San Mateo County. The term of the lease was for thirty years with two (2) ten-year options to extend the lease to April 2034. The Orchard Supply Company, LLC (Orchard Supply Company) exercised the first ten-year option to extend the lease to April 2024.

In 2016, the Board of Supervisors approved an amendment to the lease between SFPUC and Orchard Supply Company to reduce the size of leased premises for needed space for the SFPUC's Regional Groundwater Storage and Recovery Project. The amendment permanently reduced the total square footage by 13,623 square feet from 206,932 square feet to 193,309 after construction was completed. In return, the SFPUC paid the Orchard Supply Company \$460,673 to compensate for the lease reduction.

On August 22, 2018, Lowe's Home Centers, LLC (Lowe's), the parent of Orchard Supply Company, announced that it would close all 99 Orchard Supply Company stores in California by the end of 2018. Lowe's appointed a Chicago brokerage firm, Hilco, to handle the liquidation and closing of the stores. In early November 2018, Hilco made a verbal offer to the SFPUC to terminate the lease, followed by delivery of a draft termination agreement on November 7, 2018 for the SFPUC's consideration.

On January 22, 2019, the SFPUC approved a resolution authorizing the General Manager to execute the proposed Lease Termination Agreement.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve:

- Termination of the existing lease between SFPUC, as landlord, and Orchard Supply Company, LLC, as tenant as of April 30, 2019;
- The terms and conditions of the termination agreement; and
- Amendments or modifications to the termination agreement by the SFPUC General Manager, that are in the best interest of the City and do not materially increase the obligations or liabilities of the City and are in compliance will applicable laws.

Details of the Proposed Lease Termination

The termination agreement provides for the early termination of the lease as of April 30, 2019, and relieves Orchard Supply Company of its obligation to pay rent beyond the termination date. Orchard Supply Company will surrender possession of the premises in a broom-clean condition, and repair any material damage caused by its removal of inventory, fixtures and equipment.

Alternative Uses for Space

The SFPUC plans to use the early termination of the lease to (1) use existing warehouse on the premises as additional utility plumbers' storage and workshop space, and (2) rent the additional structures to a new tenant.

Of the 193,309 square feet of space currently under the lease, SFPUC plans to use 6,800 square feet for new storage for the Millbrae Yard. The Orchard Supply Company previously built a warehouse at the leased premises, which will come under the ownership of SFPUC upon termination of the lease. According to Mr. Anthony Bardo, Assistant Real Estate Director at the SFPUC, the utility plumbers' materials are currently stored in a structurally unsafe building.

The remaining 186,509 square feet includes two structures that the SFPUC plans to rent to outside tenants. One structure consists of a single-story, 50,000 square foot building constructed around 1985 that was previously occupied by the Orchard Supply Company. The second structure consists of a single-story, 4,900 square foot building currently occupied by Kentucky Fried Chicken, which has a sublease agreement with the Orchard Supply Company. The SFPUC is developing a request for proposals for short-term leases of the former Orchard Supply Company store and the Kentucky Fried Chicken restaurant and has ordered a fair market rent appraisal for the two facilities.

In addition, the termination of the lease will allow SFPUC to address pedestrian safety issues occurring on an easement included in the current lease.

FISCAL IMPACT

Under the existing lease, the annual rent paid by Orchard Supply to SFPUC is \$1,117,432 for the four year period from May 2014 to April 2019, which would increase by the Consumer Price Index (CPI) to \$1,304,915 beginning on May 1, 2019. The proposed termination agreement terminates the existing lease as of April 30, 2019. Based on annual rent of \$1,304,915 for the remaining five-year term of the existing lease from May 1, 2019 through April 30, 2024, the SFPUC will lose \$6,524,577.

According to Mr. Bardo, the loss in rent will be offset by two (2) new five-year leases at current fair market value. The SFPUC estimates that a new fair market rent for the land and improvements would exceed the rent in the current ground lease.

Under the existing lease, the SFPUC did not receive any rent from the subtenant, Kentucky Fried Chicken. The SFPUC is currently negotiating a 12-month extension of the existing Kentucky Fried Chicken restaurant lease for 9 percent of sales with a minimum base rent of \$10,350 per month, or a minimum of \$124,200 per year. According to Mr. Bardo, the 12-month

extension was granted as staff estimate it will take one year to issue a request for proposals and secure a new tenant. The draft of the request for proposals is currently being finalized.

RECOMMENDATION

Approve the proposed resolution.

FIRST AMENDMENT TO GROUND LEASE

THIS FIRST AMENDMENT TO GROUND LEASE (this "Amendment") is made as of AUGUST 4, 2014, in San Francisco, California, by and between CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Landlord"), acting through its Public Utilities Commission ("SFPUC") and ORCHARD SUPPLY COMPANY, LLC, a North Carolina limited liability company ("Tenant").

RECITALS

THIS AMENDMENT is made with reference to the following facts and circumstances:

A. City and Tenant's predecessor in interest entered into that Ground Lease dated April 26, 1984 (the "Lease"), for the lease of approximately 4.7505 acres of land commonly known as 900 El Camino Real, Millbrae, San Mateo County, California, and known in SFPUC records as a portion of Parcel 29, Millbrae Pump Station Lot (the "Premises"), as further described in the Lease. The Premises are under SFPUC's jurisdiction.

B. The Lease provides for an initial term of 30 years, commencing May 1, 1984, and expiring April 30, 2014, with two options to extend the term for additional periods of ten (10) years each. Tenant exercised the first option to extend the term for an additional 10-year period, commencing on May 1, 2014, at an annual rent (as determined by appraiser arbitration) of One Million One Hundred Seventeen Four Hundred Thirty-two Dollars (\$1,117,432.00), subject to a rental adjustment on May 1, 2019, as required in Section 5.01(f) of the Lease.

C. SFPUC is undertaking the Regional Groundwater Storage and Recovery Project to enhance the capacity and reliability of SFPUC's regional water system. City desires to use portions of the Premises for the Project, and Tenant is willing to agree to such use, on the terms and conditions set forth in this Amendment.

ACCORDINGLY, in consideration of the matters described in the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the City and Tenant agree as follows:

1. **Effective Date; Commencement Dates.**

1.1 Effective Date. The date on which this Amendment shall become effective (the "Effective Date") is the date upon which both of the following shall have occurred: (a) City's Mayor and Board of Supervisors, in their sole and absolute discretion, shall have adopted a resolution or enacted an ordinance approving this Amendment in accordance with all applicable laws, and (b) this Amendment shall have been duly executed and delivered by the parties hereto.

1.2. Building Commencement Date. The "Building Commencement Date" shall be September 28, 2015. If City's contractor first enters the portion of the Premises identified as "Build & Well Area" on Exhibit A (the "Building and Well Site") and the Temporary Staging Area, as defined in Section 2.2, to commence staging and well construction for the Project pursuant to a Permit to Enter between City and Tenant ("Permit") before this Amendment is

executed, then such date of first entry shall be deemed the Building Commencement Date for purposes of determining the expiration date of the 18-month Building Construction Period, as defined in **Section 2.2**, and City's use of the Building and Well Site and Temporary Staging Area during the period from the Building Commencement Date until the Effective Date shall be governed by such Permit.

1.3 Utility Line Commencement Date. The "Utility Line Commencement Date" shall be the date on which City's contractor commences using the areas identified as "Temporary Work Area" on attached **Exhibit A** to commence construction of the subsurface utility lines identified on **Exhibit A** and/or to commence construction staging associated with the installation of the well station in the Building and Well Site. The Utility Line Commencement Date shall be no earlier than the Building Commencement Date and no later than nine (9) months after the Building Commencement Date. City shall provide, or cause its contractor to provide, at least fourteen (14) days' advance written notice to Tenant of the Utility Line Commencement Date. At the request of either party, Tenant and City shall confirm in writing the Utility Line Commencement Date. If City's contractor first uses the Temporary Work Area to commence construction of the subsurface utility lines before the Effective Date, pursuant to a Permit (as defined in **Section 1.2**), then such date of initial use shall be deemed the Utility Line Commencement Date for purposes of determining the expiration date of the Utility Line Installation Period (as defined in **Section 2.3**); however, City's use of the Temporary Work Area during the period from the Utility Line Commencement Date until the Effective Date shall be governed by such Permit.

2. Modification of Premises.

2.1. Permanent Deletion of Building and Well Site. On the later of the Building Commencement Date or the Effective Date, the Building and Well Site shall be deleted from the Premises for the balance of the Term, including any Extended Term. On the Building Commencement Date, Tenant shall tender possession of the Building and Well Site to City's contractor free and clear of any and all trash, vehicles, equipment, inventory, other personal property, and structures, except that Tenant, at its option, may leave the existing fence for City's contractor to demolish.

2.2. Temporary Deletion of Temporary Staging Area. Commencing on the later of the Building Commencement Date or the Effective Date, and continuing until the expiration of the Building Construction Period, as defined below, the portion of the Premises identified as "Temporary Staging Area" on **Exhibit A** (the "Temporary Staging Area") shall be deleted from the Premises. The Temporary Staging Area includes those areas shaded in Cyan, green and red (for underground utilities) where they overlap with the pink/magenta area on **Exhibit A**. On the Building Commencement Date, Tenant shall tender possession of the Temporary Staging Area to City's contractor free and clear of any and all trash, vehicles, equipment or other personal property, and structures. The "Building Construction Period" shall be the period commencing on the Building Commencement Date and expiring on the last day of the 18th full calendar month thereafter; however, City shall have the option to extend the Building Construction Period beyond that date on a month-to-month basis. A 14-day written notice will be given to Tenant if City elects to exercise its option for any such extension. For any such extension, City shall pay Tenant monthly in advance the sum of Two Thousand Sixteen Dollars (\$2,016) per month

(which is the same rate as the portion of the Compensation (as defined in **Section 4**) paid for the Temporary Staging Area for the initial 18-month Building Construction Period, prorated on a monthly basis). Upon the expiration of the Building Construction Period, City shall restore the surface of the Temporary Staging Area as provided in **Section 3**, and such space shall again be part of the Lease Premises.

City shall indemnify, defend and hold harmless ("**Indemnify**") Tenant from and against any and all claims, costs and expenses, including, without limitation, reasonable attorneys' fees (collectively, "**Claims**"), to the extent caused by (a) City's use of the Temporary Staging Area during the Building Construction Period, or (b) any negligence of City or its Agents (as defined below) in, on or about the Temporary Staging Area during the Building Construction Period; provided, however, City shall not be obligated to Indemnify Tenant or its Agents to the extent any Claim arises out of the negligence or willful misconduct of Tenant or its Agents. In any action or proceeding brought against Tenant by reason of any Claim Indemnified by City hereunder, City may, at its sole option, elect to defend such Claim by attorneys in City's Office of the City Attorney, by other attorneys selected by City, or both. City shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that Tenant shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost. City's obligations under this Section shall survive the expiration of the Building Construction Period. The term "**Agents**" when used in this Amendment with respect to either party shall include the agents, employees, officers and contractors of such party

2.3. Shared Use of Temporary Work Area. During the Utility Line Installation Period, as defined below, City shall have the right to use the Temporary Work Area for the installation of the subsurface water, sewer, electrical, and telephone lines in the locations identified on **Exhibit A** (the "**New Utilities**") and for construction staging and activities associated with the installation of the well station in the Building and Well Site. The Temporary Work Area includes the portions of the areas shown in red, light blue and green that overlap with the gray area on **Exhibit A**, as well as the entire blue "**Water Out**" area shown on such Exhibit running along the boundary of the Premises to El Camino Real. Tenant and City's contractor shall cooperate in good faith to schedule the installation of such utilities at such times and in such manner as to reasonably minimize disruption to Tenant's operations; provided that such efforts (i) do not result in a material increase in the cost of performing the utility line installation work, (ii) do not diminish the quality of utility installation work performed, and (iii) do not unreasonably restrict Tenant's ability to take delivery of necessary supplies and merchandise. During any scheduled installation, Tenant shall keep the Temporary Work Area free and clear of parked vehicles, equipment, supplies, merchandise and other obstructions, except for delivery trucks loading or unloading materials at Tenant's loading dock at mutually agreed upon times. The "**Utility Line Installation Period**" shall be the period commencing on the Utility Line Commencement Date and expiring on the last day of the ninth (9th) full calendar month thereafter; however, City shall have the option to extend the Utility Line Installation Period beyond that date on a month-to-month basis. A 14-day written notice will be given to Tenant if City elects to exercise its option for any such extension. For any such extension, City shall pay Tenant monthly in advance the sum of Seven Thousand Four Hundred Seventy-nine Dollars (\$7,479) per month (which is the same rate as the portion of the Compensation (as defined in **Section 4**) paid for the Temporary Work Area for the initial Utility Line Installation Period,

prorated on a monthly basis). During the Utility Line Installation Period, the Temporary Work Area shall remain part of the Lease Premises.

City shall Indemnify Tenant from and against any and all Claims, to the extent caused by (a) City's use of the Temporary Work Area during the Utility Line Installation Period, or (b) any negligence of City or its Agents in, on or about the Temporary Work Area during the Utility Line Installation Period; provided, however, City shall not be obligated to Indemnify Tenant or its Agents to the extent any Claim arises out of the negligence or willful misconduct of Tenant or its Agents. In any action or proceeding brought against Tenant by reason of any Claim Indemnified by City hereunder, City may, at its sole option, elect to defend such Claim by attorneys in City's Office of the City Attorney, by other attorneys selected by City, or both. City shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that Tenant shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost. City's obligations under this Section shall survive the expiration of the Utility Line Installation Period.

2.4 Maintenance, Operation and Protection of the New Utilities. Landlord's easement under Section 2.02 of the Lease to enter the Premises to repair, replace, maintain, operate and remove existing utility facilities shall extend to and include the future repair, replacement, maintenance, operation and removal of the New Utilities installed in the Temporary Work Area by City pursuant to **Section 2.3**. Tenant's obligation to use reasonable efforts to protect improvements and pipeline appurtenances and prevent damage to City's underground pipelines; under Section 2.03 of the Lease, shall extend to and include the protection of the New Utilities.

3. Restoration of Temporary Work Area and Temporary Staging Area. On the earlier of expiration of the Utility Line Installation Period (including any extension) or City's completion of the Project, City shall restore, as nearly as reasonably possible, the surface of the Temporary Work Area to its condition immediately prior to the commencement of the work related to the Project. On the earlier of expiration of the Building Construction Period (including any extension) or City's completion of the Project, City shall restore, as nearly as reasonably possible, the surface of the Temporary Staging Area to their condition immediately prior to the commencement of the work related to the Project, and such premises shall again become part of the Lease Premises.

4. Compensation. Within thirty (30) days after the Effective Date (as defined in **Section 1.1**), City shall pay Tenant the sum of Four Hundred Sixty Thousand Six Hundred Seventy-three Dollars (\$460,673.00) (the "**Compensation**") as compensation for (i) the termination of the Lease with respect to the Building and Well Site, (ii) deletion of the Temporary Staging Area from the Lease Premises during the Building Construction Period (provided that additional compensation will be payable for any extension, in accordance with **Section 2.2**), (iii) City's use of the Temporary Work Area during the Utility Line Installation Period (provided that additional compensation will be payable for any extension, in accordance with **Section 2.3**), and (iv) City's permanent use of subsurface portions of the Premises for the New Utilities. Tenant acknowledges that such payment will compensate Tenant in full, and Tenant shall not be entitled to any rental abatement or rental reduction for the permanent deletion of the Building and Well Site, the temporary deletion of the Temporary Staging Area from the

Premises, Landlord's shared use of the Temporary Work Area, or City's permanent use of the subsurface areas for the New Utilities. If City's contractor commences using any part of the Premises before the Effective Date, pursuant to a Permit, as defined in **Section 1.2**, then City shall receive a credit toward the Compensation in the amount of any use fees paid by City (either in cash or as offsets against the Lease rent) under such Permit. Upon request, Tenant shall submit any standard forms required by the City's Controller as a condition of releasing the payment, including federal form W-9 and City form P-25.

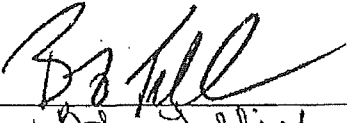
5. **City Lease Provisions.** The provisions set forth in attached **Exhibit B** are incorporated into and made a part of the Lease as of the Effective Date.
6. **No Joint Venture.** Neither this Amendment nor any activity by the City hereunder creates a partnership or joint venture between the City and Tenant relating to the Lease or otherwise. This Amendment does not constitute authorization or approval by the City of any activity conducted by Tenant, and the City shall in no way be responsible for the acts or omissions of Tenant on the Premises or otherwise.
7. **Attorneys Fees.** In the event a dispute arises concerning this Amendment, the party not prevailing in such dispute shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Amendment, 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.
8. **References.** No reference to this Amendment is necessary in any instrument or document at any time referring to the Lease. Any future reference to the Lease shall be deemed a reference to such document as amended hereby.
9. **Applicable Law.** This Amendment shall be governed by, construed and enforced in accordance with the laws of the State of California.
10. **Further Instruments.** The parties hereto agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Amendment. Without limiting the foregoing, the parties agree to negotiate in good faith a memorandum of agreement setting forth their agreement concerning construction details such as scheduling of City's installation of utility lines within the Temporary Work Area.
11. **Counterparts; Electronic Signature.** This Amendment may be executed in counterparts. This Amendment shall be considered executed by a party when counterparts bearing the signing party's original signature are delivered to the other party or when a counterpart bearing the signature of such signing party is delivered in an Adobe .pdf file by email transmission to the other party. Such electronic signature shall be treated in all respects as having the same effect as an original signature.

12. **Miscellaneous.** The Lease shall remain in full force and effect as modified by this Amendment. The Lease as amended by this Amendment constitutes the entire agreement of the parties concerning the subject matter hereof, and supersedes and conceals any and all previous negotiations, agreements, or understandings, if any, regarding the matters contained herein. The execution of this Amendment shall not constitute a waiver of relinquishment of any rights that City may have relating to the Lease. Tenant and City hereby ratify and confirm all of the provisions of the Lease as amended by this Amendment.

[Remainder of page intentionally blank]


In witness whereof, the parties hereto have executed this Amendment as of the first date written above.

TENANT: ORCHARD SUPPLY COMPANY, LLC, a North Carolina limited liability company

By: 
Name: Bob Bell
Its: President

By: _____
Name: _____
Its: _____

LANDLORD: CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: 
HARLAN L. KELLY, JR.
General Manager
San Francisco Public Utilities Commission

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

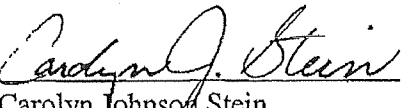
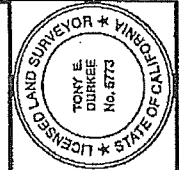
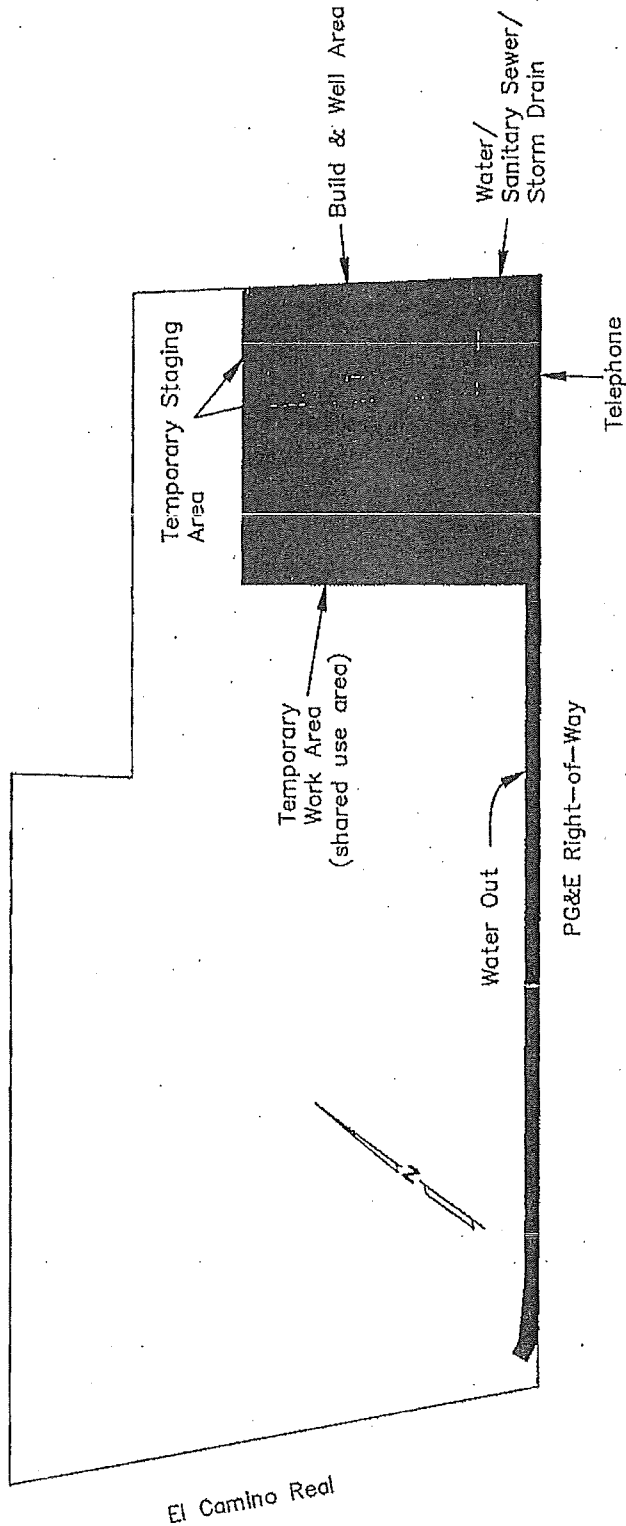
By: 
Carolyn Johnson Stein
Deputy City Attorney

EXHIBIT A

**Diagram of Temporary Work Area, Building and Well Site,
and Temporary Staging Area**

Exhibit "A"

Site	APN	Total OSH Lease Area	Site Area	Type	Color
Bldg & Well Area	093-220-010	206,931 sq.ft.±	5,393 sq.ft.±	Perm. Area	Blue
Temp Work Area	093-220-010	206,931 sq.ft.±	20,005 sq.ft.±	Temp. Access Area	Gray
Sub-Surface Telephone	093-220-010	206,931 sq.ft.±	862 sq.ft.±	Perm. Underground Area	Green
Sub-Surface Water/SS/SD	093-220-010	206,931 sq.ft.±	481 sq.ft.±	Perm. Underground Area	Red
Sub-Surface Water Out	093-220-010	206,931 sq.ft.±	6,887 sq.ft.±	Perm. Underground Area	Cyan
Temp Staging	093-220-010	206,931 sq.ft.±	4,373 sq.ft.±	Temp.Const. Area	Magenta



City of Millbrae, San Mateo Co.
02/23/2015

Easement Diagram
Millbrae Corporation Yard
Conjunctive Use Project Site 13

City and County of San Francisco
Public Utilities Commission
Real Estate Services

EXHIBIT B

City Lease Provisions

A. Local Hiring Requirements

If Tenant proposes to make improvements or alterations to the Premises that exceed Seven Hundred Fifty Thousand Dollars (\$750,000) in cost ("Covered Alterations"), unless otherwise exempt, Tenant shall comply with the Local Hiring Policy set forth in San Francisco Administrative Code Section 6.22(g) (the "Local Hiring Policy") in the construction or performance of the Covered Alterations. Because the Premises are located within 70 miles from the jurisdictional boundary of the City, the percentage requirements will apply in proportion to City's actual cost, if any, of the Covered Alterations compared to the total cost of the project, pursuant to Administrative Code Section 6.22(g)(3)(C). Before starting any such Covered Alterations, Tenant shall contact City's Office of Economic Workforce and Development to verify the Local Hiring Policy requirements that apply to the Improvements or Alteration, and Tenant shall comply with all such requirements. Failure to comply shall be deemed a breach of the Lease, and may subject Tenant to penalties as set forth in the Local Hiring Policy.

Any capitalized term used in this Section A that is not defined will have the meaning given to such term in the Local Hiring Policy.

B. Non-Discrimination in City Contracts and Benefits Ordinance

1. Section 20.10 and Exhibit F of the Lease are replaced in full with this Section B effective as of the Effective Date (as defined in Section 1.1 of the First Amendment to Ground Lease to which this Exhibit is attached). Section 20.10 and Exhibit F of the Lease remain applicable until the Effective Date.

2. Covenant Not to Discriminate

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

3. Subleases and Other Subcontracts

Tenant shall include in all Subleases and other subcontracts relating to the Premises entered into or amended on or after the Effective Date a non-discrimination clause applicable to such Subtenant or other subcontractor in substantially the form of Subsection (a) above. In addition, Tenant shall incorporate by reference in all subleases and other subcontracts entered into or amended on or after the Effective Date the provisions of Sections 12B.2(a), 12B.2(c)-(k),

and 12C.3 of the San Francisco Administrative Code and shall require all Subtenants and other subcontractors under such subleases and subcontracts to comply with such provisions. Tenant's failure to comply with the obligations in this Subsection shall constitute a material breach of the Lease.

4. Non-Discrimination in Benefits

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

5. Incorporation of Administrative Code Provisions by Reference

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

C. Notification of Limitations on Contributions

By its execution of this Amendment, Tenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Tenant further acknowledges that the prohibition on contributions applies to each entity constituting Tenant; each member of Tenant's board of directors, and Tenant's chief executive officer, chief financial officer, and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in

Tenant; any subcontractor listed in the contract with City; and any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that Tenant must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Tenant shall provide City with the names of each person, entity, or committee described above.

D. MacBride Principles - Northern Ireland

City 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. City 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 City concerning doing business in Northern Ireland.

E. Bottled Drinking Water

Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the San Francisco Bottled Water Ordinance, as set forth in San Francisco Environment Code Chapter 24, including the administrative fines, remedies, and implementing regulations provided in that statute, as the same may be amended from time to time. The provisions of Chapter 24 are incorporated by reference and made a part of the Lease as though fully set forth.

F. Tropical Hardwood and Virgin Redwood Ban

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

G. Prohibition of Tobacco Sales and Advertising

Tenant acknowledges and agrees that no advertising or sale of cigarettes or tobacco products is allowed on the Premises. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product.

H. Prohibition of Alcoholic Beverage Advertising

Tenant acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Premises. For purposes of this Section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This

advertising prohibition includes the placement of the name of a company producing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product

I. Disclosure

Tenant understands and agrees that the City's Sunshine Ordinance (San Francisco Administrative Code Chapter 67) and the State Public Records Law (California Gov't Code Section 6250 et seq.), apply to the Lease and any and all records, information, and materials submitted to the City in connection with the Lease. Accordingly, any and all such records, information, and materials may be subject to public disclosure in accordance with the City's Sunshine Ordinance and the State Public Records Law. Tenant hereby authorizes the City to disclose any records, information, and materials submitted to the City in connection with the Lease.

J. Food Service Waste Reduction

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

K. Criminal History in Hiring and Employment Decisions

Unless exempt, Tenant agrees to comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; "Chapter 12 T"), which are hereby incorporated as may be amended from time to time, with respect to applicants and employees of Tenant who would be or are performing work at the Premises.

Tenant shall incorporate by reference the provisions of Chapter 12T in all subleases of some or all of the Premises, and shall require all Subtenants to comply with such provisions. Tenant's failure to comply with the obligations in this Subsection shall constitute a material breach of the Lease.

Tenant and any Subtenants shall not inquire about, require disclosure of, or if such information is received, base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (i) Arrest not leading to a Conviction, unless the Arrest is

undergoing an active pending criminal investigation or trial that has not yet been resolved; (ii) participation in or completion of a diversion or a deferral of judgment program; (iii) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (iv) a Conviction or any other adjudication in the juvenile justice system; (v) a Conviction that is more than seven years old, from the date of sentencing; or (vi) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

Tenant and any Subtenants shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in Subsection (c) above. Tenant and Subtenants shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

Tenant and any Subtenants shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Tenant or subtenant at the Premises, that the Tenant or subtenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

Tenant and any Subtenants shall post the notice prepared by the Office of Labor Standards Enforcement ("OLSE"), available on OLSE's website, in a conspicuous place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

Tenant and any Subtenants understand and agree that upon any failure to comply with the requirements of Chapter 12T, City may pursue any rights or remedies available under Chapter 12T or the Lease, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of the Lease.

If Tenant has any questions about the applicability of Chapter 12T, it may contact the City's Real Estate Division for additional information. City's Real Estate Division may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

950 EL CAMINO REAL
MILLBRAE, CALIFORNIA

GROUND LEASE

This GROUND LEASE is made as of this 26th day of APRIL, 1984, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting through its Public Utilities Commission (the "Commission") ("Landlord"), and GRACE RETAIL CORPORATION, a Delaware corporation having an office at c/o Orchard Supply Hardware, 1555 S. Seventh St., San Jose, California 95112 ("Tenant").

RECITALS:

This Ground Lease is made and entered on the basis of the following facts, understandings and intentions of the parties:

A. Landlord is the owner of all that certain real property ("the Premises") situated in the City of Millbrae, County of San Mateo, State of California, particularly described in Exhibit A-1 hereto and shown on the survey attached hereto as Exhibit A-3.

B. Tenant desires to lease the Premises from Landlord in "as is" condition and to have the right to erect new improvements thereon.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and promises herein contained, Landlord leases to Tenant, and Tenant does hereby lease and take from Landlord, the Premises upon the terms and conditions hereinafter set forth:

ARTICLE ONE

Definitions

1.01. Additional Rent. The rent payable by Tenant pursuant to Section 5.04 of this Ground Lease.

1.02. Annual Rent. The rent payable by Tenant pursuant to Section 5.01(b) of the Ground Lease.

1.03. Commencement Date. MAY 1, 1984.

1.04. Development Period. The period commencing with the Commencement Date and expiring on the first (1st) anniversary date thereof or the Opening Date, whichever is the earlier.

1.05. Lease Year. The period of twelve consecutive months commencing upon the Commencement Date and terminating on the last day of the month expiring immediately prior to the first anniversary of the Commencement Date, and each successive twelve month period thereafter.

1.06. Manager. The General Manager and Chief Engineer of the San Francisco Water Department.

1.07. Mortgage. A deed of trust as well as a mortgage.

1.08. Mortgagee. A beneficiary under or a holder of a recorded deed of trust as well as a mortgagee.

1.09. Mortgagor. A trustor under a recorded deed of trust as well as a mortgagor.

1.10. Opening Date. The date on which the Tenant opens for business on any portion of the Premises.

1.11. Premises. The real property particularly described in Exhibit A-1 to this Ground Lease, together with all easements and rights appurtenant thereto.

1.12. Rent. Any and all Annual Rent and Additional Rent to be paid by Tenant under this Ground Lease.

1.13. Security Deposit. The deposit Tenant is required to pay to the Landlord in accordance with the provisions of ARTICLE FOUR of this Ground Lease.

1.14. Term. The term of this Ground Lease as provided in ARTICLE THREE hereof.

ARTICLE TWO

Premises

2.01. Demise of Premises. Landlord leases to Tenant and Tenant does hereby lease and take from Landlord the Premises for the Term, and upon the terms and conditions, hereinafter specified.

2.02. Reservation of Easements. Landlord reserves the following easements in, on, over and along the Premises as follows:

(a) Maintenance and Repair of 54-Inch Pipeline. The right to maintain, repair, replace or reconstruct the fifty-four (54) inch pipeline and appurtenances, presently located on the Premises and to construct, maintain, repair, replace or reconstruct additional pipeline and appurtenances, all within the thirty (30) foot wide strip of land along the existing fifty-four (54) inch pipeline as shown on the Survey, Exhibit A-3, attached hereto and incorporated herein by reference thereto.

(b) Construction Within 10-Foot Strip. The right to construct, maintain, repair or reconstruct a pipeline or pipelines within a strip of land ten (10) feet in width along the southerly edge of the Premises, as shown in Exhibit A-3.

(c) Existing Easements. The rights of way and easements for existing underground water pipelines, overhead power and communication lines in, over and through the Premises, as shown on Exhibit A-3.

(d) Utility Maintenance. The right at all reasonable times, without unreasonably or unduly interfering with Tenant's use of the Premises (and subject to Tenant's reasonable right of prior approval where entry into buildings is required), to enter upon the Premises to replace, repair, maintain, operate and remove existing water pipes, and any other existing utility and communication facilities; provided, however, that the expense of any such operations shall be borne by Landlord, unless due to the negligence of Tenant, its agents or employees.

(e) Supporting Rights. The foregoing shall include such rights of ingress and egress as may reasonably be required to maintain, repair, alter and replace the foregoing easements and the improvements therein.

2.03. Condition Of Easements. The easements reserved to Landlord pursuant to Section 2.02 shall be subject to the following rights and obligations:

(a) No Improvements. Tenant shall erect no buildings within or place any structures upon the easement area or the lands affected thereby. No other improvements shall be placed or maintained within the easement areas without the prior written consent of Manager which shall not be unreasonably withheld. Without such consent, however, Tenant may utilize the easement areas for surface parking of motor vehicles and for development of open space, roadways and landscaping (other than trees or perennial shrubs).

(b) Relocation Of Easements. Tenant shall have the right to replace or relocate any of the easements; provided, however, that all costs of such relocation shall be borne by persons other than Landlord, the prospective relocation, configuration and layout of the relocated facilities shall be subject to Manager's prior written approval, and the manner and method of accomplishing the work of relocation shall be consistent with Landlord's operating requirements as Manager shall determine in its discretion reasonably exercised. All costs for repair, replacement or removal of any improvements from time to time located in any easement area shall be borne by Tenant without any right over or claim against Landlord.

(c) Protection Of Improvements. Tenant shall use reasonable efforts to protect the improvements and pipeline appurtenances located on the Premises as shown on Exhibit A-3. In addition, in order to prevent damage to Landlord's underground pipelines, Tenant's use of vehicles and construction equipment within 20 feet of Landlord's pipelines shall be subject to the following restrictions:

(i) the cover over the top of Landlord's pipelines must be at least 3 feet;

(ii) the "axle loading" of vehicles and construction equipment must not exceed that allowed under "AASHO Standard H-10 Loading". H-10 loading is defined as loading caused by a two axle truck with a gross weight of ten tons (20,000 lbs.), axles 14 feet apart, and rear axle carrying 8 tons (16,000 lbs.). It is Tenant's responsibility to provide substantiation that its equipment meets this requirement; and

(iii) the use of vibrating compaction equipment will not be allowed.

Improvements and pipeline appurtenances damaged or disturbed by Tenant shall be repaired and/or relocated by Landlord at Tenant's expense.

(d) Marking Of Underground Improvements. Tenant shall use extreme care to protect Landlord's pipelines at all times, and shall mark, at its own expense, the location of Landlord's pipelines within the Premises. Tenant shall not use any pick, plow or other sharp tool over or near said pipelines, or heavy construction equipment directly over the pipelines of Landlord.

(e) Landlord's Responsibility. Anything herein contained to the contrary notwithstanding, Landlord shall conduct the installation, maintenance and operation of any of the aforesaid easements, pipelines and other utility and communication facilities in such manner that will not unnecessarily or unreasonably obstruct, interfere with, or impede the ingress/egress of persons or vehicles to and from the Premises or any buildings constructed thereon and the public streets abutting the Premises, or the orderly flow of both pedestrian and vehicular traffic, or otherwise interfere with Tenant's use of the Premises or its business thereon. In addition, Landlord shall repair any damage which may be done to the surface of the Premises or to any pavement, landscaping, curbing or other improvements thereon or to any buildings or other improvements thereon which may result from the construction, installation, repair, maintenance or operation (or any combination thereof) of the aforesaid easements, pipelines and/or utility and communication facilities. Landlord shall be responsible for, and shall reimburse Tenant upon demand for, any loss, cost or expense paid or incurred by Tenant and attributable to any and all damage to property and injury or death to person or persons to the extent caused by any dangerous condition or any negligent act or omission of Landlord, its employees, officers, agents, licensees, invitees or contractors, in connection with the construction, installation, repair, maintenance or operation (or any combination thereof) of the aforesaid easements, pipelines and/or utility and communication facilities.

2.04. Grant Of Access Easement. Landlord grants to Tenant a non-exclusive easement for the Term of the Lease and any Extended Term of the Lease over a portion of that certain parcel of property owned by

Landlord and situated immediately adjacent to the Premises, said easement area being more particularly described on Exhibit A-2 and located within the area shown on Exhibit A-3 hereto and designated thereon as "Ingress & Egress Easement", for the purpose of ingress and egress by Tenant, its subtenants, customers, employees, invitees, licensees, agents, and contractors, in the conduct of its business, and any motor vehicles used in the conduct of business to and from the Premises onto El Camino Real at the signalized intersection. Tenant shall, at its sole cost and expense, relocate Landlord's automated entrance gate and security fence as Manager shall direct. It is understood and agreed that the Ingress & Egress Easement area may be altered or modified by mutual agreement between the parties provided, however, that throughout the Term or any Extended Term Tenant shall be granted (and Landlord, its successors and assigns shall provide and grant to Tenant) an access easement of substantially the same size and configuration and in substantially the same location as the Ingress & Egress Easement shown on Exhibit A-3 hereto. Landlord and Tenant further covenant and agree that each shall keep the Ingress & Egress Easement area free at all times from obstructions of any nature (including, without limitation, parking of trucks or other vehicles, barricades, fences and landscaping) such that the free flow of pedestrian and vehicular traffic to and from the Premises and Landlord's adjacent property and the public streets through the Ingress & Egress Easement area shall at all times be and remain unimpeded and unhampered.

2.05. Conditions Of Title. Landlord holds title to the Premises in fee simple absolute subject to no exceptions other than those specified in Exhibit C, attached hereto and incorporated herein by this reference.

2.06. Existing Improvements. Prior to the end of the Development Period, and without cost or expense to Landlord, Tenant shall remove, relocate or reconstruct onto adjacent real property of Landlord certain parking lot improvements presently located on the Premises, as shown on Exhibit B, all in accordance with written plans and specifications of Landlord and in a manner reasonably satisfactory to Landlord; provided, however, that the cost of such relocation shall not exceed Fifty Thousand Dollars (\$50,000.00) (herein the "Cap Price") and Tenant shall not be obligated to expend amounts in excess of said sum for such relocation. Such work shall not disrupt parking facilities required for employees and invitees of the Water Department, nor shall ingress to or egress from such parking facilities be obstructed. Landlord shall remove the newly installed chain link fence along the frontage of the Premises prior to the Construction Period and Landlord shall retain possession of the fencing materials. Tenant may demolish and remove all other existing improvements on the Premises (excluding the pipelines, power lines and other items shown on Exhibit A-3).

Prior to the commencement of any such relocation work by Tenant, Tenant shall submit to Landlord a written estimate of the cost of all such relocation work as set forth in the aforesaid plans and specifications together with copies of all bids received from contractors. In the event the construction price of the lowest bid for such relocation work shall be in excess of the Cap Price, then Landlord shall have the right, for a period of thirty (30) days after Tenant delivers copies of said bids to Landlord as aforesaid, to:

(i) Approve the construction price of said lowest bid and pay to Tenant the amount thereof which exceeds the Cap Price at the time and as provided hereinbelow; or

(ii) Modify the plans and specifications for such relocation work, and resubmit the same to Tenant to obtain a new construction price not exceeding the Cap Price.

If Landlord shall fail to approve the lowest bid or modify its plans as herein provided within said thirty (30) day period, then said lowest bid shall be deemed approved and Landlord shall pay to Tenant the amount, if any, by which the construction price of such relocation work shall exceed the Cap Price, as hereinafter provided. Within thirty (30) days after completion of such relocation work, Tenant shall deliver to Landlord a statement certified by an officer of Tenant's Orchard Supply Hardware division setting forth in detail the costs of completing such

relocation work in accordance with Landlord's plans and specifications, including the computation of costs in excess of the Cap Price which are to be paid by Landlord. Within thirty (30) days after the delivery of said statement to Landlord, Landlord shall reimburse Tenant for the cost of completing such relocation work in excess of the Cap Price. If Landlord shall fail to reimburse Tenant as herein provided within said thirty (30) day period, then Tenant may, at its option, deduct such amount from the next due and succeeding payments of Minimum Annual Rent and other charges payable by Tenant to Landlord under this Lease.

2.07. Maintenance of Ingress & Egress Easement Area. Throughout the term of this Lease and any extensions thereof, Tenant covenants and agrees to maintain and repair the Ingress & Egress Easement area in good order and condition including, but not limited to repaving, restriping, filling in pot holes, removing all rubbish and debris therefrom, and removing all standing water and ice therefrom, provided, however, that Tenant shall not be obligated to repair or replace any portion of the Ingress & Egress Easement area, the damage to which was caused by Landlord, its employees, agents, officers, licensees, invitees or contractors, or with respect to any repair or replacement required as a result of the faulty or defective construction of any portion of the Ingress & Egress Easement area (and Landlord agrees to repair and/or replace the same). If Tenant shall fail to make or perform any of its maintenance obligations herein provided, and if Tenant shall not cure such breach or failure within thirty (30) days after notice from Landlord specifying such breach or failure (or if such breach or failure shall reasonably take more than thirty (30) days to cure, Tenant shall not have commenced the same within said thirty (30) days and diligently prosecuted the same to completion), Landlord may, at Landlord's option, without waiving any claim for damages for breach of agreement, at any time thereafter cure such breach or failure for the account of Tenant, and any amount paid or any contractual liability incurred by Landlord in so doing shall be deemed paid or incurred for the account of Tenant and Tenant agrees to reimburse Landlord therefor. If Tenant shall fail to reimburse Landlord upon demand for any amount paid for the account of Tenant hereunder, said amount shall be added to and become due as a part of the next payment of Annual Rent due hereunder.

ARTICLE THREE

Term

3.01. Initial Term. The Term shall commence on the Commencement Date and shall expire at the hour of 12:01 A.M. on the thirtieth (30th) anniversary of the Commencement Date unless (i) the Term is extended in accordance with the provisions of Section 3.02 or (ii) earlier terminated as hereinafter provided.

3.02. Extended Term. Subject to all of the provisions of this Ground Lease including, without limitation thereto, the provisions for the adjustment and reappraisal of Rent in ARTICLE FIVE, Tenant may, at Tenant's option, extend the Term for two (2) additional ten (10) year periods (the "Extended Term"), which Extended Term shall commence at the expiration of the Initial Term (or the next preceding Extended Term) and terminate at the hour of 12:01 A.M. on the tenth (10th) anniversary of the date of commencement of each Extended Term, unless earlier terminated as hereinafter provided.

(a) Conditions Precedent To Options To Extend.

Tenant's right to exercise the option to extend for an Extended Term shall be subject to the following conditions precedent:

(1) No Default. Tenant shall not be in default under this Ground Lease (i) at the time notice of exercise of the option is given to Landlord, and (ii) on the last day of the Initial Term (or the next preceding Extended Term).

(2) Notice. At least one hundred eighty (180) days before the last day of the Initial Term (or next preceding Extended Term), Tenant shall give Landlord written notice that Tenant has irrevocably elected to extend the Term in accordance with the provisions

of this Section 3.02, Each party shall, at the request of the other, execute a memorandum in recordable form acknowledging that the option has been exercised and the Term extended for the applicable Extended Term.

ARTICLE FOUR

Security Deposit

4.01. (a) Amount. On or before the Commencement Date, Tenant shall pay to Landlord as initial security for the full performance and observance of each and all of the provisions hereof a sum equal to Sixty Three Thousand Dollars (\$63,000.00). In the alternative, Tenant may, at its option and in lieu of such cash deposit, establish and maintain throughout the Term of this Lease, with a national or California bank having at least one branch office within the City and County of San Francisco, a confirmed irrevocable letter of credit in favor of the City and County of San Francisco, a municipal corporation, acting by and through its Public Utilities Commission, in an amount of Sixty Three Thousand Dollars (\$63,000.00). Said letter of credit shall provide that payment of the entire face amount thereof, or any portion thereof, shall be made to the City and County of San Francisco, upon presentation of a written demand to the said bank signed by the General Manager on behalf of the City and County of San Francisco.

(b) Disposition of Security Deposit. If Tenant defaults in any covenant or agreement to be observed or performed by Tenant under this Lease beyond any applicable grace period as elsewhere provided in this Lease, Landlord may use, apply or retain the whole or any part of the Security Deposit (or make its demand under said letter of credit) for any or all of the following purposes, in such order of priority, as Landlord may elect in its sole discretion: (i) to the extent of any sum due to Landlord; (ii) to compensate Landlord for any expense or damage caused by Tenant's default; or (iii) to cure the default. If any portion of said security deposit (or said letter of credit) is so used or applied, Tenant shall within thirty (30) days after written demand therefor, deposit cash with Landlord in an amount sufficient to restore and maintain the security deposit at its original amount, and Tenant's failure to do so shall be a default under this Lease. If Landlord shall apply or retain the whole or any part of such security deposit or shall receive any payments from the aforementioned bank under said letter of credit by reason of having made a wrongful or excessive demand for payment, then Landlord shall return to Tenant the amount by which Landlord's total receipts from such security deposit or letter of credit shall exceed the amount to which Landlord is rightfully entitled, together with interest at the maximum lawful rate, but Landlord shall not otherwise be liable to Tenant for any damages or penalties. Any such letter of credit hereunder shall have an original term of one year, with automatic extensions through the Term of this Lease, and shall provide for sixty (60) days notice by said bank to Landlord in the event of nonextension. In the event of any such nonextension, Tenant shall replace said letter of credit at least ten (10) days prior to expiration, and if Tenant fails to do so, Landlord shall be entitled to present its written demand for payment of the entire face amount of said letter of credit. Any amount so received by Landlord shall be returned to Tenant upon replacement of the letter of credit.

4.02. Surety Bond. In lieu of the cash security deposit and/or letter of credit hereinabove provided, Tenant may, at its option, obtain and deliver to Landlord a valid surety bond or bonds in a sum equal to six (6) months Annual Rent, issued by a surety company or companies reasonably acceptable to the Controller of the City of San Francisco and in such form as reasonably approved by the City Attorney of the City of San Francisco, which surety bonds shall be kept, at Tenant's own expense, in full force and effect until the sixtieth (60th) day after expiration or earlier termination of the Term of this Lease, as the same may hereafter be modified, renewed or extended, to insure faithful performance by Tenant of all of the covenants and conditions to be performed or observed by Tenant hereunder according to their true intent and meaning, including but not limited to, provisions for payment of all rents, taxes, insurance and other charges, and payment of all valid claims resulting from any breach of this Lease. Said bond or bonds shall also provide that thirty (30) days' prior written notice of cancellation or material change of said bond or bonds shall be delivered to the Manager.

ARTICLE FIVE

Rent

5.01. Rent. During the Term, Tenant shall pay as Rent for the Premises, without abatement, deduction or offset, the following amounts:

(a) Development Period Annual Rental. For the Development Period, Tenant shall pay Landlord as Annual Rent the sum of Twelve Thousand Six Hundred Dollars (\$12,600.00).

(b) Annual Rent. Commencing with the end of the Development Period and continuing during the Term and any Extended Term, Tenant shall pay Landlord as Annual Rent the sum of One Hundred Fifty Thousand Dollars (\$150,000.00), subject to (i) periodic adjustments as provided in Section 5.01.(c) below and (ii) the optional appraisal provided in Section 5.01(d) below.

(c) Adjustment to Annual Rent.

(1) Adjusted Amount. Except as otherwise provided in Section 5.01(d) below, the Annual Rent shall be adjusted (subject to the limitations hereinafter set forth) on the fifth (5th) anniversary of the Commencement Date and each five (5) year anniversary date thereafter including, without limitation thereto, any such anniversary date occurring during the Extended Term (each such date being referred to herein as an "Adjustment Date") in accordance with Section 5.01(c)(2) below. For purposes hereof, the terms "Consumer Price Index", "CPI", or "Index", shall mean the Consumer Price Index For All Urban Consumers, San Francisco/Oakland Metropolitan Area, All Items Series A, based on the year 1967=100, published by the United States Department of Labor, Bureau of Labor Statistics.

(2) Calculation of CPI Adjustment. The periodic adjustments to Minimum Annual Rent shall be calculated as follows:

(a) The first such rental adjustment shall be made for purposes of calculating the Annual Rent for the five (5) year period commencing on the fifth (5th) anniversary of the Commencement Date. For such purpose, the Beginning Index Figure shall be the figure for the Consumer Price Index last published immediately prior to the end of the Development Period, and the Adjustment Date Index Figure shall be the figure for the Consumer Price Index last published immediately prior to the fifth (5th) anniversary of the Commencement Date. The Annual Rent for the five (5) year period commencing with the fifth (5th) anniversary of the Commencement Date shall be the amount equal to the sum of: (i) the Initial Annual Rent set forth in Section 5.01(b); plus (ii) the amount derived by multiplying said Initial Annual Rent by the fraction, the numerator of which is the Adjustment Date Index Figure less the Beginning Index Figure, and the denominator of which is the Beginning Index Figure, provided, however, that in no event shall the Annual Rent be adjusted downward, and provided further that if the above calculation of CPI adjustment results in an adjusted Annual Rent which exceeds the Initial Annual Rent set forth in Section 5.01(b) by 30% or more, then the Annual Rent for said five (5) year period commencing with the fifth (5th) anniversary of the Commencement Date shall be 130% of the Initial Annual Rent set forth in Section 5.01(b), and provided further that Tenant may, at its option, elect to have the Annual Rent for said five (5) year period established pursuant to the optional appraisal procedures set forth in Section 5.01(d) hereof.

(b) The second such rental adjustment shall be made for purposes of calculating the Annual Rent for the five (5) year period commencing on the tenth (10th) anniversary of the Commencement Date. For such purpose, the Beginning Index Figure shall be the figure for the Consumer Price Index last published immediately prior to the fifth (5th) anniversary of the Commencement Date, and the Adjustment Date Index Figure shall be the figure for the Consumer Price Index last published immediately prior to the tenth (10th) anniversary of the Commencement Date. The Annual Rent for the five (5) year period commencing with the

tenth (10th) anniversary of the Commencement Date shall be the amount equal to the sum of: (i) the Annual Rent payable during the tenth (10th) Lease Year of the Term; plus (ii) the amount derived by multiplying the Annual Rent payable during the tenth (10th) Lease Year of the Term by the fraction, the numerator of which is the Adjustment Date Index Figure less the Beginning Index Figure, and the denominator of which is the Beginning Index Figure, provided, however, that in no event shall the Annual Rent be adjusted downward, and provided further that if the above calculation of CPI adjustment results in an adjusted Annual Rent which exceeds the Annual Rent payable during the tenth (10th) Lease Year of the Term by 30% or more, then the Annual Rent for said five (5) year period commencing with the tenth (10th) anniversary of the Commencement Date shall be 130% of the Annual Rent payable during the tenth (10th) Lease Year of the Term.

(c) The third such rental adjustment shall be made for purposes of calculating the Annual Rent for the five (5) year period commencing on the fifteenth (15th) anniversary of the Commencement Date. For such purpose, the Beginning Index Figure shall be the figure for the Consumer Price Index last published immediately prior to the tenth (10th) anniversary of the Commencement Date, and the Adjustment Date Index Figure shall be the figure for the Consumer Price Index last published immediately prior to the fifteenth (15th) anniversary of the Commencement Date. The Annual Rent for the five (5) year period commencing with the fifteenth (15th) anniversary of the Commencement Date shall be the amount equal to the sum of: (i) the Annual Rent payable during the fifteenth (15th) Lease Year of the Term; plus (ii) the amount derived by multiplying the Annual Rent payable during the fifteenth (15th) Lease Year of the Term by the fraction, the numerator of which is the Adjustment Date Index Figure less the Beginning Index Figure, and the denominator of which is the Beginning Index Figure, provided, however, that in no event shall the Annual Rent be adjusted downward, and provided further that if the above calculation of CPI adjustment results in an adjusted Annual Rent which exceeds the Annual Rent payable during the fifteenth (15th) Lease Year of the Term by 30% or more, then the Annual Rent for said five (5) year period commencing with the fifteenth (15th) anniversary of the Commencement Date shall be 130% of the Annual Rent payable during the fifteenth (15th) Lease Year of the Term.

(d) The fourth such rental adjustment shall be made for purposes of calculating the Annual Rent for the five (5) year period commencing on the twentieth (20th) anniversary of the Commencement Date. For such purpose, the Beginning Index Figure shall be the figure for the Consumer Price Index last published immediately prior to the fifteenth (15th) anniversary of the Commencement Date, and the Adjustment Date Index Figure shall be the figure for the Consumer Price Index last published immediately prior to the twentieth (20th) anniversary of the Commencement Date. The Annual Rent for the five (5) year period commencing with the twentieth (20th) anniversary of the Commencement Date shall be the amount equal to the sum of: (i) the Annual Rent payable during the twentieth (20th) Lease Year of the Term; plus (ii) the amount derived by multiplying the Annual Rent payable during the twentieth (20th) Lease Year of the Term by the fraction, the numerator of which is the Adjustment Date Index Figure less the Beginning Index Figure, and the denominator of which is the Beginning Index Figure, provided, however, that in no event shall the Annual Rent be adjusted downward, and provided further that if the above calculation of CPI adjustment results in an adjusted Annual Rent which exceeds the Annual Rent payable during the twentieth (20th) Lease Year of the Term by 30% or more, then the Annual Rent for said five (5) year period commencing with the twentieth (20th) anniversary of the Commencement Date shall be 130% of the Annual Rent payable during the twentieth (20th) Lease Year of the Term and provided further that Tenant may, at its option, elect to have the Annual Rent for said five (5) year period established pursuant to the optional appraisal procedures set forth in Section 5.01(d) hereof.

(e) The fifth such rental adjustment shall be made for purposes of calculating the Annual Rent for the five (5) year period commencing on the twenty-fifth (25th) anniversary of the Commencement Date. For such purpose, the Beginning Index Figure shall be the figure for the Consumer Price Index last published immediately prior to the twentieth (20th) anniversary of the Commencement Date, and the Adjustment Date Index Figure shall be the figure for the Consumer Price Index last

published immediately prior to the twenty-fifth (25th) anniversary of the Commencement Date. The Annual Rent for the five (5) year period commencing with the twenty-fifth (25th) anniversary of the Commencement Date shall be the amount equal to the sum of: (i) the Annual Rent payable during the twenty-fifth (25th) Lease Year of the Term; plus (ii) the amount derived by multiplying the Annual Rent payable during the twenty-fifth (25th) Lease Year of the Term by the fraction, the numerator of which is the Adjustment Date Index Figure less the Beginning Index Figure, and the denominator of which is the Beginning Index Figure, provided, however, that in no event shall the Annual Rent be adjusted downward, and provided further that if the above calculation of CPI adjustment results in an adjusted Annual Rent which exceeds the Annual Rent payable during the twenty-fifth (25th) Lease Year of the Term by 30% or more, then the Annual Rent for said five (5) year period commencing with the twenty-fifth (25th) anniversary of the Commencement Date shall be 130% of the Annual Rent payable during the twenty-fifth (25th) Lease Year of the Term.

(f) If Tenant exercises its first option to extend the term of this Lease pursuant to Section 3.02, then a sixth and a seventh rental adjustment shall be made for purposes of calculating the Annual Rent for the five (5) year period commencing on the thirtieth (30th) anniversary of the Commencement Date and for the five year period commencing on the thirty-fifth (35th) anniversary of the Commencement Date as follows:

(i) The Annual Rent for the five year period commencing on the thirtieth (30th) anniversary of the Commencement Date, shall be the fair market rental determined pursuant to the procedures set forth in Section 5.01(e) hereof with the Appraisal Date referred to therein being the twenty-ninth (29th) anniversary of the Commencement Date. This adjustment to fair market rental commencing upon the thirtieth (30th) anniversary of the Commencement Date shall be mandatory and Tenant shall not have the option of a CPI adjustment.

(ii) For purposes of calculating the Annual Rent for the five year period commencing on the thirty-fifth (35th) anniversary of the Commencement Date, the Beginning Index Figure shall be the figure for the Consumer Price Index last published immediately prior to the thirtieth (30th) anniversary of the Commencement Date, and the Adjustment Date Index Figure shall be the figure for the Consumer Price Index last published immediately prior to the thirty-fifth (35th) anniversary of the Commencement Date. The Annual Rent for the five (5) year period commencing with the thirty-fifth (35th) anniversary of the Commencement Date shall be the amount equal to the sum of: (i) the Annual Rent payable during the thirty-fifth (35th) Lease Year of the Term; plus (ii) the amount derived by multiplying the Annual Rent payable during the thirty-fifth (35th) Lease Year of the Term by the fraction, the numerator of which is the Adjustment Date Index Figure less the Beginning Index Figure, and the denominator of which is the Beginning Index Figure, provided, however, that in no event shall the Annual Rent be adjusted downward, and provided further that if the above calculation of CPI adjustment results in an adjusted Annual Rent which exceeds the Annual Rent payable during the thirty-fifth (35th) Lease Year of the Term by 30% or more, then the Annual Rent for said five (5) year period commencing with the thirty-fifth (35th) anniversary of the Commencement Date shall be 130% of the Annual Rent payable during the thirty-fifth (35th) Lease Year of the Term.

(g) If Tenant exercises its second option to extend the term of this Lease pursuant to Section 3.02, then an eighth and a ninth rental adjustment shall be made for purposes of calculating the Annual Rent for the five (5) year period commencing on the fortieth (40th) anniversary of the Commencement Date and for the five year period commencing on the forty-fifth (45th) anniversary of the Commencement Date as follows:

(i) The Annual Rent for the five year period commencing on the fortieth (40th) anniversary of the Commencement Date, shall be the fair market rental determined pursuant to the procedures set forth in Section 5.01(e) hereof with the Appraisal Date referred to

therein being the thirty-ninth (39th) anniversary of the Commencement Date. This adjustment to fair market rental commencing upon the fortieth (40th) anniversary of the Commencement Date shall be mandatory and Tenant shall not have the option of a CPI adjustment.

(ii) For purposes of calculating the Annual Rent for the five year period commencing on the forty-fifth (45th) anniversary of the Commencement Date, the Beginning Index Figure shall be the figure for the Consumer Price Index last published immediately prior to the fortieth (40th) anniversary of the Commencement Date, and the Adjustment Date Index Figure shall be the figure for the Consumer Price Index last published immediately prior to the forty-fifth (45th) anniversary of the Commencement Date. The Annual Rent for the five (5) year period commencing with the forty-fifth (45th) anniversary of the Commencement Date shall be the amount equal to the sum of: (i) the Annual Rent payable during the forty-fifth (45th) Lease Year of the Term; plus (ii) the amount derived by multiplying the Annual Rent payable during the forty-fifth (45th) Lease Year of the Term by the fraction, the numerator of which is the Adjustment Date Index Figure less the Beginning Index Figure, and the denominator of which is the Beginning Index Figure, provided, however, that in no event shall the Annual Rent be adjusted downward, and provided further that if the above calculation of CPI adjustment results in an adjusted Annual Rent which exceeds the Annual Rent payable during the forty-fifth (45th) Lease Year of the Term by 30% or more, then the Annual Rent for said five (5) year period commencing with the forty-fifth (45th) anniversary of the Commencement Date shall be 130% of the Annual Rent payable during the forty-fifth (45th) Lease Year of the Term.

(3) Payment of Adjusted Annual Rent. Following each Adjustment Date, Tenant shall continue to pay Annual Rent at the rate applicable to the preceding period until such time as Landlord shall deliver to Tenant written notice of Landlord's determination of the appropriate amount of adjusted Annual Rent. Commencing upon the first day of the month next following Tenant's receipt of Landlord's notice of Landlord's determination of adjusted Annual Rent, Tenant shall pay Landlord adjusted Annual Rent at the rate determined pursuant to Section 5.01(c)(2), subject to the provisions of Section 5.01(d)(3). In addition, subject to the provisions of Section 5.01(d)(3) hereof, if the monthly installments of adjusted Annual Rent payable by Tenant as determined pursuant to Section 5.01(c)(2) shall be increased over the monthly installments payable by Tenant for the preceding period, then on the first day of the month next following Tenant's receipt of Landlord's notice of Landlord's determination of adjusted Annual Rent, Tenant shall also pay to Landlord an amount equal to the difference, if any, between the monthly installments of Annual Rent determined pursuant to Section 5.01(c)(2) and the monthly installments of Annual Rent paid by Tenant from the applicable Adjustment Date to the first day of the month next following Tenant's receipt of Landlord's notice of Landlord's determination of adjusted Annual Rent.

(d) Optional Reappraisal of Minimum Annual Rent.

(1) Option. At Tenant's option, the Annual Rent may be revised in accordance with the following procedures on the fifth (5th) and twentieth (20th) anniversaries of the Commencement Date (each being referred to as an "Appraisal Date") to an amount equal to the fair market rental of the Premises, exclusive of Improvements, as of the Appraisal Date, or the amount payable pursuant to Section 5.01(c)(2), whichever is the lesser. Tenant shall exercise such option by written notice delivered to Landlord within thirty (30) days after each Appraisal Date.

(2) Determination. Determination of fair market rental shall be based on the highest and best use of the Premises on the applicable Appraisal Date subject to the provisions of this Ground Lease. Within thirty (30) days after receipt of Tenant's notice electing its option to have the Annual Rent adjusted by appraisal pursuant to Section 5.01(d)(1) above, Landlord shall give Tenant written notice of Landlord's determination of the appropriate amount of the appraised Annual Rent. If Tenant disagrees, it may submit the question of the appropriate amount of the appraised Annual Rent to arbitration in accordance with the provisions of Section 5.02 by giving Landlord the

notice required by Section 5.02(a) within twenty (20) days after receipt of Landlord's written determination. If Tenant does not submit Landlord's determination of the appropriate amount of appraised Annual Rent to arbitration within the required period, Landlord's determination shall be final. The decision of the arbitrators shall be final; provided, however, that in no event shall the Annual Rent be less than the amount stated in Section 5.01(b).

(3) Payment. If Tenant shall exercise its option under Section 5.01(d)(1) hereof, Tenant shall continue to pay Annual Rent at the rate applicable to the preceding period until such time as Landlord shall deliver to Tenant written notice of Landlord's determination of the appropriate amount of appraised Annual Rent. Commencing upon the first day of the month next following Tenant's receipt of Landlord's notice of Landlord's determination of appraised Annual Rent, Tenant shall pay Landlord adjusted Annual Rent at the rate determined pursuant to Section 5.01(d)(2) or at the rate determined pursuant to Section 5.01(c)(2), whichever is less, but in no event less than the Annual Rent specified in Section 5.01(b). In addition, if the monthly installments of adjusted Annual Rent payable by Tenant shall be increased over the monthly installments payable by Tenant for the preceding period, then on the first day of the month next following Tenant's receipt of Landlord's notice of Landlord's determination of appraised Annual Rent, Tenant shall also pay to Landlord an amount equal to the difference, if any, between the monthly installments of Annual Rent determined pursuant to Section 5.01(d)(2) or at the rate determined pursuant to Section 5.01(c)(2), whichever is less, and the monthly installments of Annual Rent paid by Tenant from the applicable Appraisal Date to the first day of the month next following Tenant's receipt of Landlord's notice of Landlord's determination of appraised Annual Rent. Notwithstanding the foregoing, if Tenant elects to submit the question of the appropriate amount of appraised Annual Rent to arbitration pursuant to Section 5.01(d)(2), then Tenant shall continue to pay Annual Rent at the rate applicable to the preceding period until such time as the arbitrators render their written determination of appraised Annual Rent. Commencing upon the first day of the month next following the date the arbitrators shall render their written determination of appraised Annual Rent, Tenant shall pay Landlord appraised Annual Rent at the rate determined by the arbitrators or at the rate determined pursuant to Section 5.01(c)(2), whichever is less, but in no event less than the Annual Rent specified in Section 5.01(b). In addition, if the monthly installments of adjusted Annual Rent payable by Tenant shall be increased over the monthly installments payable by Tenant for the preceding period, then on the first day of the month next following the date the arbitrators shall render their written determination of appraised Annual Rent, Tenant shall also pay to Landlord an amount equal to the difference, if any, between the monthly installments of Annual Rent determined by the arbitrators or at the rate determined pursuant to Section 5.01(c)(2), whichever is less, and the monthly installments of Annual Rent paid by Tenant from the applicable Appraisal Date to the first day of the month next following the date the arbitrators shall render their written determination of appraised Annual Rent. Anything herein contained to the contrary notwithstanding, if the amount of Annual Rent determined by appraisal pursuant to Section 5.01(d)(2) or by arbitration pursuant to Section 5.02 shall be less than the amount of Annual Rent paid by Tenant for the preceding period, then commencing upon the first day of the month next following the date on which Tenant shall receive Landlord's notice of Landlord's determination of appraised Annual Rent or the date on which the arbitrators shall render their written determination of appraised Annual Rent, as the case may be, Tenant may deduct from the next and succeeding installments of Annual Rent due, an amount equal to the excess of the monthly installments of Annual Rent already paid from the applicable Appraisal Date to the date of determination as aforesaid over the amount of appraised Annual Rent as determined pursuant hereto.

(4) Independent Elections. Failure on the part of Tenant to seek adjustment of Annual Rent to fair market rent shall not restrict or preclude exercise by Tenant of its election with respect to any subsequent Appraisal Date.

(5) Base For Future Adjustments. Once Annual Rent has been determined by appraisal, the Annual Rent so determined shall then become the Annual Rent for determination of future adjustments pursuant to Section 5.01(c)(2) which shall apply thereafter until such time as Annual Rent is again subject to adjustment to fair market rent as provided herein.

(e) Annual Rent for Extended Terms.

(1) Determination. Determination of fair market rental shall be based on the highest and best use of the Premises on the applicable Appraisal Date subject to the provisions of this Ground Lease. Within thirty (30) days after the applicable Appraisal Date, Landlord shall give Tenant written notice of Landlord's determination of the appropriate amount of the appraised Annual Rent. If Tenant disagrees, it may submit the question of the appropriate amount of the appraised Annual Rent to arbitration in accordance with the provisions of Section 5.02 by giving Landlord the notice required by Section 5.02(a) within twenty (20) days after receipt of Landlord's written determination. If Tenant does not submit Landlord's determination of the appropriate amount of appraised Annual Rent to arbitration within the required period, Landlord's determination shall be final. The decision of the arbitrators shall be final; provided, however, that in no event shall the Annual Rent be less than the amount stated in Section 5.01(b).

(2) Extension of Term and Option Notice Period. In the event Landlord shall fail to submit its determination of appraised Annual Rent on or before the date which is sixty (60) days prior to the date upon which Tenant must deliver notice to Landlord of its election to extend the Term pursuant to Section 3.02(a)(2) hereof, or if the matter of appraised Annual Rent shall have been submitted to arbitration pursuant to Section 5.01(e)(1) hereof, and the arbitrators shall not have rendered their determination of appraised Annual Rent on or before the date which is thirty (30) days prior to the date upon which Tenant must deliver notice to Landlord of its election to extend the Term pursuant to Section 3.02(a)(2) hereof, then and in any such event, the Initial Term or the preceding Extended Term, as the case may be, and the date by which Tenant must deliver notice to Landlord of its election to extend the Term shall each be automatically extended one (1) day for each day of any such delay.

(3) Payment. Tenant shall continue to pay Annual Rent at the rate applicable to the preceding period until such time as Landlord shall deliver to Tenant written notice of Landlord's determination of the appropriate amount of appraised Annual Rent. Commencing upon the first day of the month next following Tenant's receipt of Landlord's notice of Landlord's determination of appraised Annual Rent, Tenant shall pay Landlord appraised Annual Rent at the rate determined pursuant to Section 5.01(e)(1). In addition, if the monthly installments of adjusted Annual Rent payable by Tenant shall be increased over the monthly installments payable by Tenant for the preceding period, then on the first day of the month next following Tenant's receipt of Landlord's notice of Landlord's determination of appraised Annual Rent, Tenant shall also pay to Landlord an amount equal to the difference, if any, between the monthly installments of Annual Rent determined pursuant to Section 5.01(e)(1) and the monthly installments of Annual Rent paid by Tenant from the applicable Appraisal Date to the first day of the month next following Tenant's receipt of Landlord's notice of Landlord's determination of appraised Annual Rent. Notwithstanding the foregoing, if Tenant elects to submit the question of the appropriate amount of appraised Annual Rent to arbitration pursuant to Section 5.01(e)(2), then Tenant shall continue to pay Annual Rent at the rate applicable to the preceding period until such time as the arbitrators render their written determination of appraised Annual Rent. Commencing upon the first day of the month next following the date the arbitrators shall render their written determination of appraised Annual Rent, Tenant shall pay Landlord appraised Annual Rent at the rate determined by the arbitrators. In addition, if the monthly installments of adjusted Annual Rent payable by Tenant shall be increased over the monthly installments payable by Tenant for the preceding period, then on the first day of the month next following the date the arbitrators shall render their written determination of appraised Annual Rent, Tenant shall also pay to Landlord an

amount equal to the difference, if any, between the monthly installments of Annual Rent determined by the arbitrators and the monthly installments of Annual Rent paid by Tenant from the applicable Appraisal Date to the first day of the month next following the date the arbitrators shall render their written determination of appraised Annual Rent. Anything herein contained to the contrary notwithstanding, if the amount of Annual Rent determined by appraisal pursuant to Section 5.01(e)(2) or by arbitration pursuant to Section 5.02 shall be less than the amount of Annual Rent paid by Tenant for the preceding period, then commencing upon the first day of the month next following the date on which Tenant shall receive Landlord's notice of Landlord's determination of appraised Annual Rent or the date on which the arbitrators shall render their written determination of appraised Annual Rent, as the case may be, Tenant may deduct from the next and succeeding installments of Annual Rent due, an amount equal to the excess of the monthly installments of Annual Rent already paid from the applicable Appraisal Date to the date of determination as aforesaid over the amount of appraised Annual Rent as determined pursuant hereto.

(f) Time Place and Manner of Payment of Annual Rent. Annual Rent for each year of the Term shall be paid in lawful money of the United States in equal monthly installments in advance on the first day of each calendar month at the office of the Chief Accountant, San Francisco Water Department, located at 425 Mason Street, San Francisco, California 94101 (or such other place as Landlord may designate in writing) commencing with the first day of the first full calendar month during which the Development Period ends. If the Development Period ends on any day other than the first day of a calendar month, the first installment of Annual Rent shall include, in addition to the monthly installment to be paid in advance, a pro-rated payment of Rent for the month during which the Development Period ends. In addition, if the last day of the Term occurs on any day other than the last day of a calendar month, the last installment of Annual Rent shall be appropriately pro-rated.

(g) Change in Consumer Price Index.

(1) If the Index is changed at any time during the Term so that the base year differs from that used to compute the Beginning Index Figure, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics.

(2) If the Index is discontinued or revised during the Term, such other government index or computation which replaces it shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised. If the parties are unable to agree upon the substitute index or computation no later than thirty (30) days prior to the next Adjustment Date, the appropriate substitute index or computation shall, on application of either party, be determined by the chief officer of the San Francisco Regional Office of the Bureau of Labor Statistics or its successor.

5.02. Determination of Fair Market Rental by Arbitration. If Tenant disagrees with any determination of fair market rental made by Landlord under Section 5.01, Tenant shall have the right to submit the issue to arbitration as follows:

(a) Within twenty (20) business days after receipt of Landlord's determination of fair market rental, Tenant shall give Landlord written notice of intention to arbitrate, such notice to specify the name and address of the person designated to act as arbitrator on Tenant's behalf. The party so designated shall be qualified as provided in Section 5.02(d). Failure to give written notice as above provided within such twenty (20) day period shall constitute an acceptance of Landlord's determination of fair market rental.

(b) If Landlord is not willing to have the issue of fair market rental determined solely by the arbitrator selected by Tenant, then Landlord shall so notify Tenant in writing within ten (10) business

days after receipt of the notice demanding arbitration given by Tenant as provided in Section 5.02(a), such notice to specify the name and address of the person designated by Landlord to act as its arbitrator and in such case both Tenant's arbitrator and Landlord's arbitrator shall jointly determine the fair market rental in accordance with this Section 5.02, subject, however, to the appointment of a third arbitrator pursuant to Section 5.02(c) hereof. The person so designated by Landlord shall have the qualifications specified in Section 5.02(d). Failure on the part of Landlord to specify its arbitrator within the time period and in the manner set forth above shall constitute agreement to have the issue of fair market rental determined by the person designated by Tenant.

(c) If the issue of fair market rental is to be determined by a single arbitrator, the determination shall be made as diligently as possible and the report of the arbitrator delivered to the parties within thirty (30) days after expiration of the period of appointment of the second arbitrator pursuant to Section 5.02(b). If two arbitrators are selected, the arbitrators shall meet within ten (10) business days after appointment of the second arbitrator and attempt to agree upon the issue of fair market rental to be determined. If the two arbitrators are unable to agree upon the question in issue within ten (10) business days after the first meeting, they shall appoint a third arbitrator who shall be a competent and impartial person qualified to act in accordance with the provisions of Section 5.02(d). In the event the two arbitrators are unable to agree upon a third arbitrator within fifteen (15) business days after the first meeting, the parties themselves shall select a third arbitrator within a further period of ten (10) business days. If the parties are unable to agree upon a third arbitrator within the required period, either party, on behalf of both, may request the Presiding Judge of the Superior Court for the County of San Mateo, acting in his private, non-judicial capacity, to appoint as the third arbitrator an impartial person qualified to act in accordance with the provisions of Section 5.02(d) and the other party shall not raise any question as to the judge's full power and jurisdiction to entertain the application and make the appointment. The three (3) arbitrators shall decide the dispute (if it has not previously been resolved) by following the procedure set forth in Section 5.02(g).

(d) All arbitrators shall be qualified M.A.I. real estate appraisers familiar with the fair market value and rental of properties similar to the Premises in the County of San Mateo who could be qualified as expert witnesses, over objection, to give opinion testimony addressed to the issue in a court of competent jurisdiction.

(e) In the event of the failure, refusal or inability of any arbitrator to act, he shall appoint his successor; provided, however, that any successor to the third arbitrator shall be appointed as hereinbefore provided. The arbitrators shall, if possible, render a written decision within ten (10) business days after the appointment of the third arbitrator. A decision in which any two arbitrators concur shall in all cases be binding and conclusive upon the parties. Each party shall pay the fee and expenses of its arbitrator and both shall share equally the fee and expenses of the third arbitrator, if any. Each party shall pay the fees and expenses of its attorneys and any witness it may call.

(f) The arbitrators shall have the right to consult experts and competent authorities skilled in the matters under arbitration, but any such consultation shall be made in the presence of both parties with full right to cross-examine. The arbitrators shall have a counterpart copy of their written decision to each party.

(g) Where an issue cannot be resolved by agreement between any two arbitrators, or by settlement between the parties during the course of arbitration, the issue shall be resolved by the three arbitrators in accordance with the following procedure. The arbitrator selected by each of the parties shall prepare a written opinion of fair market rental and the reasons therefor and give counterpart copies to each party and each of the other arbitrators. The third arbitrator shall

arrange for a simultaneous exchange of the proposed resolutions. The third arbitrator shall select which of the two proposed resolutions most closely approximates his determination of the issue. The third arbitrator shall have no right to propose a middle ground or any modification of either of the two proposed resolutions. The resolution which the third arbitrator selects shall constitute the decision of the arbitrators and shall be final and binding upon the parties.

(h) The judgement or the award rendered in any arbitration initiated and conducted in accordance with this Section 5.02 may be entered in any court of competent jurisdiction and shall be final and binding upon the parties. The arbitration shall be conducted and determined in the City and County of San Francisco in accordance with the then prevailing commercial arbitration rules of the American Arbitration Association or its successor except as modified to conform to the foregoing.

5.03. Late Charges. Tenant recognizes that late payment of any Rent or other sum due hereunder from Tenant to Landlord will result in administrative expenses to Landlord, the extent of which additional expense is extremely difficult and economically impractical to ascertain. Tenant therefore agrees that if Rent or any other payment due hereunder from Tenant to Landlord remains unpaid ten (10) days after said amount is due, the amount of such unpaid Rent or other payment shall be increased by a late charge to be paid to Landlord by Tenant in an amount of Three Hundred Dollars (\$300.00). In addition, Tenant shall pay interest on the amount of unpaid Rent or other payment at a rate of five percent (5%) per year above the prime rate then charged by the Bank of America of San Francisco, California or a successor comparable bank or at the maximum rate permitted by law, whichever is lower, for each day the Rent or other payment is delinquent. The amount of the late charge to be paid Landlord by Tenant on any unpaid Rent or other payment plus any accrued interest shall be Additional Rent payable by Tenant with the next succeeding installment of Rent. Tenant agrees that such amount is a reasonable estimate of the loss and expense to be suffered by Landlord as a result of such late payment by Tenant and may be charged by Landlord to defray such loss and expense. The provisions of this section in no way relieve Tenant of the obligation to pay Rent or other payments on or before the date on which they are due, nor do the terms of this section in any way affect Landlord's remedies pursuant to Section 17.03 in the event said Rent or other payment is unpaid after the due date.

5.04 Additional Rent.

(a) Percentage Rental. From and after the Commencement Date and continuing during the Term, Tenant shall also pay as Additional Rent to Landlord, without abatement, deduction or offset, the amounts specified on the Percentage Rent Schedule attached hereto, marked Exhibit D and incorporated herein by this reference, as applied to "Gross Revenues" as therein defined.

(b) Quarterly Statements. Within twenty (20) days after the close of each calendar quarter, Tenant shall, without notice or demand from Landlord, deliver to Landlord a statement certified as correct by an officer of Tenant's Orchard Supply Hardware division setting forth the Gross Revenues received by Tenant in, upon or from the Premises during the preceding quarter.

(c) Annual Statement. Within sixty (60) days after the close of each Lease Year, Tenant shall furnish to Landlord a statement certified as correct by an officer of Tenant's Orchard Supply Hardware division setting forth the Gross Revenues made in, upon or from the Premises for the preceding Lease Year (hereinafter said annual statement is referred to as the "Annual Statement"). Contemporaneously with the delivery of such Annual Statement, Tenant shall pay to Landlord the Percentage Rental, if any, due for the preceding Lease Year as calculated in accordance with the Percentage Rent Schedule attached hereto as Exhibit "D". In addition to the foregoing Annual Statement, within sixty (60) days after the expiration of Tenant's fiscal year, Tenant shall furnish to Landlord a statement duly certified by a certified public

accountant approved by Manager (which approval shall not be unreasonably withheld) setting forth the Gross Revenues made in, upon or from the Premises during such fiscal year. Landlord acknowledges that Tenant's fiscal year may not coincide with the Lease Year established hereunder and that the figure for Gross Revenues set forth in the Annual Statement may not be the same as the figure for Gross Revenues set forth in the statement of Gross Revenues for Tenant's fiscal year, it being understood and agreed that the determination of Percentage Rental hereunder shall be based upon Gross Revenues as set forth in the Annual Statement and that the submission of the additional annual statement for Tenant's fiscal year is for information purposes only and shall not increase or otherwise affect Tenant's obligation to pay Percentage Rental hereunder.

(d) Audit of Gross Revenue Statements. If Tenant shall at any time cause a separate audit of Tenant's business conducted in or upon the Premises to be made by a certified public accountant, Tenant shall furnish Landlord with a copy of said audit without any cost or expense to Landlord. Tenant agrees that it will keep all source documents supporting its records of Gross Revenues applicable to each Lease Year for a period of twenty-four (24) months following the expiration of each Lease Year and thereafter will retain summary financial statements (including, but not limited to, ledgers and journals) for an additional twelve (12) months. Tenant further agrees that Landlord or the agents or representatives of Landlord may annually inspect Tenant's records of Gross Revenues, such inspection to be conducted at the accounting offices of Tenant's Orchard Supply Hardware division, wherever such offices are now or hereafter located, provided such inspection is made within thirty-six (36) months after the Annual Statement of Gross Revenues is mailed or delivered by Tenant to Landlord and such inspection shall be limited to the period covered by such Annual Statement. In addition, Landlord may, in connection with its inspection of Tenant's records, employ an independent firm of Certified Public Accountants to verify Tenant's reports of Gross Revenues for such year and if such accountants shall determine that Tenant has underpaid its obligation for Percentage Rental to the extent of three (3%) percent or more for any such Lease Year, Tenant shall, in addition to paying Landlord the deficiency, also pay the cost of the audit. Any claim by Landlord for revision of any Annual Statement of Gross Revenues or for additional rent, which claim is not made to Tenant within thirty-six (36) months after the date when such Annual Statement of Gross Revenues is mailed or delivered to Landlord, shall be deemed and hereby is waived by Landlord.

(e) Confidentiality of Sales Records. Except to the extent that the information is required to be a matter of public record, Landlord agrees not to divulge to any person or persons, firm or corporation, the amount of sales made by Tenant in or from the Premises except such disclosures as may be absolutely required (i) to its employees or agents in the normal course of its business, (ii) to its auditors, (iii) to bona fide lending institutions and/or purchasers, (iv) in judicial or arbitration proceedings, or (v) in response to a valid subpoena.

5.05 Net Lease. The Rent payable by Tenant hereunder shall be absolutely net to Landlord. Except as otherwise expressly provided herein, Tenant shall pay and discharge without abatement, set-off, deduction or defense, all taxes, assessments, insurance premiums, construction costs, operating and maintenance charges and other amounts, liabilities and obligations which become due during the Term with respect to the Premises, the improvements thereon and the businesses and activities conducted thereon.

ARTICLE SIX

Taxes, Assessments and Other Expenses

6.01 Payment by Tenant. During the Term Tenant shall pay, at least ten (10) days before delinquency and before any fine, interest, penalty or other charge shall become due:

(a) All real property and possessory interest taxes, personal property taxes, general and special assessments (including,

without limitation thereto, assessments for benefits from public works or improvements, whether or not begun or completed prior to the Commencement Date and whether or not to be completed within the Term), levies, fees, rents and other charges of every description which at any time arise with respect to, or are levied on or assessed against (i) the Premises or any part thereof including personal property located on the Premises or within the improvements, (ii) the construction, possession, ownership, occupancy, operations, use, repair, restoration or reconstruction of the Premises or any part thereof, (iii) the Rent reserved or payable hereunder or under any sublease, of (iv) this Ground Lease, the leasehold estate or any subleasehold estate created hereunder, whether belonging to or chargeable against Landlord or Tenant;

(b) All other taxes, assessments, levies, fees, rents and other charges of every description which, during the Term, may be levied on or assessed against the Premises (exclusive of the easements, pipelines or utility or communication facilities reserved or installed and maintained by Landlord as set forth in Section 2.02 hereof) or any part thereof, or imposed on Landlord or Tenant (including, without limitation, reimbursement of Landlord for any such taxes paid by Landlord) as a result of a reduction in, or the abolition of, or replacement of real property taxes, assessments, levies, fees, rents or other charges levied on or assessed against the Premises as of the Commencement Date, subject, however, to the requirement that: (a) such replacement taxes have materially different applicability to real property or to the owners of real property or to rental income than they do to other kinds of property or to other kinds of income; and (b) the amount of such replacement taxes shall be determined as if the Premises were the only asset of Landlord, and as if the rent paid hereunder were the only income of Landlord. In addition, Tenant may take the benefit of any law allowing assessments to be paid in installments and in such event Tenant shall only be liable for such installments of assessments due during the term hereof;

(c) Any gross receipts or similar taxes levied on, assessed against, or measured by, the Rent paid or discharged by Tenant hereunder, subject, however, to the requirement that the amount of such taxes shall be determined as if the Premises were the only asset of Landlord, and as if the rent paid hereunder were the only income of Landlord;

(d) All sales or use taxes which may be imposed on Landlord or Tenant on account of the leasing, subleasing, assignment or use of the Premises or any part thereof by Tenant;

(e) All other costs, charges, amounts, liabilities, expenses and obligations incurred or payable from time to time during the Term by reason of, or in any manner connected with, or arising out of (i) Tenant's estate or interest in the Premises or any part hereof, (ii) any right or interest of Tenant in or under this Ground Lease or the leasehold estate created hereunder, or (iii) the construction, possession, ownership, occupancy, operations, use, management, maintenance, repair, restoration, reconstruction or replacement of the Premises or any part thereof.

Tenant acknowledges and understands that this Ground Lease will create in Tenant a possessory interest subject to property taxes. Landlord will use its best efforts to cause the Premises, as of the Commencement Date of this Ground Lease, to be assessed separately for real estate and possessory interest tax purposes from any and all other parcels of property owned or leased by Landlord or other parties. Landlord represents, warrants, covenants and agrees that subject to the provisions hereof, Tenant shall only be responsible for the payment of those real property taxes, assessments, possessory interest taxes and other taxes and impositions assessed or levied solely against the Premises as herein described (and exclusive of all other premises or parcels of property).

6.02 Exclusion of Net Income Taxes and Related Taxes. Nothing herein contained shall impose upon Tenant the obligation to pay any

franchise, corporate, estate, inheritance, succession, capital levy, transfer or other tax imposed upon Landlord and measured by Landlord's net income or revenue, or a formula derived therefrom, other than taxes levied on, assessed against or measured solely by "gross receipts" consisting of the Rent, subject to the provisions of Section 6.01(c) above.

6.03 Proration of Rents. All taxes, assessments, levies, fees and other charges levied on, or assessed against, the Premises shall be prorated and apportioned between Landlord and Tenant for the tax year in which the Term commences and for the tax year in which the Term expires or terminates.

6.04. Contest of Tax Levied. Tenant shall have the right to contest the validity or amount of any tax, assessment, levy, fee or other charge payable in whole or in part by Tenant hereunder, or to seek a reduction in the assessed value of the Premises, or any part thereof, by appropriate proceeding diligently conducted in good faith; provided, however, that Tenant shall indemnify and defend Landlord against, and save Landlord harmless from and shall protect the Premises from, any lien, claim, demand, loss, cost, liability or expense arising therefrom. In the event Tenant undertakes any such contest, Tenant may withhold or defer payment or pay under protest; provided, however, the prior to delinquency Tenant shall deliver to landlord a bond in an amount equal to one hundred fifty percent (150%) of the contested charge together with the estimated amount of fines, interest, penalties and other charges which may become due thereon, issued by a corporate surety acceptable to Landlord, and a protecting Landlord and the Premises from any line, claim, demand, loss, cost, liability or expense which Landlord or the Premises might suffer or incur as a consequent of the withheld or protested payment. Upon termination of any such contest, Tenant shall pay the amount finally determined to be payable, together with all fines, interest, penalties or other charges incurred or payable as a result thereof.

ARTICLE SEVEN

Improvement of the Premises

7.01 Right to Improve. At its sole cost and expense, Tenant shall have the right to construct on the Premises such new improvements as Tenant may desire and to alter, modify, remove and replace the same at Tenant's discretion, subject to the other provisions herein contained.

7.02 Condition of the Premises and Right to Use. Tenant has relied, and hereafter shall rely, entirely on its own investigation with respect to all matters pertaining to the Premises, the physical condition thereof, the right to use the Premises and governmental actions or approvals applicable to or potentially affecting the condition or use of the premises. Landlord makes no covenant or warranty with respect to the condition of, or the right to use, the Premises including, without limitation thereto, the condition of the soil or subsoil, the condition of the existing improvements, compliance of the existing improvements with building, health, safety and similar laws, codes or regulations, the right of Tenant to use the Premises for any purpose under zoning, environmental and other land use laws, codes and regulations, or any governmental actions or approvals applicable to the condition or use of the Premises or potentially affecting the condition or use of the Premises. Any representation or warranty of Landlord as to any matter affecting the conditions or use of the Premises, whether express or implied, is negated and no such representation or warranty shall be implied in fact or in law from any provision of this Ground Lease or any other circumstance whatever. Tenant may enter the Premises before the Commencement Date to make soil, structural engineering and such other tests as Tenant considers necessary. Anything herein contained to the contrary notwithstanding, if Tenant is unable to obtain building permits for construction of its intended buildings and improvements within 180 days after the date of execution hereof, or if Tenant is unable to obtain a certificate of occupancy for the operation of a home improvement center

retail store with an outside sales area, nursery and pick-up area, then Tenant, at any time thereafter, may, at Tenant's option, terminate this Lease by written notice to Landlord, provided, however, that in such event, Landlord shall be entitled to retain the \$12,600 deposit heretofore paid to Landlord pursuant to that certain Invitation to Bid for development and operation of the Premises and submitted to Landlord on or about October 5, 1983.

7.03 Permit Applications. In connection with Tenant's application for permit or permits to the City of Millbrae and other appropriate agencies pursuant to Section 7.02(d), Landlord agrees to cooperate and join with Tenant in applying for such permit or permits, wherever such action is necessary and required by law; provided, however, that Tenant shall indemnify and hold Landlord harmless from any costs or expenses in connection therewith. Notwithstanding anything to the contrary herein, Landlord shall not be obligated to grant or to join in conduct which would result in a dedication of easements or rights of way for any purpose, including the dedication of open space.

7.04 Protection of Landlord Against Cost or Claim.

(a) Payment; Contest of Lien; Indemnity. Tenant shall pay or cause to be paid the total cost and expense of all "works of improvement," as that phrase is defined in California Civil Code Section 3106 or any comparable statute in effect when the work begins, undertaken upon the Premises. Tenant shall not suffer or permit to be enforced against the Premises, or any part thereof, any mechanic's, materialman's, contractor's or subcontractor's lien arising from any such work of improvement. However, Tenant may in good faith and at Tenant's sole cost and expense contest the validity of any asserted lien, claim or demand, provided Tenant has furnished the bond required in California Civil Code Section 3143 or any comparable statute then in effect. Tenant shall defend and indemnify Landlord against, and hold Landlord harmless from, all liability and loss of any kind arising out of work performed on the Premises by or on behalf of Tenant, together with reasonable attorneys' fees and all costs and expenses incurred by Landlord in negotiating, settling, defending, or otherwise protecting against such claims.

(b) Landlord's Right to Discharge Lien. If Tenant has not recorded the bond described in California Civil Code Section 3143 or otherwise acted to protect the Premises under any alternative or successor statute, and if a final judgment has been rendered against Tenant by a court of competent jurisdiction for the foreclosure of a mechanic's materialman's, contractor's or subcontractor's lien claim, and if Tenant has failed to stay the execution of the judgment by lawful means or to pay the judgment, Landlord shall have the right, but not the duty, to pay or otherwise discharge, stay, or prevent the execution of any such judgment or lien; and all sums so paid, and/or any costs incurred by Landlord in connection therewith, plus interest thereon at a rate of five percent (5%) per year above the prime rate then charged by the Bank of America at San Francisco, California or a successor or comparable bank, or at the maximum rate permitted by law, whichever is lower, shall be deemed to be Additional Rent payable by Tenant with the next succeeding installment of Rent. No such payment or act of discharge shall constitute a waiver of default, or of any right or remedy for default, by Landlord, or render Landlord liable for any loss or damage arising therefrom.

ARTICLE EIGHT

Use of Demised Premises

8.01. Purposes. The Premises may be used for any lawful purpose.

8.02. Compliance with Laws. At its sole cost and expense Tenant shall comply, and shall cause the Premises to comply, with the laws, statutes, ordinances, orders, rules, regulations and requirements of the federal, state and City governments, and all appropriate departments,

commission, boards and officers thereof, which affect the Premises, the improvements thereon, or any part thereof, whether ordinary or extraordinary, including those which require the making of any structural, unforeseen or extraordinary changes, whether presently within the contemplation of the parties or constituting a change of governmental policy, and irrespective of cost.

8.03. Contest of Laws. Tenant shall have the right at its sole cost and expense to contest the validity of any law, statute, ordinance, order, rule, regulation or requirement affecting the Premises, the improvements thereon, or any part thereof, by appropriate proceeding diligently conducted in good faith; provided, however, that Tenant shall defend and indemnify Landlord against, and hold Landlord harmless from, any and all liability, loss, cost, damage, injury or expense (including, without limitation thereto, attorneys' fees and litigation costs) which Landlord may sustain or suffer by reason of Tenant's failure or delay in complying with, or Tenant's contest of, any such law, statute, ordinance, order, rule, regulation or requirement. Landlord shall have the right, but not the obligation, to contest by appropriate proceeding, at Landlord's expense, any such law, statute, ordinance, rule, regulation or requirement.

8.04. No Abatement of Rent. Tenant shall not be entitled to any abatement, diminution, reduction or postponement of Rent as a consequence of loss caused by any present or future laws, statutes, rules, requirements, order, directions, ordinances or regulations of the federal, state or city governments, or of any other causes beyond the control of Landlord, except as expressly otherwise provided herein.

ARTICLE NINE

Assignment

9.01. Definitions. As used in this ARTICLE NINE, the following terms shall have the following meanings:

(a) "Assignment" shall include, without limitation thereto, any sale, assignment, transfer or other disposition of all or any portion of Tenant's estate under this Ground Lease or of Tenant's interest in the improvements thereon, whether voluntary or involuntary, and whether by operation of law or otherwise. The term "assignment" shall also include any transfer, or the aggregate transfer, during the Term, of the ownership interests in Tenant as follows:

(1) if Tenant is a corporation, (i) any dissolution, merger, consolidation, or other reorganization of Tenant, or (ii) a sale of more than fifty percent (50%) of the value of the assets of Tenant, or (iii) if Tenant is a corporation with fewer than five hundred (500) shareholders, the sale or other transfer of a controlling percentage of the capital stock of Tenant. "Controlling percentage" means the ownership of, and the right to vote, stock possessing at least fifty percent (50%) of the total combined voting power of all classes of Tenant's capital stock issued, outstanding and permitted to vote for the election of directors;

(2) if Tenant is a trust, the transfer of more than fifty percent (50%) of the beneficial interest of Tenant, or the dissolution of the trust;

(3) if Tenant is a partnership or joint venture, the withdrawal, of the transfer of the interest, of any general partner or joint venturer, or the dissolution of the partnership or joint venture;

(4) if Tenant is composed of tenants-in-common, the transfer of the interest of any co-tenant, or the partition or dissolution of the co-tenancy.

(b) "Permitted Assignment" shall mean:

(1) An Assignment to any partnership or joint venture of which Tenant is a general partner or joint venturer and retains,

pursuant to the terms of the partnership or joint venture agreement, active and controlling management of an operational responsibility for the Premises; or

(2) The acquisition of Tenant's estate under this Ground Lease by a Mortgagee or purchaser at a foreclosure sale pursuant to the provisions of Sections 11.02(3) through (7); or

(3) An assignment to: (a) Tenant's parent corporation; or (b) to another subsidiary of Tenant's parent corporation; or (c) to an affiliated corporation; or (d) to a corporation under common control with Tenant's parent corporation or another subsidiary of Tenant's parent corporation; or (e) any corporation into which Tenant may merge or which may result in the consolidation of Tenant with any other corporation; or (f) any corporation or entity to which Tenant sells or assigns all or substantially all of its assets. The provisions of this paragraph shall apply to any assignment by operation of law as well as to any transfer or assignment resulting from the transfer of the corporate stock of Tenant.

9.02. Qualified Right of Assignment. Subject to the provisions of Sections 9.03 and 9.04, Tenant shall have the right, without the prior written consent of Landlord, to assign its interest in this Ground Lease to a Permitted Assignee. Tenant shall not assign its interest in this Ground Lease to any assignee other than a Permitted Assignee without the prior written consent of Landlord. The consent of Landlord shall not be unreasonably withheld; provided, however, that, in Landlord's reasonable judgment, the proposed assignee is financially and otherwise able and qualified to perform and discharge all of the obligations of Tenant under, and otherwise comply with the terms, covenants, and conditions of, this Ground Lease.

9.03. Conditions Precedent to Assignment. Any assignment by Tenant of its interest in this Ground Lease including, without limitation thereto, any Permitted Assignment other than an acquisition of Tenant's estate under this Ground Lease by Mortgagee or purchaser at a foreclosure sale pursuant to the provisions of Sections 11.02(3) through (7), shall be subject to each and all of the following conditions precedent:

(a) Notice. Tenant shall give Landlord at least ninety (90) days written notice of the proposed assignment which shall include the name, address and legal description of the proposed assignee, Tenant's full and complete computation of excess consideration pursuant to Section 9.03(f) and such other information as may be necessary or appropriate to establish to the satisfaction of Landlord that the proposed assignee is either a Permitted Assignee or financially and otherwise able and qualified to perform and discharge the obligations of Tenant under, and otherwise comply with the terms, covenants and conditions of, this Ground Lease.

(b) No Default. Tenant shall not be in default under this Ground Lease either at the time the foregoing notice is given or at the time the assignment is consummated.

(c) Written Assignment. The proposed assignment shall be in a writing duly executed and acknowledged by Tenant and the proposed assignee and otherwise in recordable form.

(d) Assumption of Tenant's Obligations. The written assignment shall provide that the proposed assignee assumes the obligations to be performed or discharged by Tenant and agrees to comply with all of the terms, covenants and conditions hereof.

(e) Delivery of Executed Original. The proposed assignment shall not become effective until such time as Tenant has delivered to Landlord a duly executed and acknowledged original of the written assignment.

(f) Participation in Excess Consideration. As a condition to approval of any proposed assignment pursuant to Section 9.02, fifty percent (50%) of the "excess consideration" therefor shall be paid over

to Landlord. For purposes hereof, the term "excess consideration" shall mean the amount by which the total consideration received by Tenant for the assignment (whether paid directly or indirectly, in cash or in kind, in installments or lump sum) exceeds (i) the amounts required to be paid hereunder, and (ii) brokerage commissions in customary amounts incurred in connection with the assignment. Consideration paid for improvements to the portion of the Premises subject to an assignment shall be retained by Tenant. Any dispute between the parties concerning computation of excess consideration, including, but without limitation, the question of allocating consideration paid for an assignment between amounts paid for improvements and amounts paid for assignment of this Ground Lease, in whole or in part, shall be determined fair market rental set forth in Section 5.02, with Landlord to be the party to initiate the proceeding by demanding arbitration of Tenant's proposed allocation.

9.04. No Waiver. Landlord's failure to object, or to refuse to consent, or Landlord's written consent, to an assignment shall not be deemed to be a consent, or a waiver of Landlord's right to object or refuse to consent, to any further assignment.

9.05. Other Assignment Void. Any purported assignment which does not comply with the provisions of this ARTICLE NINE shall be void and shall constitute an event of default. Landlord may, after default by Tenant, collect any Rent to be paid or discharged hereunder from the purported assignee and apply the net amount collected to the Rent herein reserved; but no such collection shall be deemed a waiver of the covenants of this ARTICLE NINE, or the acceptance of the purported assignee as Tenant, or a release of Tenant from the further performance by Tenant of the terms, covenants and conditions of this Ground Lease.

ARTICLE TEN

Subleases

10.01. Qualified Right to Sublease. Subject to the provisions of this ARTICLE TEN, Tenant may sublet all or any part of the Premises; provided, however, that:

(a) Term. The term of each sublease shall expire prior to expiration of the Term;

(b) Attornment. Subject to the rights of any Mortgagee under ARTICLE ELEVEN, each sublease shall contain a provision satisfactory to Landlord requiring the sublessee, in the event of default by Tenant, to attorn to Landlord and, upon notice, to make sublessee's rental payments directly to Landlord.

(c) Prepaid Rent. Tenant shall not accept, directly or indirectly, more than three (3) months' prepaid rent from any sublessee.

(d) Notice. Tenant shall, within ten (10) days after the execution of each sublease, notify Landlord of the name and mailing address of the sublessee and deliver to Landlord a true and correct copy of the sublease; and

(e) Compliance With This Ground Lease. Each sublease shall require the sublessee to comply with all of the terms, covenants and conditions of this Ground Lease.

ARTICLE ELEVEN

Encumbrances

11.01. Of Landlord's Fee Estate By Tenant. Upon not less than twenty (20) business days prior written notice to Landlord, Tenant shall have the right to encumber Landlord's fee estate in the Premises in whole or in part without the prior written consent of Landlord upon the following terms, covenants and conditions:

(1) The instrument of encumbrance shall apply solely to Landlord's interest in the Premises and all easements and appurtenances

thereto and Landlord shall not be required to execute any instrument which would obligate Landlord for payment in whole or in part of any such loan or any part thereof.

(2) Tenant shall not be in default in performance of any obligation on its part to be performed pursuant to the terms of this Lease;

(3) The encumbrance shall be imposed for purposes of securing a loan provided by an institutional lender for the purpose of development and construction of improvements upon the portion of the Premises to be so encumbered;

(4) The proceeds of the loan shall be disbursed as development and construction progresses with customary and usual constraints and controls concerning disbursement of funds to assure that the funds are applied properly for development and construction of improvements upon the portion of the Premises so encumbered;

(5) The principal of the loan secured by the encumbrance shall not exceed the lender's estimated value of the interest to be encumbered as of completion of the improvements or the cost of construction and development thereof, whichever is the less;

(6) The loan secured by such encumbrance shall be payable in full not later than two (2) years after the date of the encumbrance;

(7) Interest on the unpaid principal amount of the loan secured by the encumbrance shall not exceed three percent (3%) per annum in excess of the "prime rate" (constituting the rate charged by the lender to its best corporate customers) charged by any major national bank with headquarters in San Francisco, California;

(8) The fees, charges and other compensation payable to the lender with respect to such loan shall not exceed three percent (3%) of the principal amount thereof;

(9) Under the terms of the loan agreement, Landlord shall have the right (a) to assume Tenant's interest under this Lease in the event of Tenant's default, (b) to cure the default, and (c) to take whatever other steps are necessary to protect its interest in the Premises;

The purpose of the foregoing shall be to provide a mechanism for "subordination" of Landlord's fee estate to so-called "construction" or "interim" loans from time to time made by institutional lenders for purposes of construction or development of improvements upon the Premises but not to provide for encumbrances of Landlord's fee estate to long-term or "permanent" loans.

Default of Tenant under any such loan shall constitute a default hereunder. Any sums paid by Landlord to cure a default and all cost incurred by Landlord in connection therewith shall constitute Additional Rent payable by Tenant with the next monthly installment of Annual Rent hereunder. No such payment or other act of cure shall constitute a waiver of any other right may have by reason of any such default.

11.02. Leasehold Encumbrances by Tenant. Tenant, may, without the consent of Landlord, mortgage or otherwise encumber all or a portion of Tenant's leasehold estate in the Premises provided that (i) the Mortgage or encumbrance shall not affect or become a lien upon Landlord's fee estate in the Premises, and (ii) the Mortgage or encumbrance shall be subject to each and every one of the following terms and conditions:

(1) Mortgage Subject to Ground Lease. The Mortgage or encumbrance, shall be subject and subordinate to each and every one of the terms, covenants, conditions and restrictions set forth in this

Ground Lease and to all rights and interests of Landlord hereunder. In the event of any conflict between the provisions of this Ground Lease and the provisions of this Ground Lease shall control over the provisions of the Mortgage or encumbrance;

(2) Notices. Tenant shall notify Landlord in writing of the name and address of the holder of any such Mortgage or encumbrance and shall forward to Landlord a copy of the instrument evidencing such Mortgage or encumbrance within ten (10) days after it is recorded. Landlord shall mail or deliver to the Mortgagee or other lienholder a duplicate copy of any and all written notices which Landlord may from time to time give to or serve upon Tenant under and pursuant to the terms and provisions of this Ground lease including, without limitation thereto, notice of default or breach by Tenant hereunder;

(3) Mortgagee's Rights to Cure. A Mortgagee or other lienholder may, at its option, at any time before the rights of Tenant shall have been terminated as provided in this Ground Lease, pay any of the Rent to be paid or discharged by tenant under this Ground Lease or cure any other default of Tenant, and all payments so made and curative acts so performed shall be as effective to prevent a termination of the rights of Tenant hereunder as payments made or acts performed by Tenant. Any Mortgage constituting an encumbrance on all or a portion of the Tenant's interest in the Premises may be so conditioned as to provide that as between the holder thereof and Tenant, the holder, upon curing any default on the part of Tenant, shall thereby be subrogated to any or all of the rights of Tenant under this Ground Lease;

(4) Mortgagee's Right of Possession. The holder of a Mortgage or other encumbrance on all or a portion of Tenant's interest in this Ground Lease who, upon default by Tenant, pays the Rent and performs all of the other obligations of this Ground Lease to be paid or performed by Tenant in accordance with the provisions of Section 11.02(3) may enter into possession of that portion of the Premises affected by the Mortgage or encumbrance without first having assumed the obligations of Tenant under this Ground Lease;

(5) Mortgagee's Possessory Obligations. Should the holder of a Mortgage or other encumbrance on all or a portion of Tenant's interest acquire all or any part of such interest in this Ground Lease by foreclosure, assignment in lieu thereof, or as a result of any other action or remedy provided for by the Mortgage or other encumbrance, or by law, the holder thereof shall take Tenant's interest subject to all of the provisions of this Ground Lease and shall so long as, but only so long as, it shall be the owner and in possession of the leaseholder estate, assume personally the obligations of this Ground Lease;

(6) Limitation on Landlord's Rights. Landlord shall not terminate this Ground Lease on account of any default or breach on the part of Tenant if, within sixty (60) days after service by Landlord of written notice of the default or breach on Tenant [and on the holder of the Mortgage or encumbrance if Tenant or the holder has notified Landlord of its existence as provided in Section 11.02(2)], the Mortgagee or other lienholder shall:

(i) Cure the default or breach if the same can be cured by the payment or expenditure of money or, if the default or breach is not so curable, if the Mortgagee or other lienholder commences and thereafter diligently pursues foreclosure or private sale pursuant to the Mortgage or other encumbrance in the manner provided by law; and

(ii) From and after commencement of foreclosure pays and performs all obligations required to be paid and performed by Tenant under this Ground Lease until such time as such interest in this Ground Lease shall be sold upon foreclosure, or by exercise of a power of sale pursuant to the Mortgage or other encumbrance, or until such Mortgage or other encumbrance shall be released or reconveyed.

(7) Foreclosure Or Sale. Foreclosure of a Mortgage or other encumbrance, or any sale thereunder, whether by judicial proceedings or exercise of power of sale in the Mortgage or encumbrance, or any

conveyance of its interest from Tenant to the Mortgagee or other lienholder through, or in lieu of, foreclosure shall not require the consent of Landlord or constitute a default under this Ground Lease. Upon such foreclosure, sale or conveyance Landlord shall recognize the Mortgagee or other lienholder, or any purchaser at a foreclosure sale, as Tenant hereunder. In the event the Mortgagee or other lienholder becomes the Tenant under this Ground lease, the mortgagee or other lienholder shall be personally liable for the obligations of Tenant under this Ground Lease only so long as it remains Tenant hereunder. While the Mortgagee or other lienholder is the Tenant under this Ground Lease its right to assign this Ground Lease shall be subject to the provisions of ARTICLE NINE. In the event the Mortgagee or other lienholder subsequently assigns its interest under this Ground Lease after acquiring Tenant's interest by foreclosure, or by acceptance of an assignment in lieu of foreclosure, and in connection with such assignment takes back a Mortgage encumbering such interest to secure payment of the purchase price, the Mortgage shall be subject to, and the Mortgagee shall enjoy the rights and be entitled to enforce the terms, covenants and conditions of, this ARTICLE ELEVEN and any other provisions of this Ground Lease included for the benefit of a mortgagee of all or portions of Tenant's interest in the Premises.

(8) No Release of Tenant. Except as expressly otherwise provided in this Ground Lease, no foreclosure, assignment or sale of Tenant's leasehold estate, or assumption of the obligations of Tenant under this Ground Lease, by a Mortgagee or other lienholder, or acceptance of Rent by Landlord from a Mortgagee or other lienholder, shall relieve, release or in any manner affect the liability of Tenant hereunder;

(9) Request For Notice Of Default. Immediately after a Mortgage or other encumbrance on all or a portion of the Tenant's interest in the Premises is recorded, Tenant, at its own expense shall cause to be duly recorded a request that Landlord receive written notice of any default and/or notice of sale under the Mortgage or other encumbrance. In addition, Tenant shall furnish to Landlord complete copies of the Mortgage or other encumbrance and the note or other obligation secured thereby.

11.03. Other Encumbrances. Except as otherwise provided in this ARTICLE ELEVEN, Tenant shall not mortgage or otherwise encumber all or any portion of the Premises or Tenant's interest under the Ground Lease without the prior written consent of Landlord. Consent by Landlord to any Mortgage or encumbrance shall not be construed as a consent by, or so as to relieve Tenant from the obligation to obtain the express written consent of, Landlord to any further Mortgage or encumbrance other than a permitted Mortgage or encumbrance under Section 11.02.

ARTICLE TWELVE

Waste And Inspection

12.01. Waste and Unlawful Use. Tenant shall not make or suffer any waste or any unlawful, improper, or offensive use of the Premises.

12.02. Inspection. Landlord, its employees or agents, shall have the right at all reasonable times during the Term to enter the Premises to determine whether Tenant's covenants herein are being fully observed and performed provided that Landlord shall give Tenant at least forty-eight (48) hours advance notice of any such entry and no such entry may be made without an agent or representative of Tenant being present at the time of such entry.

ARTICLE THIRTEEN

Insurance

13.01. Public Liability. At all times during the Term Tenant shall, at Tenant's sole cost and expense, obtain and maintain a policy or policies of owner's, landlord's and tenant's comprehensive general public

liability insurance covering, without limitation thereto, (i) fire damage, (ii) water damage, (iii) owned, non-owned and hired automobile, (iv) contractors, (v) contractual and, if applicable, (vi) host liquor, (vii) elevator, (viii) garage keeper's, (ix) products, and (x) completed operations liability, naming as insureds and separately protecting Landlord, its officers, agents, employees and members of the Commission, and Tenant, as their interests may appear, against any liability to the public, or to the occupants of the Premises, their sublessees, and their respective family members, guests, invitees or licensees, incident to the ownership, maintenance, management and/or use of the Premises or any part thereof, arising from claims for personal injury, death or property damage occurring upon, in or about the Premises, the adjoining property of Landlord, or any fixtures or equipment located upon or within the Premises, or in or about any streets, sidewalks and passageways located within the Premises except to the extent caused by any dangerous condition or any negligent act or omission of Landlord, its employees, members, officers, agents, invitees, licensees or contractors. Limits of liability under such insurance for bodily injury or death shall be not less than Two Million Dollars (\$2,000,000.00) per occurrence; and for property damage not less than Two Million Dollars (\$2,000,000.00) per occurrence. Each policy: (i) shall be issued on a comprehensive liability basis, shall be cross-liability endorsed so as not to prejudice the rights of a named insured with respect to any action against another named insured; (ii) may be maintained under blanket policies; and (iii) shall further provide for a full waiver of subrogation by the insurer as to any and all claims against the named insureds and their respective agents and employees, and of all defenses based on acts of the insureds or the existence of co-insurance. Tenant shall pay all premiums thereon when due, and shall, immediately upon receipt, deliver to Landlord certificates of insurance evidencing such coverage. Not more frequently than once every five (5) years during the Term Landlord shall have the right to require Tenant to increase the amounts of such coverage if Landlord, in its reasonable judgment, determines that an increase is necessary and if the amount of the coverage required by Landlord is consistent with the requirements generally imposed under ground leases of similarly improved California real property.

13.02. Additional Insureds. Each of the insurance policies required to be obtained and maintained by Tenant pursuant to this ARTICLE THIRTEEN shall name as additional insureds the City and County of San Francisco, its officers, agents, employees and members of the Commission, and may name as an additional insured any Mortgagee provided, however, that nothing contained in this Section 13.02 or the Mortgage shall relieve Tenant of any of its insurance obligations to Landlord hereunder or give Tenant or a Mortgagee any right to use and/or receive insurance proceeds other than in accordance with the provisions of ARTICLE SEVENTEEN of this Ground Lease.

13.03. Notice of Cancellation or Modification. Each of the insurance policies required to be obtained and maintained under this ARTICLE THIRTEEN shall provide that the insurer may not cancel, amend or refuse to renew the policy without first giving Landlord thirty (30) days prior written notice by certified or registered mail.

13.04. Waiver of Subrogation. Either Landlord or Tenant may obtain and maintain policies of insurance other than those required to be obtained and maintained by Tenant hereunder; provided, however that any such policy shall comply with the provisions applicable to insurance policies obtained and maintained under this ARTICLE THIRTEEN. Landlord and Tenant waive, on their own behalf and on behalf of their respective insurers, any claim and on behalf of their respective insurers, any claim, or right of subrogation to a claim, by one against the other, or its agents or employees, arising from any loss, damage, liability, cost or expense to the extent it is covered by a policy of insurance applicable to the Premises or any part thereof or the respective rights and duties of Landlord and Tenant and/or to the extent Landlord or Tenant is a self-insured. Each policy of insurance applicable to the Premises or the respective rights and duties of Landlord and Tenant shall provide for the waiver hereinabove set forth. In the event either Landlord or Tenant discovers that such a waiver is not available, it shall promptly give the other written notice of non-availability.

13.05 Workers' Compensation Insurance and Social Security.

Tenant enters into this Lease as an independent contractor and not as an agent or employee of Landlord, as the word "employee" is defined in the Workers' Compensation Act of the State of California. Tenant covenants that none of its officers, agents or employees are employees of the City of San Francisco and further covenants to provide Workers Compensation insurance, with employer's liability limits of not less than \$1,000,000 for each accident, and such social security and unemployment compensation benefits as may be required by law, and will, upon written request, furnish to Landlord reasonable evidence of such coverage.

ARTICLE FOURTEEN

Indemnification and Non-Liability of Landlord

14.01. Indemnification and Defense. As used in this Section 14.01, the term "Landlord" shall include, in addition to the City and County of San Francisco, the Public Utilities Commission of the City and County of San Francisco, and its or their respective board members, offices, employees, servants and agents. Except to the extent caused by any dangerous condition or any negligent act or omission of Landlord, its employees, officers, agents, licensees, invitees or contractors, Tenant shall indemnify and defend Landlord against, and hold Landlord harmless from, any and all liabilities, obligations, losses, damages, fines, penalties, claims, demands, suits, actions, causes of action, charges, judgments, costs and expenses (including all reasonable architects' and attorneys' fees and court costs) of any nature whatsoever which may be imposed upon, incurred or paid by, or asserted against Landlord, Tenant, the Premises or any interest therein by reason of, arising from, or in connection with any of the following occurring during the Term:

(1) Any injury to or death of any person or any damage to property occurring from any cause in, on or about the Premises or any part thereof;

(2) The use, non-use, condition, possession, occupation, operation, repair, maintenance or management of the Premises or any part thereof;

(3) Any construction, reconstruction, changes or alterations or or to, or any work or thing done in, on or about, the Premises or any part thereof including, without limitation thereto, the construction of improvements, or anything done in connection therewith;

(4) Failure of Tenant to perform or comply with any term, covenant and condition of this Ground Lease; or

(5) Violation of Tenant of any contract or agreement to which Tenant is a party or any restriction, statute, law, ordinance or regulation, in each case affecting the Premises, or any part thereof or the ownership, occupancy, use possession, operation, repair, maintenance or management of the Premises.

In the event any action or proceeding the subject of this Section 14.01 is brought against Landlord, Tenant shall, upon written notice from Landlord, at Tenant's expense, defend such action or proceeding through counsel approved in writing by Landlord.

14.02. Legal Expenses. When Landlord is the prevailing party, Tenant shall pay, and indemnify Landlord against, all legal costs and charges including, without limitation thereto, reasonable attorneys' fees, paid or incurred by Landlord in obtaining possession of the Premises after default of Tenant or upon expiration or earlier termination of this Ground Lease, or in enforcing any covenant or condition herein contained. When Tenant is the prevailing party, Landlord shall pay, and indemnify Tenant against, all legal costs and charges including, without limitation thereto, reasonable attorney's fees, paid or incurred by Tenant in enforcing any covenant or condition herein contained.

ARTICLE FIFTEEN

Default Provisions

15.01. Events of Default. Each of the following events shall be a default by Tenant and a breach of this Ground Lease:

(a) Failure or refusal to pay when due any Rent required to be paid or discharged by Tenant hereunder;

(b) A general assignment by Tenant for the benefit of its creditors; or the admission in writing by Tenant of its inability to pay its debts as they become due;

(c) Either (i) the appointment of a receiver or trustee to take possession of all or substantially all of the assets of Tenant, or (ii) any action or proceeding commenced by or against Tenant under any insolvency or bankruptcy act, or under any other statute or regulation having as its purpose the protection of creditors, which is not discharged within thirty (30) days after the date of commencement. Upon the happening of any such event, and notwithstanding any provision to the contrary in Section 15.02, Landlord shall have the right, subject to the rights of Tenant and any trustee in bankruptcy in such proceedings, to terminate this Ground Lease upon ten (10) days written notice (or such longer period as may be specified by applicable bankruptcy law or order of the bankruptcy court) given to Tenant and the trustee in bankruptcy. If under the applicable law, Tenant or the trustee in bankruptcy has the right to affirm this Ground Lease and continue to perform the obligations of Tenant hereunder, Tenant or the trustee shall, within the time period permitted by the bankruptcy court, cure all defaults of Tenant outstanding as of the date of the affirmation of this Ground Lease and provide to Landlord such adequate assurances as may be necessary to assure Landlord of the continued performance of Tenant's obligations under this Ground Lease. Specifically, but without limiting the generality of the foregoing, Tenant's obligations under this Ground Lease. Specifically, but without limiting the generality of the foregoing, Tenant or the trustee in bankruptcy shall assure Landlord that the Rent required to be paid or discharged by Tenant shall be paid or discharged in full at the times and in the manner herein specified. The provisions of this Section 15.01(c) have been included in this Ground Lease to assure that the basic understanding between Landlord and Tenant with respect to Tenant's use of the Premises and the benefits to Landlord therefrom are preserved consistent with the purpose and intent of applicable bankruptcy laws;

(d) The subjection of any right or interest of Tenant in this Ground Lease or the Premises to attachment, execution or other levy, or to seizure under legal process, if not released within thirty (30) days;

(e) The assignment, mortgage or encumbrance of this Ground Lease, or the subletting of all or any part of the Premises, by Tenant otherwise than as expressly permitted hereunder; or the transfer of this Ground Lease to any person, firm or corporation other than Tenant except in the manner permitted hereunder;

(f) The failure or refusal of Tenant to perform or observe any other covenant, condition or requirement of this Ground Lease not hereinbefore in this Section 15.01 specifically addressed.

15.02. Notice and Right to Cure. As a precondition to pursuing any remedy for an alleged default by Tenant [except for a default described in Section 15.01(c)], Landlord shall, before pursuing any remedy, give a notice of default to Tenant which shall specify in detail the alleged event of default. If the alleged default is the nonpayment of Rent to be paid or discharged by Tenant hereunder, Tenant shall have three (3) business days after notice of default is given to cure the default. With respect to any other default, Tenant shall promptly after notice of

default commence and diligently proceed to cure the default and shall have thirty (30) days after notice is given to complete the cure, provided, however, that if such default shall reasonably take more than thirty (30) days to cure, Tenant shall commence the same within the thirty (30) days and diligently prosecute the same to completion.

15.03. Landlord's Remedies. If any default by Tenant shall continue uncured for the period specified and following a notice of default given in accordance with the provisions of Section 15.02, Landlord shall have, in addition to any other rights and remedies provided by law or equity, the rights and remedies provided in Section 15.04, 15.05 and 15.06.

15.04. Election to Terminate. Landlord shall have the right to terminate this Ground Lease by written notice of termination given to Tenant at any time after expiration of the applicable cure period. In such event this Ground Lease and the Term hereof, as well as all of the right, title and interest of Tenant hereunder, shall wholly cease and expire at the hour of 12:01 A.M. of the day after the day on which the notice of termination is given, or at such later day and time as Landlord may specify in the notice of termination, in the same manner, and with the same force and effect, as if such date were the date originally specified herein for the expiration of the Term. Tenant shall quit and surrender the Premises to Landlord on such date; provided, however, that notwithstanding the surrender, Tenant shall remain liable as specifically hereinafter provided. In the event Landlord gives Tenant notice of termination as hereinabove provided:

(a) Landlord, or Landlord's agents, employees or servants, may on the termination date specified herein or in the notice of termination, or at any time thereafter, reenter the Premises and remove Tenant, its agents, employees and servants, and all or any of its property, by any suitable action or proceeding at law, and repossess and enjoy the Premises; and

(b) Tenant shall also pay to Landlord all costs and expenses which Landlord may then or thereafter incur in connection with the termination, reentry, removal and repossession; and

(c) Landlord, on the termination date specified herein or in the notice of termination, or any time thereafter, shall be entitled to recover from Tenant:

(1) The worth at the time of award of the unpaid Rent which had been earned at the time of termination;

(2) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; and

(3) The worth at the time of award of the amount by which unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that the Tenant proves could be reasonably avoided.

(4) The "worth at the time of award" of the amounts referred to in Sections 15.04(c)(1) and (c)(2) above shall be computed by allowing interest at the lesser of five percent (5%) per year above the prime rate then charged by the Bank of America at San Francisco, California, or a successor or comparable bank, or the maximum rate allowed by law. The "worth at the time of award" of the amount referred to in Section 15.04(c)(3) above shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%).

(5) As used herein, the term "time of award" shall mean either the date upon which Tenant pays to Landlord the amount recoverable

by Landlord as hereinabove set forth or the date of entry of any determination, order or judgment of any court or other legally constituted body determining the amount recoverable, whichever first occurs.

15.05. Refusal to Terminate. Landlord shall have the right to refuse to terminate this Ground Lease and/or accept the surrender of the Premises after expiration of the applicable cure period. In such event the obligation of Tenant to pay or discharge all Rent to be paid or discharged hereunder shall continue until the expiration or earlier termination of this Ground Lease. Landlord may, without accepting, or being deemed to have accepted, a surrender of the Premises or Tenant's leasehold estate under this Ground Lease, collect and/or sue for the installments of Rent required to be paid or discharged by Tenant under this Ground Lease as and when the same shall become due.

15.06. Landlord's Right to Cure. If Tenant shall fail, refuse or neglect to pay the taxes, assessments or other charges levied against the Premises or any mortgages, liens or encumbrances, the judicial sale or which will affect the fee estate of Landlord in and to the Premises, then after expiration of the applicable cure period, or before the expiration of the cure period in the event of an emergency, Landlord shall have the right, but not the obligation, to make any payment required to be paid or discharged by Tenant under any note secured by a mortgage on the Premises, or perform or comply with any covenant or condition imposed on Tenant under any such note or Mortgage, or pay any such taxes or assessments (subject to the right of Tenant to contest the same and to withhold the payment of the same pursuant to Section 6.04 hereof) and the amount so paid, and/or any costs or expenses incurred by Landlord in connection therewith, plus interest thereon at a rate of five percent (5%) per year above the prime rate then charged by the Bank of America at San Francisco, California, or a successor or comparable bank, or at the maximum rate permitted by law, whichever is lower, shall be deemed to be Additional Rent payable by Tenant with the next succeeding installment of Rent. No such payment, performance or compliance by Landlord shall constitute a waiver of default, or of any right or remedy for default, by Landlord, or render Landlord liable for any loss or damage arising therefrom.

15.07. Availability of Remedies. The rights and remedies for default provided to Landlord under this ARTICLE FIFTEEN shall not be exclusive. Landlord shall have, and may exercise, any and every right and remedy herein or by law provided in such order and manner as Landlord may, in Landlord's sole discretion, determine.

15.08. No Waiver. No failure by Landlord to insist upon strict performance of any term, covenant or condition of this Ground Lease or to exercise any right or remedy provided herein or by law as a consequence of default, and no acceptance of full or partial payment of Rent during the continuance of any default, shall constitute a waiver of the default, or Landlord's right to insist upon the strict performance of any such term, covenant or condition, or Landlord's right to exercise any right or remedy with respect to the default or any subsequent default.

ARTICLE SIXTEEN

Damage and Destruction

16.01. Casualty. If the improvements located on the Premises or any part thereof are damaged or destroyed due to any cause whether insured or uninsured, Tenant shall, within two (2) years thereafter, either (i) repair, restore or replace the damaged or destroyed improvements, or (ii) cause the damaged buildings to be demolished and the Premises to be restored to a level and clean condition free of rubble, wreckage and debris. Any insurance or compensation awarded or paid by reason of such damage or destruction shall be utilized for the purpose of repairing, restoring or replacing the damaged or destroyed improvements or for purposes of razing and clearing the Premises. All proceeds of any insurance or compensation awarded or paid by reason of

any damage or destruction shall be the sole property of Tenant, and Landlord hereby assigns to Tenant any and all right, title and interest Landlord may now or hereafter have or claim in and to any such insurance proceeds or compensation.

16.02. Rent. Notwithstanding anything to the contrary contained elsewhere in this ARTICLE SIXTEEN, in the event of damage or destruction Tenant shall remain obligated to pay the Rent to be paid or discharged under this Ground Lease until expiration of the Term.

ARTICLE SEVENTEEN

Condemnation

17.01. Total Condemnation.

(a) If at any time during the Term, all of the Premises is taken or damaged for any public or quasi-public use under any statute, by right of eminent domain, or by private purchase in lieu of eminent domain, or by private purchase in lieu of eminent domain, then this Ground Lease shall terminate. All Rent to be paid and discharged by Tenant under this Ground Lease shall be prorated as of the date title vests in the condemnor.

(b) If, after the execution of this Lease and prior to the expiration of the term hereof, any public or private authority shall, under the power of eminent domain, make a taking, or Landlord shall convey to said authority in lieu of such taking, and if as a result of such taking or sale in lieu of such taking:

(i) the area remaining within the Premises is insufficient for the conduct of the usual business operations being conducted by Tenant or by its subtenants upon the Premises at the time of such taking; or

(ii) there remains insufficient parking or common area to permit free vehicular and pedestrian access between the Premises and the adjacent public streets or between the buildings and improvements constructed upon the Premises and all remaining parts of the parking and common areas; or

(iii) the remaining portion of the Premises shall not be sufficient in size to permit the construction and/or operation of a building thereon in an economically feasible basis as contemplated under the provisions of this Lease;

then Tenant may, at its election, terminate this Lease by giving Landlord notice of the exercise of Tenant's election within thirty (30) days after Tenant shall receive notice of such taking. In the event of termination by Tenant under the provisions of this Section, this Lease and the term hereof shall cease and terminate as of a date not less than thirty (30) nor more than ninety (90) days after the date of Tenant's notice to Landlord of its election to terminate this Lease, and Annual Rent and other charges payable by Tenant to Landlord hereunder shall be apportioned between Landlord and Tenant as of the date of termination of this Lease.

17.02 Award. The award in condemnation or sales proceeds, less all expenses incurred in connection with the eminent domain proceedings or private sale in lieu of eminent domain, shall be paid to Landlord, as trustee, for the account of Landlord and Tenant, as their respective interests may appear. The priority and manner for the distribution of the condemnation proceeds by Landlord shall be as follows:

(a) Landlord shall be entitled to the then fair market value, immediately prior to such taking, of the land comprising the Premises (exclusive of all buildings and improvements thereon) considered as encumbered by this Lease (taking into account the renewal options available to Tenant) and including Landlord's reversionary interest hereunder in the land and buildings; and

(b) The remainder of said award or awards including, but not limited to, any award for the value of Tenant's leasehold estate, all buildings, improvements and site improvements, trade fixtures and equipment, shall be paid to Tenant.

17.03. Partial Condemnation. IF at any time during the Term, a portion of the Premises is condemned, and this Ground Lease shall not be terminated pursuant to the provisions of Section 17.01, this Ground Lease shall terminate as to the portion taken, and all Annual Rent to be paid or discharged by Tenant under this Ground Lease after the date title vests in the condemnor shall be reduced in the proportion which the surface area of the land condemned bears to the total surface area of the land constituting the Premises immediately prior to the condemnation. The award for partial condemnation applicable to that portion of the Premises shall be paid to landlord, as trustee, for the Account of Landlord and Tenant and/or any Mortgagee of Tenant, as their respective interests may appear. Landlord shall apportion the proceeds between Landlord on the one hand, and Tenant or Tenant's Mortgagee on the other hand, pursuant to the provisions of Section 17.02; provided, however, that Landlord's portion of the award for partial condemnation shall be determined with respect to the condemned portion of the Premises, only. In such event, Tenant shall restore the Premises and the improvements located thereon as nearly as possible to the condition immediately prior to the condemnation.

ARTICLE EIGHTEEN

Surrender of the Premises

18.01. Surrender in Good Condition and Repair. Upon the expiration or earlier termination of this Ground Lease for any reason whatsoever (other than acquisition of title by Tenant or loss of title by reason of condemnation), Tenant shall surrender the Premises to Landlord with all improvements thereon in good order, condition and repair, (except for reasonable wear and tear or as otherwise provided herein) or with the Premises in a level and clean condition with all improvements and debris removed. All property that Tenant surrenders shall become Landlord's property a termination of this Ground Lease. Title to all furniture and personal property of Tenant located in or upon the Premises or in or upon any buildings or improvements thereon shall remain in Tenant, and upon the expiration or earlier termination of this Ground Lease the same may, and upon the demand of Landlord shall, be removed and any resultant damage to the Premises shall be repaired by and at the expense of Tenant.

ARTICLE NINETEEN

Sale Or Transfer of Premises

19.01. Effect On Lease. Landlord shall promptly notify Tenant in writing of any sale or transfer of the Premises or any assignment of the Landlord's interest in this Lease, giving the name and address of the assignee or new owner, as the case may be, and instructions regarding the payment of rent. In the event of any transfer or assignment of the Landlord's interest in this Lease or any change in, or transfer of, title in and to the Premises or any part thereof, whether voluntary or involuntary, or by act of Landlord or by operation of law, Tenant shall be under no obligation to pay rents or other charges payable by Tenant to Landlord hereunder, thereafter accruing, until Tenant shall have been notified in writing of such transfer, assignment or change in title and given satisfactory proof thereof, and the withholding of rents or other charges payable by Tenant to Landlord hereunder, in the meantime shall not be deemed a default upon the part of the Tenant. If Landlord sells or transfers all or any portion of its estate in the Premises, on consummation of the sale or transfer Landlord shall be released from any liability thereafter accruing under this Ground Lease. Any successor in interest to landlord shall take Landlord's estate in the Premises subject to each and every one of the conditions set forth in Section 11.01 of this Ground Lease. Landlord may transfer the balance of the Security

Deposit and prepaid Rent, if any, then held by Landlord to its successor and, on such transfer, Landlord shall be discharged from any further liability with respect thereto.

ARTICLE TWENTY

Miscellaneous

20.01. Notices. All notices, demands and requests required or permitted under this Ground Lease shall be in writing and shall be either personally delivered or sent by United States registered or certified mail, postage prepaid, addressed as follows:

TO LANDLORD: General Manager and Chief Engineer
San Francisco Water Department
425 Mason Street
San Francisco, California 94101

TO TENANT: c/o Orchard Supply Hardware
1555 S. Seventh St.
San Jose, California 95112
Att: Director of Real Estate

With a copy to:

W. R. Grace & Co.
1114 Avenue of the Americas
New York, New York 10036
Att: Senior Vice President, Real Estate -
Retail Group

TO MORTGAGEE: At the most recent address furnished to
Landlord in writing by Tenant or the Mortgagee.

Notices, demands and requests given to Landlord, Tenant or any Mortgagee in the manner aforesaid shall be deemed to have been received for all purposes hereunder upon personal delivery or forty-eight (48) hours after deposit in any post office or branch post office regularly maintained by the United States Government. Landlord, Tenant and any Mortgagee shall have the right to change the address for receipt of notice by a notice given as aforesaid; provided, however, that during the Term Tenant shall continuously maintain in the County of San Mateo or the City and County of San Francisco an office for receipt of notice hereunder and service of process in any action arising under this Ground Lease or related to the Premises.

20.02. Severability of Provisions. If any term or provision of this Ground Lease, or the application thereof to any person or circumstance, shall be invalid or unenforceable, the remainder of this Ground Lease, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby.

20.03. Entire Agreement. This Ground Lease constitutes the entire agreement and understanding between the parties with respect to its subject matter and the Premises. There are no other agreements, understandings, representations or warranties, either written or oral, with respect thereto. This Ground Lease shall not be modified or amended except by a subsequent writing executed by the parties.

20.04. Approvals and Consents. Whenever any provision of this Ground Lease requires an approval or consent to be given by one of the parties hereto, such approval or consent shall not be unreasonably withheld unless provision to the contrary is expressly made herein. In the case of Landlord, Tenant acknowledges that certain approvals required to be provided hereunder shall require action by the Board of Supervisors of the City and County of San Francisco.

20.05. Headings. The headings of the Articles and Sections of this Ground Lease are for convenience or reference only and are not a part of this Lease.

20.06. Number and Gender. Whenever the context requires, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

20.07. Short Form Lease. Upon the Commencement Date (or earlier if required to accommodate Tenant's financing as contemplated herein), Landlord and Tenant shall execute a Short Form Ground Lease substantially in the form attached hereto as Exhibit E and cause the original thereof to be recorded in the Official Records.

20.08. Successors. Subject to the provisions of this Ground Lease on assignment, each and all of the terms, covenants and conditions of this Ground Lease shall be binding on and inure to the benefit of the heirs, successors, executors, administrators, assigns and personal representatives of the respective parties.

20.09. Commission. Landlord and Tenant represent and warrant to the other that it has not had any contact with a third person which could result in any claim against the other for a broker's finder's or similar fee or commission in connection with this Ground Lease; and each of Landlord and Tenant shall indemnify and defend the other against, and hold it harmless from, any claim for a broker's finder's or similar fee or commission arising out of its contacts with any third person in connection with this Ground Lease.

20.10. Non-Discriminatory Employment Practices. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discriminatory employment practices are incorporated herein by reference and made a part of this Ground Lease as though fully set forth at length herein, the provisions thereof currently in force being attached hereto, marked Exhibit F and incorporated herein by reference thereto.

20.11. No Conflict of Interest. Landlord shall not, and shall not be required to, pay any money or provide any other consideration of any kind whatsoever or employ, contract with or sublease to or with any person or entity if such payment of money or provision of other consideration would violate or have a reasonable likelihood of violating any law, statute, directive, regulation, decision or opinion now or hereafter enacted or promulgated by landlord, the City and County of San Francisco, the State of California, or any governmental, public or judicial body, agency or department relating in any manner to conflict of interest or if such payment or provision of consideration is to an entity which has discretionary authority or power of any kind over the development, use, or occupancy of the Premises or any part thereof or with respect to the enforcement or interpretation of this Ground Lease.

20.12. Waiver of Future Right to Acquire Landlord's Fee. Tenant acknowledges that Landlord has elected to enter into this Ground Lease rather than to convey its fee estate in the Premises in order to retain its fee estate in the Premises for the benefit of Landlord, and for the benefit, health, safety and welfare of the residents of the City and County of San Francisco including, without limitation thereto, in order to be in a position to meet the needs of future generations. In consideration for Landlord's willingness, and in order to induce Landlord, to enter into this Ground Lease, Tenant hereby irrevocably waives any and all rights it might otherwise have under any law hereinafter enacted by the federal, state or city governments which would otherwise entitle Tenant to acquire, or succeed to, Landlord's fee estate in the Premises or reversionary interest in the Premises. Tenant acknowledges that Tenant's attempt to exercise any such right would constitute a material failure of the consideration for which Landlord has entered into this Ground Lease.

20.13. Time. Time is of the essence of each and every provision of this Ground Lease.

20.14. Exhibits. The following exhibits are attached hereto and incorporated herein by this reference:

- EXHIBIT A-1: Description of the Premises
- EXHIBIT A-2: Description of Ingress & Egress Easement
- EXHIBIT A-3: Survey
- EXHIBIT B: Parking Facilities and Miscellaneous Site Work
- EXHIBIT C: Exceptions to Title
- EXHIBIT D: Percentage Rent Schedule
- EXHIBIT E: Short Form Ground Lease
- EXHIBIT F: Non-Discrimination Provisions

20.15 Quiet Enjoyment. Landlord covenants and agrees with Tenant that upon Tenant observing and performing all of the terms, covenants and conditions on Tenant's part to be observed and performed hereunder, Tenant may peaceably and quietly have, hold, occupy and enjoy the Demised Premises without hindrance or molestation from Landlord or any other persons lawfully claiming by, through or under Landlord.

20.16 Force Majeure. In the event that Tenant shall be delayed or hindered in or prevented from the performance of any act other than Tenant's obligation to make payments of rent, additional rent, and other charges required hereunder, by reason of strikes, lockouts, unavailability of materials, failure of power, restrictive governmental laws or regulations, riots, insurrections, the act, failure to act, or default of Landlord, war or other reason beyond its control, then performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for a period equivalent to the period of such delay. Notwithstanding the foregoing, lack of funds shall not be deemed to be a cause beyond control of Tenant.

20.17 Waiver of Landlord's Lien. Landlord shall not have, and hereby expressly waives any lien granted to Landlord, whether statutory or otherwise, in Tenant's personal property, fixtures, inventory, or stock-in-trade on the Premises for nonpayment of rent, default by Tenant, or any other reason whatsoever.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

APPROVED AS TO FORM:

"Landlord"

GEORGE AGNOST
City Attorney

CITY AND COUNTY OF SAN FRANCISCO
By Public Utilities Commission

By *McMorris M. Dow*
McMORRIS M. DOW
Utilities General Counsel

By *Rudolf Nothenberg*
RUDOLF NOTHENBERG
General Manager of Public
Utilities

Authorized by Public
Utilities Commission
Resolution No. 83-0483
Adopted November 8, 1983

Attest: *Romaine S. Boldridge*
Romaine S. Boldridge
Secretary

"Tenant"

GRACE RETAIL CORPORATION

(SEAL)
Attest:

By *Francois H. Stee*
Assistant Secretary

By *Edward H. Tutun*
Edward H. Tutun
President

LEGAL *[Signature]*
RE _____

EXHIBIT A-1

DESCRIPTION OF PREMISES

All of that real property situate in the City of Millbrae, County of San Mateo, State of California, described as follows:

Beginning at a point distant North 39°14' West, 50.08 feet from the intersection of the boundary line between the C.M.P. Coleman 175.20 acre tract and the Custodio Silva 168 acre tract and said point being distant South 53°46' West, 51.63 feet from the westerly line of the lands of Southern Pacific Railroad Company. Thence North 39°14' West a distance of 255.56 feet; Thence South 53°46' West a distance of 292.25 feet; Thence North 34°52'55" West a distance of 75.02 feet; Thence South 53°46' West 428.24 feet, more or less, to the northerly line of El Camino Real; Thence along said northerly line south 46°53' East a distance of 336.00 feet; Thence leaving said northerly line and running parallel to and distant 50 feet measured at right angles northwesterly from said line between C.M.P. Coleman 175.20 acre tract and said Custodio Silva 168 acre tract, North 53°46' East a distance of 670.00 feet, more or less to the POINT OF BEGINNING.

Containing 4.7505 acres of land, more or less.

EXHIBIT A-2

DESCRIPTION OF INGRESS & EGRESS EASEMENT

All that certain real property situate in the City of Millbrae, County of San Mateo, State of California, described as follows:

Commencing at the northwest corner of the Lands of the City and County of San Francisco leased to Orchard Supply Hardware in the City of Millbrae, County of San Mateo, State of California and proceeding along the northerly line of said lands North 53°46' East a distance of 79 feet to the TRUE POINT OF BEGINNING; thence continuing along said northerly line North 53°46' East, a distance of 42 feet; thence North 36°14' West a distance of 2.0 feet; thence along a curve to the right with a radius of 4 feet from a tangent bearing of South 53°46' West, through a central angle of 90° for a distance of 6.28 feet; thence North 36°14' West a distance of 9.46 feet; thence along a curve to the right with a radius of 6 feet, through a central angle of 102°12'05" for a distance of 10.70 feet to a point of reverse curve; thence along a curve to the left with a radius of 147.0 feet, through a central angle of 6°59'46", a distance of 17.95 feet; thence North 36°14' West a distance of 27.14 feet; thence along a curve to the right with a radius of 120.0 feet, from a radial bearing of North 29°51'09" West, through a central angle of 35°44'37" for a distance of 74.86 feet, to a point of reverse curve; thence along a curve to the left with a radius of 213.0 feet, through a central angle of 30°07'30", a distance of 111.59 feet, to a point on the northerly line of El Camino Real; thence along said northerly line South 46°53' East a distance of 64.45 feet; thence along a curve to the right with a radius of 18.0 feet, from a radial bearing of South 73°15'36" East, through a central angle of 23°01'43" for a distance of 7.23 feet; thence North 39°46'07" East a distance of 10.77 feet; thence along a curve to the right with a radius of 43.00 feet, through a central angle of 45°10'01", for a distance of 33.90 feet; thence North 84°56'08" East a distance of 31.45 feet; thence along a curve to the right with a radius of 38.0 feet through a central angle of 58°49'52" for a distance of 39.02 feet; thence South 36°14' East, a distance of 9.0 feet; thence along a curve to the right with a radius of 4 feet through a central angle of 90°, for a distance of 6.28 feet; thence South 36°14' East a distance of 2.0 feet to the TRUE POINT OF BEGINNING.

Containing 0.1643 acres of land, more or less.

EXHIBIT A-3

SURVEY

PUBLIC UTILITIES COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 83-0483

WHEREAS, the San Francisco Water Department owns approximately 4.752 acres of land at 950 El Camino Real in Millbrae, California, which is excess to the Water Department's present needs, and

WHEREAS, pursuant to the terms and conditions of Commission Resolution No. 82-310, adopted July 27, 1982, the Water Department published an invitation for sealed bids for the purpose of awarding a ground lease of said premises for thirty (30) years for commercial use and on other terms and conditions provided for in the proposed lease; and

WHEREAS, sealed bids were received by the Water Department from Orchard Supply Hardware, Lucky Stores, Inc., and KTW/C&H, which bids included the following minimum annual lease rentals:

Orchard Supply Hardware	\$150,000
Lucky Stores, Inc.	\$144,000
KTW/C&H	\$136,000

and

WHEREAS, the values of the three bids and the qualifications of all three bidders have been considered by Commission in order to determine the successful bidder; now, therefore, be it

RESOLVED, that this Commission hereby awards to Orchard Supply Hardware, as the highest, responsible, qualified bidder, a ground lease for commercial use of approximately 4.752 acres of land at 950 El Camino Real, Millbrae, California, copies of which lease are on file with the Water Department, for the term of

NOV 12 1983
MAR 18 1984

PUBLIC UTILITIES COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION No. _____

thirty (30) years and at the minimum rent and coverage and on the other terms and conditions contained in said lease, subject to confirmation by the City's Board of Supervisors; and be it

FURTHER RESOLVED, that City's Board of Supervisors be requested to approve, by ordinance, award of said ground lease; and be it

FURTHER RESOLVED, that upon approval by the Board of Supervisors, the General Manager of Public Utilities is hereby authorized and directed to execute said lease.

9083C

NOV 12 8 31 AM '83

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission
at its meeting of NOVEMBER 8 1983

Romaine A. Boldridge
Secretary, Public Utilities Commission

EXHIBIT C

EXCEPTIONS TO TITLE

1. General and Special Taxes for the fiscal year 1983-84, now a lien, not yet ascertainable.

2. General and Special Taxes for the fiscal year 1982-83,
First Installment \$34.95 PAID
Second Installment \$34.95
Code Area 14-1 A.P. #093 220 01

3. EASEMENT AND RIGHT OF WAY for underground wires, cables and other electrical conductors as disclosed by San Francisco Water Department Drawing No. B-4051 dated May 2, 1978.
Affects the Northeasterly 6 feet.

NOTE: In connection with the above there is an existing unrecorded use permit in favor of The Pacific Telephone and Telegraph Company.

4. UNDERGROUND CONSTRUCTION AGREEMENT by and
Between : Pacific Telephone and Telegraph Company, a corporation
and : The Lowris Paving Company, Inc.
Dated : October 25, 1957
Recorded : October 30, 1957
Document No: 93947-P, Official Records of San Mateo County, California

5. EXISTING telephone line, retaining wall, 54 inch crystal springs pipeline, 24 inch water line and meter box all as disclosed by San Francisco Water Department Drawing No. B-4051, dated May 2, 1978.

EXHIBIT D

PERCENTAGE RENT SCHEDULE

Tenant agrees to pay to Landlord as "Percentage Rental," an amount equal to one and one-quarter (1-1/4%) percent of Gross Revenues (as hereinafter defined) made in, on or from the Premises during each Lease Year in excess of the First Gross Sales Base up to an amount equal to the Second Gross Sales Base; one (1%) percent of Gross Revenues made, in, on or from the Premises during each Lease Year in excess of the Second Gross Sales Base up to an amount equal to the Third Gross Sales Base; and one half (1/2%) percent of Gross Revenues made, in on or from the Premises during each Lease Year in excess of the Third Gross Sales Base. For purposes hereof, the term "First Gross Sales Base" for each Lease Year shall be deemed to mean the amount equal to the Annual Rent applicable to such Lease Year, divided by the number ".0125"; the "Second Gross Sales Base" for each Lease Year shall be deemed to mean the amount equal to the sum of the First Gross Sales Base applicable to such Lease Year plus \$5,000,000; and the "Third Gross Sales Base" shall be deemed to mean the amount equal to the sum of the Second Gross Sales Base applicable to such Lease Year plus \$5,000,000.

Example:

If the Annual Rent applicable to such Lease Year is \$150,000, then Tenant shall pay as Percentage Rental hereunder an amount equal to one and one-quarter (1-1/4%) percent of Gross Revenues made in, on or from the Premises during such Lease Year in excess of \$12,000,000 up to \$17,000,000 of such Gross Revenues; one (1%) percent of Gross Revenues made in, on or from the Premises during such Lease Year in excess of \$17,000,000 up to \$22,000,000 of such Gross Revenues; and one-half (1/2%) percent of Gross Revenues made in, on or from the Premises during such Lease Year in excess of \$22,000,000.

For the purpose of determining the Percentage Rental to be paid hereunder, "Gross Revenues" shall mean the total receipts from all merchandise and services sold or rendered in the Premises by Tenant, whether at retail or wholesale, whether for cash or on a charge, credit or time basis (without reserve or deduction for inability or failure to collect) less the selling price of any goods returned by any customer (to the extent that the selling price of any such returned goods has been included in Gross Revenues) and less that part of the sales price of merchandise which is paid for by the trading in of other merchandise of the customer (although the proceeds from the subsequent sale of such trade-in merchandise shall be included in Gross Revenues hereunder) and further expressly excluding the following:

1. Sales at a discount to employees of Tenant, revenues derived from service charges made for credit transactions, sums received as charges for delivery to customers for products sold from the Premises by Tenant, sales from vending machines, all sums received from the sale of tickets of admission to theatrical, circus, church and sports events (but including all commissions and fees paid to Tenant in connection with the sale of such tickets);
2. All sums representing so-called sales taxes collected directly from customers, based upon present and future laws of the State or local government and collected by Tenant in the operation of its business on the Premises, and any other tax, excise or duty which is levied or assessed against Tenant for any Federal, State, Municipal or local authority based on sales of specific merchandise sold on or from the Premises, whether or not the amount thereof is passed on to, or collected by, Tenant from any purchaser thereof;

3. The transfer of merchandise by Tenant, or a subsidiary of Tenant, from the Premises to another store or a place of business owned or operated by Tenant, or a subsidiary of Tenant shall not constitute a sale;

4. Proceeds from the sale of gift certificates or like vouchers, provided, however, that when any such certificates or vouchers are redeemed for merchandise at the Premises (whether said certificates or vouchers were initially sold by Tenant at the Premises or by Tenant at another location), then the retail price of the goods allocable to such redemption shall be included in Gross Revenues;

5. Donations or sales at discount of merchandise to nonprofit charitable and religious institutions;

6. Service charges, finance charges, interest and discounts attributable to "charge accounts" and credit cards to the extent the same are paid to Tenant by customers of Tenant, or to the extent the same are paid for by Tenant to, or charged to Tenant by, credit card companies; and

7. Charges for labor performed by independent contractors outside of the Premises and arranged by Tenant's "Home Improvement" and "Decorations" Department, but including the receipts from the sale of merchandise from the Premises in connection therewith.

EXHIBIT E
SHORT FORM GROUND LEASE

MNE:gz
3/7/83

Recording Requested By
And When Recorded Return To:

950 EL CAMINO REAL
MILLBRAE, CALIFORNIA

SHORT FORM OF
GROUND LEASE

This GROUND LEASE is made this _____ day of _____, 1983, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting through its Public Utilities Commission (the "Commission") ("Landlord"), and _____, a _____ ("Tenant").

RECITALS:

This Ground Lease is made and entered on the basis of the following facts, understandings and intentions of the parties:

A. Landlord is the owner of all that certain real property ("the Premises") situated in the City of Millbrae,

County of San Mateo, State of California, particularly described in Exhibit A hereto.

B. Tenant desires to hire the Premises from Landlord in "as is" condition and to have the right to erect new improvements thereon.

C. Landlord is willing to lease the Premises to Tenant and to grant Tenant the right to erect thereon new improvements [subject to, and in accordance with, all applicable laws and regulations and the provisions of this Ground Lease,]; provided that Tenant at its own cost and expense remove, relocate or reconstruct on adjacent real property of Landlord certain parking facilities located on the Premises, (defined in Section 2.07 below), all in accordance with written plans and specifications of Landlord and in a manner satisfactory to Landlord.

D. Tenant is willing to remove, relocate or reconstruct on adjacent real property of Landlord said parking facilities and improvements as required by Landlord pursuant to Section 2.07 below.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, Landlord leases to Tenant and Tenant hires from Landlord the Premises upon the terms and conditions set forth in that certain Ground Lease bearing even date herewith all of which is incorporated herein by reference, for a term of forty (40) years

from the Commencement Date of _____, with
Tenant having the right to extend the Term for an additional
period of ten (10) years subject to all the terms, covenants
and conditions contained in the Ground Lease.

IN WITNESS WHEREOF, the parties hereto have exe-
cuted this Short Form of Ground Lease the day and year first
above written.

APPROVED AS TO FORM:

"Landlord"

GEORGE AGNOST
City Attorney

CITY AND COUNTY OF SAN FRANCISCO
By Public Utilities Commission

By _____
MCMORRIS H. DOW
Utilities General Counsel

By _____
RUDOLF NOTHENBERG
General Manager of Public Utilities

Authorized by Public
Utilities Commission
Resolution No. _____

"Tenant"

Adopted _____

a _____

Attest: _____
Romaine S. Boldridge
Secretary

By _____
Its _____

"Sublease" shall mean and include a lease by which a lessee or tenant grants or lets to another person part or all of the leased real property for a shorter term and under which said lease or tenancy retains some right or interest under the original lease.

"Transfer" shall mean and include any conveyance in which the City and County of San Francisco holds a legal interest and improvements to said real property.

"Sex" shall mean the character of being male or female.

"Sexual Orientation" shall mean the choice of being adult sexual partner according to gender.

"Suitability" is a physical or mental impairment which does not make the person incapable of performing one or more of the accommodations, advantages, facilities, privileges, services or membership in business, social or other establishments or organizations with a reasonable accommodation to his or her disability, and does not make the person incapable of making such use in a manner which would not endanger his or her health and safety of the health and safety of others.

"Tenant" shall mean the person or persons, firm, partnership, corporation or combination thereof who enters into a contract, agreement, lease, concession or other arrangement involving the use of real property and improvements thereon of the City and County of San Francisco.

SEC. 12C.1. Nondiscrimination Provisions of Property Contracts.

Every contract, franchise, lease, concession or other agreement entered into by any person or persons, firm, partnership, corporation or other combination thereof, in the City and County of San Francisco for a period exceeding twenty-nine (29) days in any calendar year, whether by singular or cumulative instrument, shall contain the provisions hereinafter set forth in the nondiscrimination provisions of such property contract.

In the performance of this contract, the tenant agrees as follows:

(a) The tenant shall not discriminate on the basis of race, ethnicity, national origin, ancestry, sex, sexual orientation, or disability, in the performance of this contract, in the selection, hiring, promotion, advancement, activities, privileges, services, or membership in the business, social or other establishment or organization operated by the tenant or subtenant on the real property of the City and County of San Francisco, on the ground or because of race, color, creed, national origin, ancestry, sex, sexual orientation, or disability.

(b) Should the tenant or subtenant operate as a membership organization, the tenant will permit access to his membership program to all persons, regardless of race, color, creed, national origin, ancestry, sex, sexual orientation, or disability, for the purpose of investigating to ascertain compliance with the nondiscrimination provisions of this contract, and shall request provide evidence that has or will comply with the nondiscrimination provisions of this contract.

(c) That tenant or subtenant shall be deemed to have breached the nondiscrimination provisions of this contract upon:

- (1) A finding by the Director of the San Francisco Human Rights Commission or such other official who may be designated by the Human Rights Commission, that tenant has willfully violated such nondiscrimination provisions.
- (2) Upon such finding by the Director of the Human Rights Commission, or other official designated by the Human Rights Commission, the hearing authority shall refer the matter to the San Francisco Human Rights Commission or other official designated by the Human Rights Commission within such reasonable period as the Human Rights Commission shall determine, that the violation has been contracted, action will be taken as set forth in subparagraph (d).
- (3) The Human Rights Commission shall, within ten days of the date of issuance of any finding by the Director of the San Francisco Human Rights Commission, or other official designated by the Human Rights Commission, file a copy of the full written notice of his/her finding to appeal. Notices of appeal must be filed in writing with the Chairman of the Commission within 30 days of the date of mailing said copy and notice.
- (4) For purposes of appeal proceedings under this section, a quorum shall consist of a majority of the members of the Commission. The vote of the majority of the full Commission shall be necessary to affirm or reverse the finding of the hearing authority or other action rendered hereunder. Should a member of the Human Rights Commission be designated under Section 12C.1 (c) (3) of this contract, that Commissioner may not participate in an appeal under this section except as a witness.

CHAPTER 12C OF THE SAN FRANCISCO ADMINISTRATIVE CODE

ARTICLE 12C.1. Nondiscrimination in Real Property Contracts on the Ground of RACE, COLOR, CREED, NATIONAL ORIGIN, ANCESTRY, AGE, SEX, SEXUAL ORIENTATION OR DISABILITY.

As it is amended by the People of the City and County of San Francisco:

Section 1. Chapter 12C is added to the San Francisco Administrative Code to read as follows:

CHAPTER 12C

NONDISCRIMINATION IN PROPERTY CONTRACTS

SEC. 12C.1. All Property Contracts to Include Nondiscrimination Provisions.

All contracting agencies of the City and County of San Francisco, or any department thereof, acting for or on behalf of the City and County, shall include in all contracts, franchises, leases, concessions or other arrangements involving the lease, rental, or other use of real property, or improvements thereon of the City and County of San Francisco, for a period exceeding twenty-nine (29) days in any calendar year, whether by singular or cumulative instrument, a provision obligating the contractor, franchisee, lessee, concessionaire, or other party of said agreement not to discriminate on the ground or because of race, color, creed, national origin, ancestry, sex, sexual orientation or disability, in the performance of this contract, in the selection, hiring, promotion, advancement, activities, privileges, services, or membership in the business, social or other establishment or organization operated by the tenant or subtenant on the real property of the City and County of San Francisco, on the ground or because of race, color, creed, national origin, ancestry, sex, sexual orientation, or disability.

The tenant shall not discriminate on the basis of race, ethnicity, national origin, ancestry, sex, sexual orientation, or disability, in the performance of this contract, in the selection, hiring, promotion, advancement, activities, privileges, services, or membership in the business, social or other establishment or organization operated by the tenant or subtenant on the real property of the City and County of San Francisco, on the ground or because of race, color, creed, national origin, ancestry, sex, sexual orientation, or disability.

Should the tenant or subtenant operate as a membership organization, the tenant will permit access to his membership program to all persons, regardless of race, color, creed, national origin, ancestry, sex, sexual orientation, or disability, for the purpose of investigating to ascertain compliance with the nondiscrimination provisions of this contract, and shall request provide evidence that has or will comply with the nondiscrimination provisions of this contract.

That tenant or subtenant shall be deemed to have breached the nondiscrimination provisions of this contract upon:

- (1) A finding by the Director of the San Francisco Human Rights Commission or such other official who may be designated by the Human Rights Commission, that tenant has willfully violated such nondiscrimination provisions.
- (2) Upon such finding by the Director of the Human Rights Commission, or other official designated by the Human Rights Commission, the hearing authority shall refer the matter to the San Francisco Human Rights Commission or other official designated by the Human Rights Commission within such reasonable period as the Human Rights Commission shall determine, that the violation has been contracted, action will be taken as set forth in subparagraph (d).
- (3) The Human Rights Commission shall, within ten days of the date of issuance of any finding by the Director of the San Francisco Human Rights Commission, or other official designated by the Human Rights Commission, file a copy of the full written notice of his/her finding to appeal. Notices of appeal must be filed in writing with the Chairman of the Commission within 30 days of the date of mailing said copy and notice.
- (4) For purposes of appeal proceedings under this section, a quorum shall consist of a majority of the members of the Commission. The vote of the majority of the full Commission shall be necessary to affirm or reverse the finding of the hearing authority or other action rendered hereunder. Should a member of the Human Rights Commission be designated under Section 12C.1 (c) (3) of this contract, that Commissioner may not participate in an appeal under this section except as a witness.

SEC. 12C.2. Definitions.

As used in this chapter the term:

"Age" for the purpose of membership refers to and shall include any person who has attained the age of eighteen (18) years, except for bona fide senior citizen organizations.

"Contract" shall mean and include an agreement to operate from or make use of real property of the City and County of San Francisco in the operation of a business, social, or other establishment or organization.

"Contractor" means any person or persons, firm, partnership, corporation, or combination thereof, who enters into a contract to operate from or make use of real property of the City and County of San Francisco in the operation of a business, social, or other establishment or organization.

"Franchisee" shall mean and include an agreement or contract under or subordinate to a franchise agreement, lease, concession or other arrangement involving the use of real property of the City and County of San Francisco in the operation of a business, social, or other establishment or organization.

"Lessee" shall mean and include a contract by or on behalf of the City and County of San Francisco in the operation of a business, social, or other establishment or organization.

"Nondiscrimination provisions" shall mean and include a person who is the grantor or beneficiary of a concession as herein defined.

"Person" shall mean and include a right or privilege conferred by grant from the City and County of San Francisco, or any contracting agency thereof, and vested in and exercisable by a person to conduct such business, social, or other activity as is specified in said grant.

"Sex" shall mean the character of being male or female.

"Sexual Orientation" shall mean and include a person who is the grantor or beneficiary of a concession as herein defined.

"Transfer" shall mean and include any conveyance in which the City and County of San Francisco holds a legal interest and improvements to said real property.

"Sex" shall mean the character of being male or female.

"Sexual Orientation" shall mean the choice of being adult sexual partner according to gender.

"Suitability" is a physical or mental impairment which does not make the person incapable of performing one or more of the accommodations, advantages, facilities, privileges, services or membership in business, social or other establishments or organizations with a reasonable accommodation to his or her disability, and does not make the person incapable of making such use in a manner which would not endanger his or her health and safety of the health and safety of others.

"Tenant" shall mean the person or persons, firm, partnership, corporation or combination thereof who enters into a contract, agreement, lease, concession or other arrangement involving the use of real property and improvements thereon of the City and County of San Francisco.

(3) The presiding officer of the Commission shall have the power to administer oaths to witnesses in appeals before the Commission under this section. In the event that any person shall fail or refuse to appear as a witness in any such proceeding after being requested to do so, and if it shall appear to the Commission that the testimony, or books, records, documents or other things under his control are being withheld, he shall be deemed to be in contempt of the Commission. The Commission in the proceeding, the presiding officer of the Commission may subpoena such persons, requiring his presence at the proceeding and requiring him to bring such books, records, documents or other things under his control.

(4) All appeals to the Human Rights Commission shall be open to public inspection. Upon reaching a decision in any appeal, the Commission shall give written notice thereof to the Director of the Human Rights Commission, or other official designated by the Commission, and to the appellant, and to the respondent. The Commission shall file with the Clerk of the Superior Court of the County of San Francisco a copy of the decision and a copy of the written notice thereof. Appropriate legal proceedings are filed in a court of competent jurisdiction by any party to this contract.

(7) If any tenant or subtenant under contract to the City and County of San Francisco shall fail to appear at an appeal proceeding of the Commission after having been given written notice to appear, such failure to appear shall be grounds for the Commission to grant the appeal and the tenant or subtenant shall be deemed to have forfeited all rights, benefits and privileges thereunder.

(8) The Human Rights Commission of San Francisco shall promulgate rules and regulations for the implementation of the nondiscrimination provisions of this contract, and such rules and regulations shall, so far as practicable, be similar to those adopted in applicable federal executive orders.

(9) A breach of the nondiscrimination provisions in the performance of this contract shall be deemed by the City and County of San Francisco to be a material breach of contract and basis for determination by the officer, board or awarding authority responsible for the awarding or letting of such contract that the tenant or subtenant is an irresponsible tenant, lessee, franchisee or concessionaire as to all future contracts for the use of real property. Such person, firm or corporation shall not, for a period of two (2) years thereafter, or until he/she shall establish and carry out a program in compliance with the nondiscrimination provisions of this contract, be eligible for a contract or subtenant under contract to the City and County of San Francisco. The City and County of San Francisco shall have the right to terminate the contract or subtenant therefrom, and the City and County of San Francisco shall be entitled to the full value of the contract or subtenant therefrom. Nothing contained in this contract shall be construed in any manner as to prevent the City and County of San Francisco from pursuing any other remedies that may be available at law.

SEC. 11C.4. Human Rights Commission Empowered.

The San Francisco Human Rights Commission, its presiding officer and its director are hereby granted the power to do all acts and exercise all powers referred to in Section 11C.3 hereof.

SEC. 11C.5. Funding.

The Board of Supervisors shall appropriate such funds from the general fund of the City and County of San Francisco, subject to budgetary and fiscal provisions of the charter, as it may deem necessary for enforcement of this ordinance.

INT. 11C.5. Severability.

If any clause, sentence, paragraph or part of this title or the application thereof to any person or circumstances shall, for any reason, be judged by a court of law to be invalid, such judgment shall not affect, impair or invalidate the remainder of this chapter.

Final Passage-February 23, 1977
Approved by Mayor-March 11, 1977

FILE NO. 65-84-5

ORDINANCE NO. 182-84

(Ground Lease)
APPROVING AWARD OF GROUND LEASE BY PUBLIC UTILITIES COMMISSION
FOR A TERM OF MORE THAN TEN YEARS.

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

Section 1. Award by the Public Utilities Commission on November 8, 1983, to Grace Retail Corporation ~~Orinda/Sunnyvale~~, a Delaware corporation, as the highest, qualified bidder, of a ground lease of 4.757 acres of Water Department land in Millbrae, California, for a term in excess of ten years and having anticipated revenue to the City and County of San Francisco of \$1 million or more, is hereby approved.

1/11/84
3ls

APPROVED AS TO FORM:
GEORGE AGNOST, City Attorney
By [Signature]
Utilities General Counsel

RECOMMENDED:
PUBLIC UTILITIES COMMISSION
By [Signature]
General Manager of Public Utilities

9116C

Passed for Second Reading
Board of Supervisors, San Francisco

APR 16 1984

Ayes: Supervisors ~~BRITT~~ Hongisto, Kennedy,
Kopp, Maher, Molinari, Nelder, Renne, Silver,

~~WALKER~~ ~~Ward~~

~~Also: Supervisors~~

Absent: Supervisors

~~BRITT~~ ~~WARD~~

Clerk

65-845
File No.

APR 26 1984
Approved:

Read Second Time and Finally Passed
Board of Supervisors, San Francisco

APR 23 1984

Ayes: Supervisors ~~BRITT~~ Hongisto, Kennedy,
Kopp, Maher, Molinari, Nelder, Renne, Silver,
~~WALKER~~ ~~Ward~~

~~Also: Supervisors~~

Absent: Supervisors

~~WALKER~~

Clerk

I hereby certify that the foregoing ordinance was
finally passed by the Board of Supervisors of the
City and County of San Francisco.

Mayor

PUBLIC UTILITIES COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 83-0483

WHEREAS, the San Francisco Water Department owns approximately 4.752 acres of land at 950 El Camino Real in Millbrae, California, which is excess to the Water Department's present needs, and

WHEREAS, pursuant to the terms and conditions of Commission Resolution No. 82-310, adopted July 27, 1982, the Water Department published an invitation for sealed bids for the purpose of awarding a ground lease of said premises for thirty (30) years for commercial use and on other terms and conditions provided for in the proposed lease; and

WHEREAS, sealed bids were received by the Water Department from Orchard Supply Hardware, Lucky Stores, Inc., and KTW/C&H, which bids included the following minimum annual lease rentals:

Orchard Supply Hardware	\$150,000
Lucky Stores, Inc.	\$144,000
KTW/C&H	\$136,000

and

WHEREAS, the values of the three bids and the qualifications of all three bidders have been considered by Commission in order to determine the successful bidder; now, therefore, be it

RESOLVED, that this Commission hereby awards to Orchard Supply Hardware, as the highest, responsible, qualified bidder, a ground lease for commercial use of approximately 4.752 acres of land at 950 El Camino Real, Millbrae, California, copies of which lease are on file with the Water Department, for the term of

RECEIVED
PUBLIC UTILITIES COMMISSION
CITY AND COUNTY OF SAN FRANCISCO
MAY 12 9 31 AM '83

PUBLIC UTILITIES COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION No. _____

thirty (30) years and at the minimum rent and overage and on the other terms and conditions contained in said lease, subject to confirmation by the City's Board of Supervisors; and be it

FURTHER RESOLVED, that City's Board of Supervisors be requested to approve, by ordinance, award of said ground lease; and be it

FURTHER RESOLVED, that upon approval by the Board of Supervisors, the General Manager of Public Utilities is hereby authorized and directed to execute said lease.

9083C

NOV 12 8 21 AM '83
PUBLIC UTILITIES COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission
at its meeting of _____ NOVEMBER 8 1983

Romaine A. Boldridge
Secretary, Public Utilities Commission

FILE NO. 65-84-5

ORDINANCE NO. 182-84

(Ground Lease)
APPROVING AWARD OF GROUND LEASE BY PUBLIC UTILITIES COMMISSION
FOR A TERM OF MORE THAN TEN YEARS.

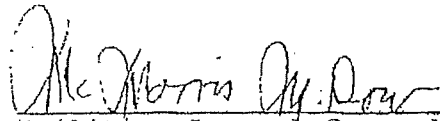
Be it ordained by the People of the City and County of San
Francisco:

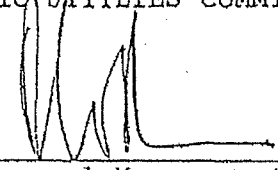
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of 4.757 acres of Water Department land in Millbrae, California,
for a term in excess of ten years and having anticipated revenue
to the City and County of San Francisco of \$1 million or more, is
hereby approved.

4/11/84
Bls

APPROVED AS TO FORM:
GEORGE AGNOST, City Attorney

RECOMMENDED:
PUBLIC UTILITIES COMMISSION

By 
Utilities General Counsel

By 
General Manager of Public
Utilities

9116C

SHORT FORM OF GROUND LEASE

This GROUND LEASE is made as of this 26th day of APRIL, 1984, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting through its Public Utilities Commission (the "Commission") ("Landlord"), and GRACE RETAIL CORPORATION, a Delaware corporation having an office at c/o Orchard Supply Hardware, 1555 S. Seventh St., San Jose, California 95112 ("Tenant").

RECITALS:

This Ground Lease is made and entered on the basis of the following facts, understandings and intentions of the parties:

A. Landlord is the owner of all that certain real property ("the Premises") situated in the City of Millbrae, County of San Mateo, State of California, particularly described in Exhibit A-1 hereto and shown on the survey attached hereto as Exhibit A-3.

B. Tenant desires to lease the Premises from Landlord in "as is" condition and to have the right to erect new improvements thereon.

C. Landlord is willing to lease the Premises to Tenant and to grant Tenant the right to erect thereon new improvements [subject to, and in accordance with, all applicable laws and regulations and the provisions of this Ground Lease].

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and promises herein contained, Landlord leases to Tenant, and Tenant does hereby lease and take from Landlord, the Premises upon the terms and conditions set forth in that certain Ground Lease bearing even date herewith all of which are incorporated herein by reference, for a term of thirty (30) years from the Commencement Date of MAY 1, 1984, with Tenant having the right to extend the Term for two (2) additional periods of ten (10) years each, subject to all of the terms, covenants and conditions contained in the Ground Lease; TOGETHER WITH, and Landlord hereby grants and demises to Tenant, a nonexclusive easement for the Term of the Ground Lease and any Extended Term of the Ground Lease over a portion of that certain parcel of property owned by Landlord and situated immediately adjacent to the Premises, said easement area being more

particularly described on Exhibit A-2 and located within the area shown on Exhibit A-3 hereto and designated thereon as "Ingress & Egress Easement", for the purpose of ingress and egress by Tenant, its subtenants, customers, employees, invitees, licensees, agents, and contractors, in the conduct of its business, and any motor vehicles used in the conduct of business to and from the Premises onto El Camino Real at the signalized intersection.

IN WITNESS WHEREOF, the parties hereto have executed this Short Form of Ground Lease the day and year first above written.

APPROVED AS TO FORM:

"Landlord"

GEORGE AGNOST
City Attorney

CITY AND COUNTY OF SAN FRANCISCO
By Public Utilities Commission

By McMORRIS M. DOW
McMORRIS M. DOW
Utilities General Counsel

By RUDOLF NOTENBERG
RUDOLF NOTENBERG
General Manager of Public
Utilities

Authorized by Public
Utilities Commission
Resolution No. 83-0483
Adopted November 8, 1983

Attest: Romaine S. Boldridge
Romaine S. Boldridge
Secretary

"Tenant"

GRACE RETAIL CORPORATION

(SEAL)
Attest:

By Francis H. Steen
Assistant Secretary

By Edward H. Tutun
Edward H. Tutun
President

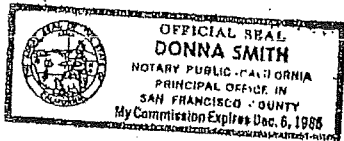
LEGAL MM

RE _____

STATE OF CALIFORNIA)
) ss:
COUNTY OF)

On this 11 day of May, 1984, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Rudolf Nothenberg, known to me to be the General Manager of Public Utilities of the Public Utilities Commission of the City and County of San Francisco, the municipal corporation that executed the within instrument, and acknowledged to me that such municipal corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Donna Smith
Notary Public

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

On this 5th day of March, 1984, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Edward H. Tutun, known to me to be the President of Grace Retail Corporation, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

CARMELA ROMALDO
Notary Public, State of New York
No. 31-4519206
Qualified in New York County
Commission Expires March 30, 1984.

Carmela Romaldo
Notary Public

EXHIBIT A-1

DESCRIPTION OF PREMISES

All of that real property situate in the City of Millbrae, County of San Mateo, State of California, described as follows:

Beginning at a point distant North 39°14' West, 50.08 feet from the intersection of the boundary line between the C.M.P. Coleman 175.20 acre tract and the Custodio Silva 168 acre tract and said point being distant South 53°46' West, 51.63 feet from the westerly line of the lands of Southern Pacific Railroad Company. Thence North 39°14' West a distance of 255.56 feet; Thence South 53°46' West a distance of 292.25 feet; Thence North 34°52'55" West a distance of 75.02 feet; Thence South 53°46' West 428.24 feet, more or less, to the northerly line of El Camino Real; Thence along said northerly line south 46°53' East a distance of 336.00 feet; Thence leaving said northerly line and running parallel to and distant 50 feet measured at right angles northwesterly from said line between C.M.P. Coleman 175.20 acre tract and said Custodio Silva 168 acre tract, North 53°46' East a distance of 670.00 feet, more or less to the POINT OF BEGINNING.

Containing 4.7505 acres of land, more or less.

EXHIBIT A-2

DESCRIPTION OF INGRESS & EGRESS EASEMENT

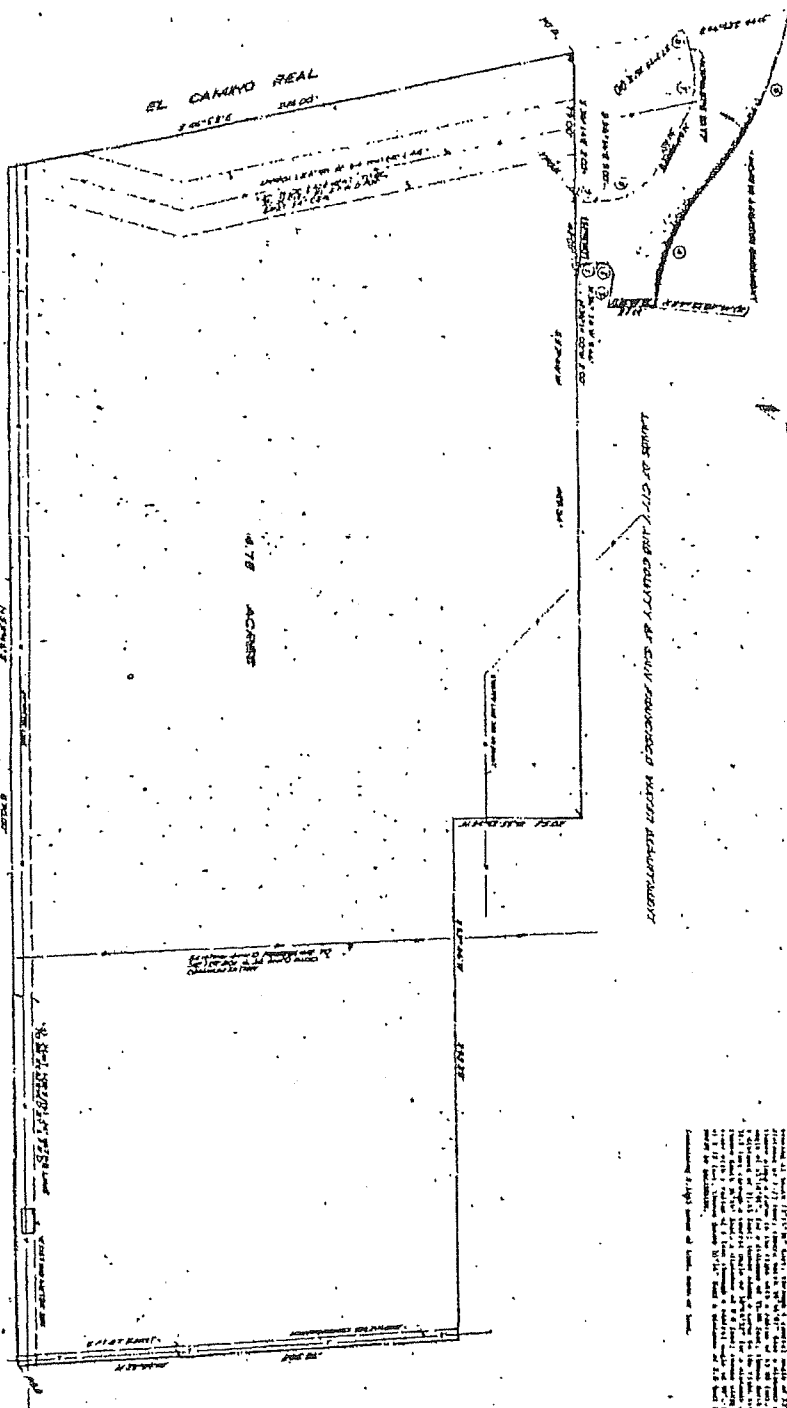
All that certain real property situate in the City of Millbrae, County of San Mateo, State of California, described as follows:

Commencing at the northwest corner of the Lands of the City and County of San Francisco leased to Orchard Supply Hardware in the City of Millbrae, County of San Mateo, State of California and proceeding along the northerly line of said lands North 53°46' East a distance of 79 feet to the TRUE POINT OF BEGINNING; thence continuing along said northerly line North 53°46' East, a distance of 42 feet; thence North 36°14' West a distance of 2.0 feet; thence along a curve to the right with a radius of 4 feet from a tangent bearing of South 53°46' West, through a central angle of 90° for a distance of 6.28 feet; thence North 36°14' West a distance of 9.46 feet; thence along a curve to the right with a radius of 6 feet, through a central angle of 102°12'05" for a distance of 10.70 feet to a point of reverse curve; thence along a curve to the left with a radius of 147.0 feet, through a central angle of 6°59'46", a distance of 17.95 feet; thence North 36°14' West a distance of 27.14 feet; thence along a curve to the right with a radius of 120.0 feet, from a radial bearing of North 29°51'09" West, through a central angle of 35°44'37" for a distance of 74.86 feet, to a point of reverse curve; thence along a curve to the left with a radius of 213.0 feet, through a central angle of 30°07'30", a distance of 111.59 feet, to a point on the northerly line of El Camino Real; thence along said northerly line South 46°53' East a distance of 64.45 feet; thence along a curve to the right with a radius of 18.0 feet, from a radial bearing of South 73°15'36" East, through a central angle of 23°01'43" for a distance of 7.23 feet; thence North 39°46'07" East a distance of 10.77 feet; thence along a curve to the right with a radius of 43.00 feet, through a central angle of 45°10'01", for a distance of 33.90 feet; thence North 84°56'08" East a distance of 31.45 feet; thence along a curve to the right with a radius of 38.0 feet through a central angle of 58°49'52" for a distance of 39.02 feet; thence South 36°14' East, a distance of 9.0 feet; thence along a curve to the right with a radius of 4 feet through a central angle of 90°, for a distance of 6.28 feet; thence South 36°14' East a distance of 2.0 feet to the TRUE POINT OF BEGINNING.

Containing 0.1643 acres of land, more or less.

EXHIBIT A-3

SURVEY



NO.	DESCRIPTION	AREA
1
2
3
4
5
6

THIS SURVEY WAS MADE BY CIVIL ENGINEERS & SURVEYORS, INC. ON THE 15TH DAY OF MARCH, 1954, FOR THE CITY OF SANTA CLARA, CALIFORNIA. THE SURVEY WAS MADE IN ACCORDANCE WITH THE PROVISIONS OF THE SURVEYING ACTS OF CALIFORNIA, AND THE SURVEY WAS FOUND TO BE CORRECT AND ACCURATE. THE SURVEY WAS MADE BY CIVIL ENGINEERS & SURVEYORS, INC., A PROFESSIONAL CORPORATION, INCORPORATED UNDER THE LAWS OF CALIFORNIA, AND THE SURVEY WAS MADE BY CIVIL ENGINEERS & SURVEYORS, INC., A PROFESSIONAL CORPORATION, INCORPORATED UNDER THE LAWS OF CALIFORNIA, AND THE SURVEY WAS MADE BY CIVIL ENGINEERS & SURVEYORS, INC., A PROFESSIONAL CORPORATION, INCORPORATED UNDER THE LAWS OF CALIFORNIA.

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REMARKS: THIS SURVEY WAS MADE BY CIVIL ENGINEERS & SURVEYORS, INC. ON THE 15TH DAY OF MARCH, 1954, FOR THE CITY OF SANTA CLARA, CALIFORNIA. THE SURVEY WAS MADE IN ACCORDANCE WITH THE PROVISIONS OF THE SURVEYING ACTS OF CALIFORNIA, AND THE SURVEY WAS FOUND TO BE CORRECT AND ACCURATE. THE SURVEY WAS MADE BY CIVIL ENGINEERS & SURVEYORS, INC., A PROFESSIONAL CORPORATION, INCORPORATED UNDER THE LAWS OF CALIFORNIA, AND THE SURVEY WAS MADE BY CIVIL ENGINEERS & SURVEYORS, INC., A PROFESSIONAL CORPORATION, INCORPORATED UNDER THE LAWS OF CALIFORNIA, AND THE SURVEY WAS MADE BY CIVIL ENGINEERS & SURVEYORS, INC., A PROFESSIONAL CORPORATION, INCORPORATED UNDER THE LAWS OF CALIFORNIA.

DEMISE LEASE PREMISES AND ACCESS BASEMENT AREA FOR ORONADO BLUFFY RESERVE SAN JOSE, CALIFORNIA	KIER & WRIGHT CIVIL ENGINEERS & SURVEYORS, INC. 1150 Scott Boulevard Building 21 Santa Clara, California 95051 727-4555	DATE: 3/15/54
		DRAWN BY: [Name]

SAN FRANCISCO WATER DEPARTMENT

LAND USE PERMIT

GEN-1700-85

Pursuant to authority granted by the Public Utilities Commission, permission is hereby granted to

ORCHARD SUPPLY HARDWARE

(hereinafter called "Permittee") to occupy and utilize the following described parcel or premises owned by the City and County of San Francisco (hereinafter called "City") and under jurisdiction of the Water Department:

Along and within Parcel 18 of former Muni right of way according to San Francisco Water Department records and as shown on San Francisco Water Department Drawing No. C-1183 attached hereto and made a part hereof.

for the purpose of installing a 6-inch VCP sanitary sewer and a 12-inch ACP storm drain to serve the Orchard Supply Hardware's lease of portion of Water Department's Millbrae Yard.

This permit is granted subject to the following conditions:

1. Unless otherwise specifically provided herein this permit shall become effective when the Public Utilities Commission or its authorized representative and the Permittee have signed it. A copy shall be furnished to Permittee.
2. This permit does not constitute a lease, deed or grant of an easement, or of a fee interest by City. It is not transferable or assignable, and is revocable at any time at the option of the Public Utilities Commission.
3. The use authorized by this permit is limited solely to the purposes set forth herein, and, except as expressly herein provided, construction, excavation or installation of structures is not authorized.
4. Neither City nor any commission, board, officer, or employee thereof shall be held responsible or liable for damage to any property of the Permittee installed or located on the premises covered by this permit.
5. Permittee shall at all times keep City's lands in good and sightly condition, so far as the same may be affected by Permittee's operation hereunder.
6. In the event City institutes and prevails in any action for the enforcement of any of its rights hereunder, Permittee will pay to City such reasonable attorney's fees as may be determined by the Court, as part of the costs of such action.

7. Permittee shall, on receipt of notice to do so and within such reasonable time limits as may be fixed by said notice, alter or remove at his own expense any of his improvements, plantings, or other property to such extent as may be required to avoid interference with any of City's pipe, power lines, or other structures now or hereafter to be constructed, with the maintenance thereof, or with any other operations or land use by City. In the event Permittee fails to alter or remove any of his improvements, plantings, or other property within the time limit specified in said notice, said improvements, plantings, or other property may be removed by City, the reasonable expense of which shall be paid to City by Permittee.
8. In the event of any emergency City may, at its sole option and without notice, alter, remove or protect at Permittee's expense, any improvements, plantings, or other property, except utility facilities owned either by a private company or a public agency. On notice that an emergency exists, owners of utility facilities, at their own expense, must take immediate action to protect, remove or relocate such facilities as required to meet the emergency.
9. Permittee shall be responsible and liable for any and all damage to City's structures or property, due directly or indirectly to Permittee's occupation and use of City lands pursuant to this permit, and shall promptly pay any just claim therefor. Permittee shall assume the defense of and indemnify and save harmless the City and County of San Francisco, its Public Utilities Commission, officers, and employees from all claims, loss, liens, damage, injury and liability of every kind, nature and description, directly or indirectly arising from Permittee's occupation and use of City lands pursuant to this permit regardless of responsibility for negligence.
10. Any gardening or landscaping shall be limited to low growing shrubs, grass or plants. Planting of trees on pipeline or electric line rights-of-way is expressly not permitted.
11. To the extent that any special conditions set forth herein conflict with or are inconsistent with the printed conditions, the special conditions shall prevail.
12. In the event the purpose of this permit is to allow Permittee to install utility facilities underground across City's premises, the clear distance between the bottom of Permittee's installation and the top of City's existing and proposed future water lines shall not be less than six inches and Permittee's said installation shall be placed at an approximately constant grade for the entire crossing.
13. In the event the purpose of this permit is to allow Permittee to install utility facilities underground across City's premises, Permittee shall properly mark the alignment of the underground installation with witness posts.
14. All conditions of this permit are subject to periodic review.
15. Permittee's proposed installations within City's right of way shall be in accordance with Permittee's drawing bearing City's signed approval. This drawing is attached hereto as Exhibit "A" and is hereby made a part of this permit.
16. In the event City expand facilities into the permit area in the future, Permittee shall remove his sewer authorized under this permit and relocate elsewhere, all at his own expense.
17. Unless sooner revoked, this permit shall terminate at the end of Permittee's lease of adjoining land.
18. The Permittee shall notify the Manager of the Suburban Division of the San Francisco Water Department, phone 697-4424, five working days prior to the date of installation.
19. The removal of existing trees along and near the sewer line authorized under this permit is required. The Permittee shall perform this work under the direction of the City and at his own expense.
20. The installation of facilities authorized by this permit is subject to City's inspection and approval.
21. The City reserves the right to alter, add, and delete from the work authorized or required under this permit.
22. Rights granted herein shall be limited to area granted under this permit. Permittee shall not use the adjacent lands of the City without prior approval of the General Manager of the San Francisco Water Department.
23. Permittee shall not accept and release his Contractor for the work authorized or required by this permit before securing the approval of the City.
24. Permittee shall install markers identifying location of their underground facilities constructed under this permit. Markers and identifying information thereon shall be approved by the City.
25. Upon completion of installation permitted hereunder, Permittee shall remove all debris and excess dirt and restore the right of way to their original condition to the satisfaction of the General Manager of the San Francisco Water Department.
26. The City shall not be taxed or assessed for the improvements permitted hereunder.

27. Public Liability and Property Damage Insurance

Permittee agrees to maintain in force during the existence of this permit, and at its cost and expense, comprehensive general liability insurance, including automobiles and products liability insurance if required by the Public Utilities Commission. The policy or policies of said insurance shall name as insured, or as additional insureds, City, Public Utilities Commission and its members, and the officers, agents and employees of each. Said policy or policies shall insure said persons against loss or liability for damages for bodily injury, death or property damage occasioned by reason of the operations of Permittee in, on and about the property permitted to be occupied by or used with minimum liability limits as follows:

\$1,000,000 Combined Single Limit for bodily injury or death of any one person; and
for bodily injury or death of two or more persons,
in any one occurrence; and
for damage to property resulting from any one occurrence.

A copy of said insurance policy or policies shall be furnished to the General Manager and Chief Engineer, San Francisco Water Department, hereinafter referred to as Manager, upon the execution of this permit and shall contain a provision that written notice of cancellation or of any material change thereof shall be delivered to Manager thirty (30) days in advance of the effective date thereof. In the event that others than the aforesaid persons are named in said policy or policies as insureds, or additional insureds, Permittee shall furnish Manager with a satisfactory severability of interests endorsement thereon. Approved forms of the last two aforesaid endorsements may be obtained from Manager.

Thereafter and during the term of this permit, Permittee shall furnish to Manager, from time to time, a duly executed certificate to the effect that the insurance coverage furnished to City is being maintained by Permittee. Such policies or certificates shall be issued by a company or companies approved in writing by City's Controller and as to form by City's City Attorney. Permittee shall increase the aforesaid limits upon the written demand of City provided that said increases are reasonable and justifiable by City.

Dated 4/22/85

PERMITTEE

ORCHARD SUPPLY HARDWARE

By R. Ingan

Title Director/Store Planning

CITY AND COUNTY OF SAN FRANCISCO
PUBLIC UTILITIES COMMISSION

General Manager of Public Utilities

By Arthur R. Jensen

Arthur R. Jensen
Acting General Manager and Chief Engineer
San Francisco Water Department

Dated APR 29 1985

SAN FRANCISCO WATER DEPARTMENT

LAND USE PERMIT

Pursuant to authority granted by the Public Utilities Commission, permission is hereby granted to

GRACE RETAIL CORPORATION
BORCHARD SUPPLY HARDWARE
P.O. BOX 6450
SAN JOSE, CALIFORNIA 95150-6450
ATTENTION: MIKE LA TOURETTE

(hereinafter called "Permittee") to occupy and utilize the following described parcel or premises owned by the City and County of San Francisco (hereinafter called "City") an under jurisdiction of the Water Department:

The following described real property situated in the City of Millbrae, County of San Mateo, State of California;

A portion of Parcel 29 Millbrae Corporation Yard as conveyed by Spring Valley Water Company to the City and County of San Francisco by deed dated and recorded March 3, 1930 in Volume 491 of Official Records at Page 1, said portion commencing at the intersection of northeasterly line of El Camino Real with the southeasterly line of Parcel 29, thence north $46^{\circ} 53'$ west and along the said northeasterly line of El Camino Real a distance of 336.00 feet, thence north $53^{\circ} 46'$ east a distance of 428.24 feet, thence south $36^{\circ} 14'$ east a distance of 75.00 feet; thence north $53^{\circ} 46'$ east a distance of 292.25 feet; thence south $39^{\circ} 14'$ east a distance of 255.56 feet; thence south $53^{\circ} 46'$ west a distance of 670.00 feet to the point of commencement.

Containing 4.752 acres more or less.

All of which property is identified by San Francisco Water Department Drawing No. B-4051-4 dated May 2, 1978 and revised January 26, 1983, attached hereto, and made a part hereof.

for the purpose of conducting preliminary engineering, survey and site preparation work.

This permit is granted subject to the following conditions:

1. Unless otherwise specifically provided herein this permit shall become effective when the Public Utilities Commission or its authorized representative and the Permittee have signed it. A copy shall be furnished to Permittee.
2. This permit does not constitute a lease, deed or grant of an easement, or of a fee interest by City. It is not transferable or assignable, and is revocable at any time at the option of the Public Utilities Commission.
3. The use authorized by this permit is limited solely to the purposes set forth herein, and, except as expressly herein provided, construction, excavation or installation of structures is not authorized.
4. Neither City nor any commission, board, officer, or employee thereof shall be held responsible or liable for damage to any property of the Permittee installed or located on the premises covered by this permit.
5. Permittee shall at all times keep City's lands in good and sightly condition, so far as the same may be affected by Permittee's operation hereunder.
- ~~6. In the event City institutes and prevails in any action for the enforcement of any of its rights hereunder, Permittee will pay to City such reasonable attorney's fees as may be determined by the Court, as part of the costs of such action.~~

7. Permittee shall, on receipt of notice to do so and within such reasonable time limits as may be fixed by said notice, alter or remove at his own expense any of his improvements, plantings, or other property to such extent as may be required to avoid interference with any of City's pipe, power lines, or other structures now or hereafter to be constructed, with the maintenance thereof, or with any other operations or land use by City. In the event Permittee fails to alter or remove any of his improvements, plantings, or other property within the time limit specified in said notice, said improvements, plantings, or other property may be removed by City, the reasonable expense of which shall be paid to City by Permittee.
8. In the event of any emergency City may, at its sole option and without notice, alter, remove or protect at Permittee's expense, any improvements, plantings, or other property, except utility facilities owned either by a private company or a public agency. On notice that an emergency exists, owners of utility facilities, at their own expense, must take immediate action to protect, remove or relocate such facilities as required to meet the emergency.
9. Permittee shall be responsible and liable for any and all damage to City's structures or property, due directly or indirectly to Permittee's occupation and use of City lands pursuant to this permit, and shall promptly pay any just claim therefor. Permittee shall assume the defense of and indemnify and save harmless the City and County of San Francisco, its Public Utilities Commission, officers, and employees from all claims, loss, liens, damage, injury and liability of every kind, nature and description, directly or indirectly arising from Permittee's occupation and use of City lands pursuant to this permit regardless of responsibility for negligence.
10. Any gardening or landscaping shall be limited to low growing shrubs, grass or plants. Planting of trees on pipelines or electric line rights-of-way is expressly not permitted.
11. To the extent that any special conditions set forth herein conflict with or are inconsistent with the printed conditions, the special conditions shall prevail.
12. In the event the purpose of this permit is to allow Permittee to install utility facilities underground across City's premises, the clear distance between the bottom of Permittee's installation and the top of City's existing and proposed future water lines shall not be less than six inches and Permittee's said installation shall be placed at an approximately constant grade for the entire crossing.
13. In the event the purpose of this permit is to allow Permittee to install utility facilities underground across City's premises, Permittee shall properly mark the alignment of the underground installation with witness posts.
14. All conditions of this permit are subject to periodic review.
15. This permit is granted for the interim period pending confirmation for approval by City's Board of Supervisors of that certain ground lease awarded to Permittee by Public Utilities Commission, pursuant to Resolution No. 83-0483, adopted November 8, 1983.
16. Permittee shall notify Manager of Suburban Division of San Francisco Water Department, phone (415) 697-4424, at least 24 hours prior to date of entry, for any work or activity to be conducted under this permit.
17. Permittee may enter adjoining San Francisco Water Department's Suburban Headquarters lands for purposes granted herein.
18. Permittee shall use extreme care to protect the City's existing water transmission pipelines at all times. Permittee shall not use heavy construction equipment over the City's pipelines during construction.
19. To prevent damage to City's underground pipelines, Permittee's use of vehicles and construction equipment closer than 20 feet to City's pipelines shall be subject to the following restrictions:
 - a. The cover over the tops of City's pipelines must be at least 3 feet.
 - b. The "axle loading" of vehicles and construction equipment must not exceed that allowed under "AASHTO Standard H-10 Loading". H-10 loading is defined as loading caused by a two axle truck with a gross weight of ten tons (20,000 lbs.), axles 14 feet apart, and rear axle carrying 8 tons (16,000 lbs). It is Permittee's responsibility to provide substantiation that his equipment meets this requirement.

20. Public Liability and Property Damage Insurance:

Permittee agrees to maintain in force during the existence of this permit, and at its cost and expense, comprehensive general liability insurance, including automobile and products liability insurance, if required by the Public Utilities Commission. The policy or policies of said insurance shall name as insured, or as additional insureds, City, Public Utilities Commission and its members, and the officers, agents and employees of each. Said policy or policies shall insure said persons against loss or liability for damages for bodily injury, death or property damage occasioned by reason of the operations of Permittee in, on and about the property permitted to be occupied by or used with minimum liability limits as follows:

\$1,000,000 Combined Single Limit for bodily injury or death of any one person; and
for bodily injury or death of two or more persons,
in any one occurrence; and
for damage to property resulting from any one occurrence.

A copy of said insurance policy or policies shall be furnished to the General Manager and Chief Engineer, San Francisco Water Department, hereinafter referred to as Manager, upon the execution of this permit and shall contain a provision that written notice of cancellation or of any material change thereof shall be delivered to Manager thirty (30) days in advance of the effective date thereof. In the event that others than the aforesaid persons are named in said policy or policies as insureds, or additional insureds, Permittee shall furnish Manager with a satisfactory severability of interests endorsement thereon. Approved forms of the last two aforesaid endorsements may be obtained from Manager.

Thereafter and during the term of this permit, Permittee shall furnish to Manager, from time to time, a duly executed certificate to the effect that the insurance coverage furnished to City is being maintained by Permittee. Such policies or certificates shall be issued by a company or companies approved in writing by City's Controller and as to form by City's City Attorney. Permittee shall increase the aforesaid limits upon the written demand of City provided that said increases are reasonable and justifiable by City.

Dated JANUARY 27, 1984

PERMITTEE:

GRACE RETAIL CORPORATION

By George J. Winchell

George J. Winchell

Title Vice President

LEGAL MMO
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CITY AND COUNTY OF SAN FRANCISCO RE
PUBLIC UTILITIES COMMISSION

General Manager of Public Utilities

By George J. Kelleher

John EUGENE J. KELLEHER
General Manager and Chief Engineer
San Francisco Water Department

Dated Jan 30, 1984

EXHIBIT A

CHAPTER 12C OF THE SAN FRANCISCO ADMINISTRATIVE CODE

AMENDING THE SAN FRANCISCO ADMINISTRATIVE CODE BY ADDING CHAPTER 12C THEREOF, PROHIBITING DISCRIMINATION IN REAL PROPERTY CONTRACTS ON THE BASIS OF RACE, COLOR, CREED, NATIONAL ORIGIN, ANCESTRY, AGE, SEX, SEXUAL ORIENTATION OR DISABILITY.

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

Section 1. Chapter 12C is added to the San Francisco Administrative Code to read as follows:

CHAPTER 12C

NONDISCRIMINATION IN PROPERTY CONTRACTS

SEC. 12C.1. All Property Contracts to Include Nondiscrimination Provisions.

All contracting agencies of the City and County of San Francisco, or any department thereof, acting for or on behalf of the City and County, shall include in all contracts, franchise, leases, concessions or other agreements involving the lease, rental, or other use of real property and improvements thereon of the City and County of San Francisco, for a period exceeding twenty-nine (29) days in any calendar year, whether by singular or cumulative instrument, a provision obligating the contractor, franchisee, lessee, concessionaire, or other party of said agreement not to discriminate on the ground or because of race, color, creed, national origin, ancestry, age, sex, sexual orientation or disability against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, operating from or making use of said real property, and shall require such contractor, franchisee, lessee, or concessionaire to include a similar provision in all subcontracts, subleases, or other subordinate agreements for a period exceeding twenty-nine (29) days in any calendar year, whether by singular or cumulative instrument, let, awarded, negotiated or entered into thereunder.

SEC. 12C.2. Definitions.

As used in this chapter the term:

- 'Age' for the purpose of membership refers to and shall include any person who has attained the age of eighteen (18) years, except for bona fide senior citizen organizations.
'Contract' shall mean and include an agreement to operate from or make use of real property of the City and County of San Francisco in the operation of a business, social, or other establishment or organization.
'Contractor' means any person or persons, firm, partnership, corporation, or combination thereof, who enters into a contract to operate from or make use of real property of the City and County of San Francisco in the operation of a business, social, or other establishment or organization.
'Subcontract' shall mean and include an agreement or contract under or subordinate to a prime contract, franchise, lease, or concession to operate from or make use of real property of the City and County of San Francisco in the operation of a business, social or other establishment or organization.
'Concession' includes a grant of land or other property by or on behalf of the City and County of San Francisco to a person for the purpose or use specified in said grant.
'Concessionaire' shall mean and include a person who is the grantee or beneficiary of a concession as herein defined.
'Franchise' shall mean and include a right or privilege conferred by grant from the City and County of San Francisco, or any contracting agency thereof, and vested in and authorizing a person to conduct such business, social, or other activity as is specified in said grant.
'Franchisees' shall mean and include a person who is the grantee or beneficiary of a franchise as herein defined.
'Instrument' shall mean and include a contract, franchise, lease, concession or other agreement to operate from or make use of real property of the City and County of San Francisco in the operation of a business, social or other establishment or organization.
'Lease' shall mean and include a contract by which the City and County of San Francisco, or any contracting agency thereof, grants to a person the temporary possession and use of property, for reward, and the latter agrees to return the same to the former at a future time.
'Lessee' shall mean and include a person or tenant taking possession of real property under a lease as herein provided.

'Sublease' shall mean and include a lease by which a lessee or tenant grants or lets to another person part or all of the leased real property for a shorter term and under which said leasee or tenant retains some right or interest under the original lease.

'Real Property' shall mean and include land in which the City and County of San Francisco holds a legal interest and improvements to said real property.

'Sex' shall mean the character of being male or female.

'Sexual Orientation' shall mean the choice of human adult sexual partner according to gender.

'Disability' is a physical or mental impairment which does not make the person incapable of making use of the accommodations, advantages, facilities, privileges, services or membership in business, social or other establishments or organizations with a reasonable accommodation to his or her disability, and does not make the person incapable of making such use in a manner which would not endanger his or her health and safety or the health and safety of others.

'Tenant' shall mean the person or persons, firm, partnership, corporation or combination thereof who enter into a contract, franchise, lease, concession or other agreement involving the lease, rental or other use of real property and improvements thereon of the City and County of San Francisco.

SEC. 12C.3. Nondiscrimination Provisions of Property Contracts.

Every contract, franchise, lease, concession or other agreement entered into by any agency of the City and County of San Francisco, or any department thereof, involving the lease, rental, or other use of real property and improvements thereon of the City and County of San Francisco for a period exceeding twenty-nine (29) days in any calendar year, whether by singular or cumulative instrument, shall contain the provisions following, which shall be known as the nondiscrimination provisions of such property contract.

In the performance of this contract, the tenant agrees as follows:

- (a) The tenant or subtenant will not discriminate against any person seeking accommodations, advantages, facilities, privileges, services, or membership in the business, social or other establishment or organization operated by the tenant or subtenant on the real property of the City and County of San Francisco, on the ground or because of race, color, creed, national origin, ancestry, age, sex, sexual orientation, or disability.
(b) Should the tenant or subtenant operate as a membership organization, the tenant will permit access to his membership records, rules, regulations and other pertinent data, by the awarding authority, or the San Francisco Human Rights Commission, for the purpose of investigating to ascertain compliance with the nondiscrimination provisions of this contract, and on request provide evidence that has or will comply with the nondiscrimination provisions of this contract.

(c) That tenant or subtenant shall be deemed to have breached the nondiscrimination provisions of this contract upon:

- (1) A finding by the Director of the San Francisco Human Rights Commission or such other official who may be designated by the Human Rights Commission, that tenant has willfully violated such nondiscrimination provisions.
(2) Upon such finding by the Director of the Human Rights Commission, or other official designated by the Human Rights Commission, the awarding authority shall notify tenant, or subtenant that unless he demonstrates to the satisfaction of the Director of the San Francisco Human Rights Commission or other official designated by the Human Rights Commission within such reasonable period as the Human Rights Commission shall determine, that the violation has been corrected, action will be taken as set forth in subparagraph (d).

(3) The Human Rights Commission shall, within ten days of the date of issuance of any finding by the Director of the Human Rights Commission or other official designated by the Commission in the enforcement of this chapter, mail to any person or persons affected by said finding, a copy of said finding, together with written notice of his right to appeal. Notice of appeal must be filed in writing with the Chairman of the Commission within 20 days of the date of mailing said copy and notice.

(4) For purposes of appeal proceedings under this section, a quorum shall consist of eight members of the Commission. The vote of the majority of the full Commission shall be necessary to affirm, reverse or modify such decisions, order or other action rendered hereunder. Should a member of the Human Rights Commission be designated under Section 12B.2 (c) (1) of this contract, that commissioner may not participate in an appeal under this section except as a witness.

(5) The presiding officer of the Commission shall have the power to administer oaths to witnesses in appeals before the Commission under this section. In the event that any person shall fail or refuse to appear as a witness in any such proceeding after being requested to do so, and if it shall appear to the Commission that his testimony, or books, records, documents or other things under his control are material and relevant as evidence in the matter under consideration by the Commission in the proceeding, the presiding officer of the Commission may subpoena such person, requiring his presence at the proceeding and requiring him to bring such books, records, documents or other things under his control.

(6) All appeals to the Human Rights Commission shall be open to public inspection. Upon reaching a decision in any appeal, the Commission shall give written notice thereof to the Director of the Human Rights Commission, or other official designated by the Human Rights Commission, and the appellant or appellants. The decision of the Commission shall be final unless within 15 days of the filing and service of written notice thereof appropriate legal proceedings are filed in a court of competent jurisdiction by any party to this contract.

(7) If any tenant or subtenant under contract to the City and County of San Francisco shall fail to appear at an appeal proceeding of the Commission after having been given written notice to appear, such failure to appear shall be grounds for cancellation of the contract or subcontract and such tenant or subtenant shall be deemed to have forfeited all rights, benefits and privileges hereunder.

(8) The Human Rights Commission of San Francisco shall promulgate rules and regulations for the implementation of the nondiscrimination provisions of this contract, and such rules and regulations shall, so far as practicable, be similar to those adopted in applicable federal executive orders.

(d) A breach of the nondiscrimination provisions in the performance of this contract shall be deemed by the City and County of San Francisco to be a material breach of contract and basis for determination by the officer, board or awarding authority responsible for the awarding or letting of such contract that the tenant or subtenant is an irresponsible tenant, lessee, franchisee or concessionaire as to all future contracts for the use of real property. Such person or firm or corporation shall not, for a period of two (2) years thereafter, or until he/she shall establish and carry out a program in conformity with the nondiscrimination provisions of this contract, be allowed to act as a tenant or subtenant under any contract involving the lease, rental or other use of real property and improvements thereon, of the City and County of San Francisco.

(e) Nothing contained in this contract shall be construed in any manner so as to prevent the City and County of San Francisco from pursuing any other remedies that may be available at law.

SEC. 12C.4. Human Rights Commission Empowered.

The San Francisco Human Rights Commission, its presiding officer and its director are hereby granted the power to do all acts and exercise all powers referred to in Section 12C.2 hereof.

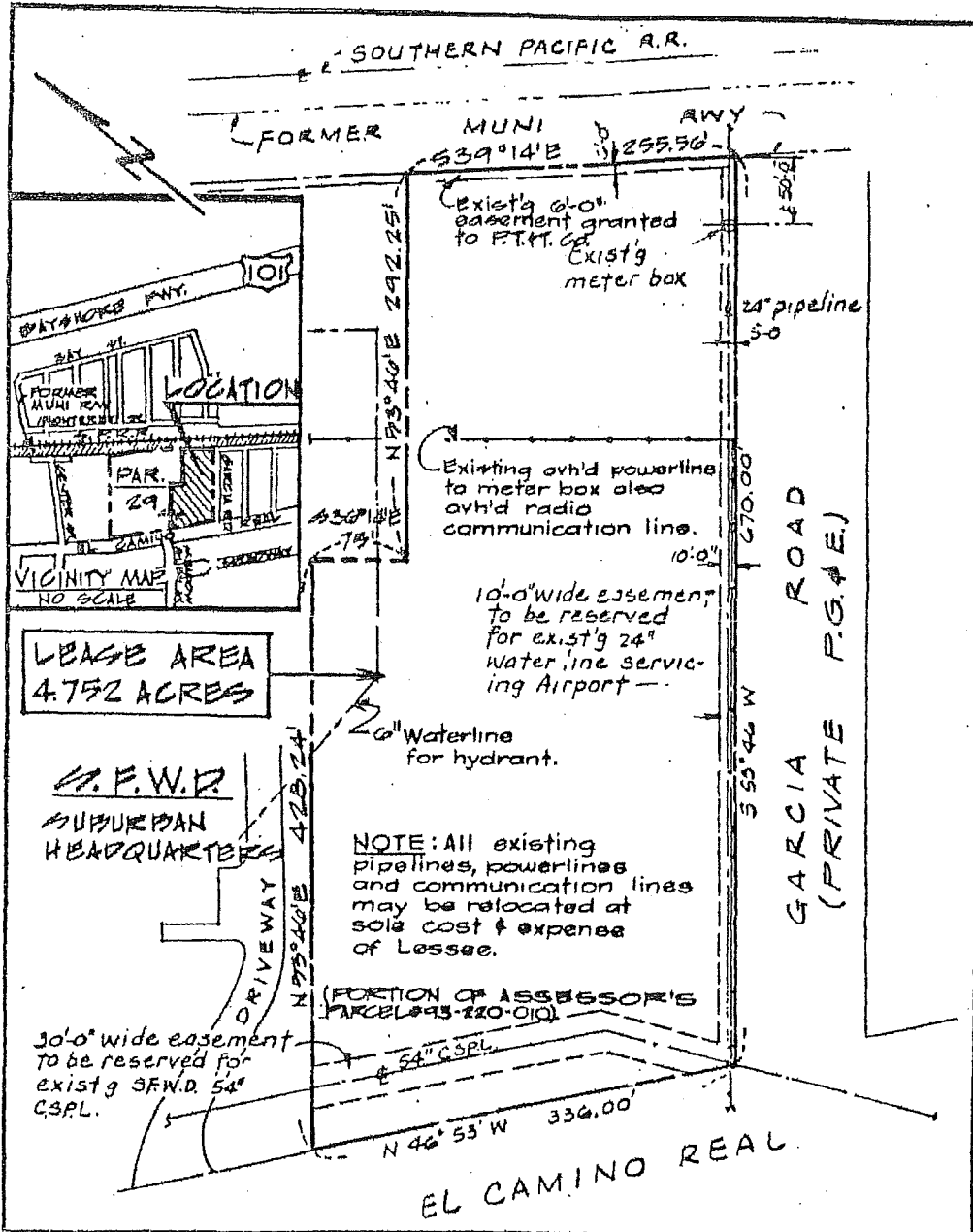
SEC. 12C.5. Funding.

The Board of Supervisors shall appropriate such funds from the general fund of the City and County of San Francisco, subject to budgetary and fiscal provisions of the charter, as it may deem necessary for enforcement of this ordinance.

SEC. 12C.6. Secrecy.

If any clause, sentence, paragraph or part of this title or the application thereof to any person or circumstances shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such jurisdiction shall not affect, impair or invalidate the remainder of this chapter.

Final Passage-February 28, 1977
Approved by Mayor-March 11, 1977



CITY AND COUNTY OF SAN FRANCISCO
PUBLIC UTILITIES COMMISSION
SAN FRANCISCO WATER DEPARTMENT

PROPOSED LAND TO BE LEASED

PORTION OF MILLBRAE PUMP STATION LOT PAR.29 S.M.

APPROVED	SCALE 1"=100'	BY	DR.	DRAWING NO.
APPROVED		REVIEWED	CH. D. M. P.	B-4051-4
GENERAL MANAGER AND CHIEF ENGINEER		DATE 5-2-78	REVISED 1-26-83	

EXHIBIT A

1 [Real Property Lease Amendment - Orchard Supply Company, LLC - San Francisco Utilities
2 Commission Parcel No. 29 in Millbrae, CA - \$460,673]

3 **Resolution authorizing the amendment of Orchard Supply Company, LLC's lease of**
4 **property from the City and County of San Francisco, to reduce the size of the leased**
5 **premises to accommodate the San Francisco Public Utilities Commission (SFPUC)**
6 **Regional Groundwater Storage and Recovery Project, Project No. CUW30103, in**
7 **consideration of City's payment of \$460,673; adopting environmental findings under**
8 **the California Environmental Quality Act (CEQA), CEQA Guidelines, and Administrative**
9 **Code, Chapter 31; adopting findings of consistency with the General Plan, and eight**
10 **priority policies of Planning Code, Section 101.1; and authorizing the Director of**
11 **Property and/or the SFPUC General Manager to execute documents, make certain**
12 **modifications, and take certain actions in furtherance of this Resolution.**

13
14 WHEREAS, The City and County of San Francisco ("City") owns in fee certain real
15 property in Millbrae, California, under the jurisdiction of the San Francisco Public Utilities
16 Commission ("SFPUC") designated as SFPUC Parcel No. 29, and also known as San Mateo
17 County APN 093-220-0101; and

18 WHEREAS, The City, acting through the SFPUC, entered into a Ground Lease dated
19 April 26, 1984 (the "Lease") with the predecessor of Orchard Supply Company, LLC
20 ("Tenant") for the lease of a portion of such property consisting of approximately 4.7505 acres
21 of land commonly known as 900 El Camino Real, Millbrae (the "Premises") for an initial term
22 of 30 years, with two options to extend for periods of 10 years each; and

1 WHEREAS, Tenant exercised the first option to extend the term of the Lease for 10
2 years, commencing on May 1, 2014, at an annual rent of \$1,117,432, subject to rental
3 adjustment on May 1, 2019, in accordance with the Lease; and

4 WHEREAS, The SFPUC has developed and approved the Regional Groundwater
5 Storage and Recovery Project ("Project"), Project No. CUW30103, a capital improvement
6 project included as part of the Water System Improvement Program ("WSIP"), with the
7 primary purpose of providing additional dry-year regional water supply capacity; and

8 WHEREAS, The Project is located in the County of San Mateo and its completion
9 would help the SFPUC achieve the WSIP Level of Service goal for Water Supply adopted by
10 the SFPUC in Resolution No. 08-200; and

11 WHEREAS, An Environmental Impact Report ("EIR") as required by the California
12 Environmental Quality Act ("CEQA") was prepared for the Project by the San Francisco
13 Planning Department, File No. 2008.1396E; and

14 WHEREAS, The San Francisco Planning Commission on August 7, 2014 1) certified
15 the Final EIR ("FEIR") for the Project by Motion No. M-19209; 2) adopted findings under
16 CEQA, including the adoption of a Mitigation Monitoring and Reporting Program ("MMRP")
17 and a statement of overriding considerations ("CEQA Findings") by Motion No. M-19210;
18 and 3) found the Project consistent with the General Plan, and eight priority policies of
19 Planning Code, Section 101.1 ("General Plan Findings") by Motion No. M-19211, a copy of
20 the motions is on file with the Clerk of the Board of Supervisors under File No. 150616,
21 which is incorporated herein by this reference; and

22 WHEREAS, The Board of Supervisors on October 28, 2014, adopted Resolution No.
23 400-14, which included the adoption of CEQA Findings and the adoption of the San
24 Francisco Planning Commission's General Plan Findings for the Project; a copy of which is
25

1 on file with the Clerk of Board of Supervisors under File No. 140945, which is incorporated
2 herein by this reference; and

3 WHEREAS, Implementation of the Project requires that the City amend the Lease to
4 recover permanent possession of a portion of the Premises for construction of Project
5 improvements and temporary possession of portions of the Premises for construction staging
6 and installation of utility lines; and

7 WHEREAS, SFPUC staff, through consultation with the Office of the City Attorney and
8 the Director of Property, have negotiated with Tenant a proposed First Amendment to Ground
9 Lease ("Lease Amendment"), a copy of which is on file with the Clerk of the Board of
10 Supervisors under File No. 160711, which is incorporated herein by this reference, by which
11 City would pay Tenant the sum of \$460,673 as compensation for the necessary permanent
12 and temporary modifications of the Premises, subject to additional payments if City extends
13 the periods of temporary possession, all of which is pursuant to an approved appraisal report
14 dated January 9, 2015; and

15 WHEREAS, On August 12, 2014, by SFPUC Resolution No. 14-0127, a copy of which
16 is on file with the Clerk of the Board of Supervisors under File No. 140945, which is
17 incorporated herein by this reference, SFPUC adopted CEQA Findings, approved the Project,
18 and authorized the SFPUC General Manager and/or the Director of Property to undertake the
19 process to acquire possession of the needed portions of the Premises, and, following Board of
20 Supervisors approval of the necessary lease amendment, to accept and execute the lease
21 amendment and any other related documents necessary to consummate the transactions
22 contemplated therein, in form approved by the City Attorney; and

23 WHEREAS, San Francisco Charter, Section 8B.121(a) grants the SFPUC Commission
24 the exclusive charge of the real property assets under the Commission's jurisdiction, and
25 Charter Section 9.118(c) requires that any amendment of any City lease of real property

1 having a term of ten or more years be approved by resolution of the Board of Supervisors;
2 and

3 WHEREAS, The Project files, including SFPUC Resolution Nos. 08-200 and 14-0127
4 and San Francisco Planning Department File No. 2008.1396E have been made available
5 for review by the Board of Supervisors and the public, and those files are considered part of
6 the record before this Board; and

7 WHEREAS, The Board of Supervisors has reviewed and considered the information
8 contained in the FEIR, and the CEQA Findings, including all written and oral information
9 provided by the Planning Department, the public, relevant public agencies, the SFPUC and
10 other experts and the administrative files for the Project; now, therefore, be it

11 RESOLVED, The Board of Supervisors, having reviewed and considered the FEIR
12 and record as a whole, finds that the proposed Lease Amendment is within the scope of the
13 Project analyzed in the FEIR and previously approved by the San Francisco Planning
14 Commission, the SFPUC, and the Board of Supervisors; and, be it

15 FURTHER RESOLVED, The Board finds that the FEIR is adequate for its use as the
16 decision-making body for approval of the Lease Amendment and hereby incorporates by
17 reference the CEQA Findings made in Resolution No. 400-14, Board File No. 140945
18 concerning the Project; and, be it

19 FURTHER RESOLVED, The Board further finds that since the FEIR was finalized,
20 there have been no substantial Project changes and no substantial changes in Project
21 circumstances that would require major revisions to the FEIR due to the involvement of
22 new significant environmental effects or an increase in the severity of previously identified
23 significant impacts, and there is no new information of substantial importance that would
24 change the conclusions set forth in the FEIR; and, be it

1 FURTHER RESOLVED, The Board of Supervisors hereby incorporates by reference
2 the General Plan Findings made in Resolution No. 400-14, Board File No. 140945
3 concerning the Project; and, be it

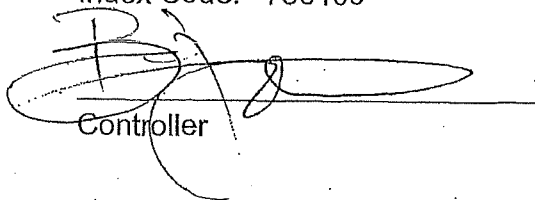
4 FURTHER RESOLVED, That in accordance with the recommendations of the
5 SFPUC General Manager and the Director of Property, the Board of Supervisors hereby
6 approves the Lease Amendment and the transaction contemplated thereby in substantially
7 the form of such instrument presented to this Board; and, be it

8 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of
9 Property and/or the SFPUC's General Manager to enter into any additions, amendments,
10 or other modifications to the Lease Amendment (including, without limitation, the attached
11 exhibits) that the Director of Property and/or the SFPUC's General Manager determines are
12 in the best interest of the City, do not materially increase the obligations or liabilities of the
13 City or materially diminish the benefits to the City, and are necessary or advisable to
14 complete the transaction contemplated in the Lease Amendment and effectuate the
15 purpose and intent of this resolution, such determination to be conclusively evidenced by
16 the execution and delivery by the Director of Property or the SFPUC's General Manager of
17 the Lease Amendment and any amendments thereto; and, be it

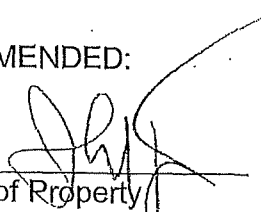
18 FURTHER RESOLVED, That the Director of Property and/or the General Manager
19 of the SFPUC are hereby authorized and urged, in the name and on behalf of the City and
20 County, to execute and deliver the Lease Amendment with Tenant, in substantially the form
21 of such instrument presented to this Board, and to take any and all steps (including, but not
22 limited to, the execution and delivery of any and all certificates, agreements, notices,
23 consents, and other instruments or documents) as the Director of Property or SFPUC
24 General Manager deems necessary or appropriate in order to consummate the modification
25 of the Premises pursuant to the Lease Amendment, or to otherwise effectuate the purpose

1 and intent of this Resolution, such determination to be conclusively evidenced by the
2 execution and delivery by the Director of Property or SFPUC General Manager of any such
3 documents.

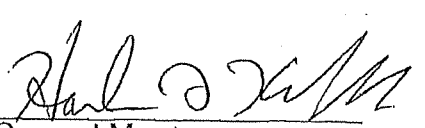
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8 \$460,673.00 available
Index Code: 730150

9
10 
11 Controller

12
13 RECOMMENDED:

14 
15 Director of Property
16 Real Estate Division

17 RECOMMENDED:

18 
19 General Manager
20 San Francisco Public Utilities Commission
21
22
23
24
25



City and County of San Francisco

Tails
Resolution

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 160711

Date Passed: July 26, 2016

Resolution authorizing the amendment of Orchard Supply Company, LLC's lease of property from the City and County of San Francisco, to reduce the size of the leased premises to accommodate the San Francisco Public Utilities Commission (SFPUC) Regional Groundwater Storage and Recovery Project, Project No. CUW30103, in consideration of City's payment of \$460,673; adopting environmental findings under the California Environmental Quality Act (CEQA), CEQA Guidelines, and Administrative Code, Chapter 31; adopting findings of consistency with the General Plan, and eight priority policies of Planning Code, Section 101.1; and authorizing the Director of Property and/or the SFPUC General Manager to execute documents, make certain modifications, and take certain actions in furtherance of this Resolution.

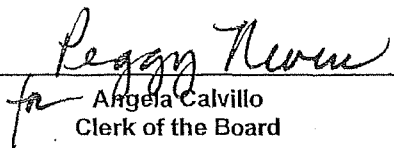
July 20, 2016 Budget and Finance Sub-Committee - RECOMMENDED

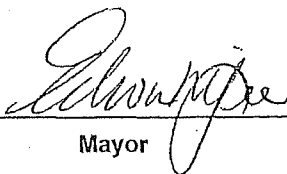
July 26, 2016 Board of Supervisors - ADOPTED


Ayes: 10 - Avalos, Breed, Campos, Cohen, Farrell, Kim, Peskin, Tang, Wiener and Yee
Absent: 1 - Mar

File No. 160711

I hereby certify that the foregoing Resolution was ADOPTED on 7/26/2016 by the Board of Supervisors of the City and County of San Francisco.


for Angela Calvillo
Clerk of the Board


Mayor


Date Approved

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 19-0016

WHEREAS, The City and County of San Francisco (City) owns in fee certain real property in Millbrae, California, under the jurisdiction of the San Francisco Public Utilities Commission (SFPUC) designated as SFPUC Parcel 29, and also known as San Mateo County APN 093-220-0101; and

WHEREAS, The City, acting through the SFPUC, entered into a Ground Lease dated April 26, 1984 (Lease) with the predecessor of Orchard Supply Company, LLC (Tenant) for the lease of a portion of such property consisting of approximately 4.7505 acres of land commonly known as 900 El Camino Real, Millbrae (Premises) for an initial term of 30 years, with two options to extend for periods of 10 years each; and

WHEREAS, Tenant exercised the first option to extend the term of the Lease for 10 years, commencing on May 1, 2014, at an annual rent of \$1,117,432 subject to a CPI adjustment on May 1, 2019, which is anticipated to increase the rent to an estimated \$1,304,915 for the remainder of the Lease term; and

WHEREAS, The City and Tenant entered into a First Amendment to Ground Lease dated August 4, 2016 (the "First Amendment") that reduced the size of the Premises by 13,623 square feet to accommodate the SFPUC's new groundwater storage and pump station facility located on the Premises; and

WHEREAS, Total lost rent from the early termination of the lease is approximately \$6,525,000; and

WHEREAS, Tenant has constructed substantial improvements on the Premises including a retail store, warehouse, and restaurant; and

WHEREAS, Under the terms of the Lease, all of Tenant's improvements to the Premises become the property of the SFPUC upon early termination of the Lease, at SFPUC's option; and

WHEREAS, Tenant desires to terminate the Lease and surrender the Premises as of April 30, 2019; and

WHEREAS, The SFPUC desires to terminate the Lease and gain possession of the Premises as of April 30, 2019; and

WHEREAS, the early termination of the Lease is expected to result in the following significant utility benefits to the SFPUC: (i) the SFPUC will be able to use an existing warehouse on the Premises as additional Utility Plumbers storage and workshop space, and other storage to serve workers displaced by unsafe conditions at the old Utility Plumbers shop, and thereby save the estimated costs (approximately \$1.3 million) of constructing a new warehouse at its Millbrae Yard, (ii) future rent from a lease of the remaining lands and improvements that will not be used for a new Utility Plumbers storage facility and workshop (Remaining Premises) is expected to significantly exceed the lost ground rent because Tenant's improvements will become the property of the SFPUC upon termination, enabling the SFPUC to re-lease the Remaining

Premises at full market rental rates, as opposed to the current CPI-adjusted ground rent Tenant will pay over the remaining term of the Lease, (iii) the SFPUC will benefit from the full retail rental income from the leasing of a restaurant located on the Remaining Premises (under the terms of the Lease, the SFPUC does not share in this sublease rent, currently estimated at \$150,000 per year), and (iv) termination of the Lease will provide the SFPUC with greater flexibility to address persistent pedestrian safety issues on El Camino posed by the current configuration of the driveway shared by both the SFPUC's Millbrae Yard and Tenant; and

WHEREAS, The utility benefits from the early termination are projected to exceed the total lost ground rent resulting from the early termination; now, therefore, be it

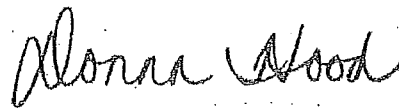
RESOLVED, That this Commission hereby ratifies, approves and authorizes all actions heretofore taken by any City official in connection with this Termination Agreement and, be it

FURTHER RESOLVED, That this Commission hereby approves the terms and conditions of this Termination Agreement; and be it

FURTHER RESOLVED, That this Commission hereby authorizes the SFPUC to seek approval by the Board of Supervisors and Mayor for the SFPUC General Manager to execute the Termination Agreement; and be it

FURTHER RESOLVED, That this Commission hereby authorizes the SFPUC General Manager to enter into any amendments or modifications to this Termination Agreement, including without limitation, the exhibits, that the General Manager determines, in consultation with the City Attorney, are in the best interest of the City; do not materially increase the obligations or liabilities of the City; are necessary or advisable to effectuate the purposes and intent of the Termination Agreement or this resolution; and are in compliance with all applicable laws, including the City Charter.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of January 22, 2019.



Secretary, Public Utilities Commission.

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 14-0127

WHEREAS, San Francisco Public Utilities Commission (SFPUC) staff have developed a project description under the Water System Improvement Program (WSIP) for the improvements to the regional water supply system, otherwise known as Project No. CUW30103, Regional Groundwater Storage and Recovery; and

WHEREAS, The primary objective of the Project is to provide an additional dry-year regional water supply. Specific objectives of the Project are to:

- Conjunctively manage the South Westside Groundwater Basin through the coordinated use of SFPUC surface water and groundwater pumped by the Daly City, San Bruno, and California Water Service Company (“Participating Pumpers”);
- Provide supplemental SFPUC surface water to the Participating Pumpers in normal and wet years, resulting in a corresponding reduction of groundwater pumping, which then allows for in-lieu recharge of the South Westside Groundwater Basin;
- Increase the dry-year and emergency pumping capacity of the South Westside Groundwater Basin by up to an average annual volume of 7.2 mgd; and
- Provide a new dry-year groundwater supply for SFPUC customers and increase water supply reliability during the 8.5-year design drought cycle.

WHEREAS, On August 7, 2014, the Planning Commission reviewed and considered the Final Environmental Impact Report (FEIR) in Planning Department File No. 2008.1396E, consisting of the Draft Environmental Impact Report (EIR), the Comments and Responses document and found that the contents of said report and the procedures through which the FEIR was prepared, publicized and reviewed complied with the provisions of the California Environmental Quality Act (CEQA), the CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code and found further that the FEIR reflects the independent judgment and analysis of the City and County of San Francisco, is adequate, accurate and objective, and that the Comments and Responses document contains no significant revisions to the Draft EIR, and certified the completion of said FEIR in compliance with CEQA and the CEQA Guidelines in its Motion Nos. 19209; 192010; 192011; and

WHEREAS, This Commission has reviewed and considered the information contained in the FEIR, all written and oral information provided by the Planning Department, the public, relevant public agencies, SFPUC and other experts and the administrative files for the Project and the EIR; and

WHEREAS, The Project and FEIR files have been made available for review by the SFPUC and the public in File No. 2008.1396E, at 1650 Mission Street, Fourth Floor, San Francisco, California; and those files are part of the record before this Commission; and

WHEREAS, SFPUC staff prepared proposed findings, as required by CEQA, (CEQA Findings) in Attachment A to this Resolution and a proposed Mitigation, Monitoring and Reporting Program (MMRP) in Attachment B to this Resolution, which material was made available to the public and the Commission for the Commission's review, consideration and action; and

WHEREAS, The Project is a capital improvement project approved by this Commission as part of the WSIP; and

WHEREAS, A Final Programmatic EIR (PEIR) was prepared for the WSIP and certified by the Planning Commission on October 30, 2008 by Motion No. 17734; and

WHEREAS, Thereafter, the SFPUC approved the WSIP and adopted findings and a MMRP as required by CEQA on October 30, 2008 by Resolution No. 08-0200; and

WHEREAS, The FEIR prepared for the Project is tiered from the PEIR, as authorized by and in accordance with CEQA; and

WHEREAS, The PEIR has been made available for review by the SFPUC and the public, and is part of the record before this Commission; and

WHEREAS, The SFPUC staff will comply with Government Code Section 7260 et seq. statutory procedures for possible acquisition of interests (temporary or permanent) in the following real property in San Mateo County (1) Assessor's Parcel # 002-410-050 in Daly City, owned by Lake Merced Golf and Country Club, (2) Assessor's Parcels # 002-072-240, -250 and 002-201-650 in Daly City, owned by John Daly Boulevard Associates/West Lake Associates, (3) Assessor's Parcels # 006-111-540 and 006-111-460 in Daly City, owned by Jefferson School District, (4) Assessor's Parcel # 008-421-120 in Colma, owned by TSE Serramonte, (5) Assessor's Parcel's # (unknown) for property owned by BART/SAMTRANS in South San Francisco, (6) Assessor's Parcel # 010-212-100 in South San Francisco, owned by Costco Wholesale Corporation, (7) Assessor's Parcel # 010-292-210 in South San Francisco, owned by Kaiser Foundation Hospitals, (8) Assessor's Parcel # 093-220-010 in Millbrae, leased by OSH/Lowes Corporation, and (9) Assessor's Parcel # 014-320-010 in San Bruno, owned by the U.S. Department of Veterans Affairs. The total combined purchase price for the acquisition of these property interests is estimated to not exceed \$1,500,000; and

WHEREAS, The Project includes work located on the property of the City of South San Francisco, Town of Colma, Lake Merced Golf Club, Jefferson Elementary School District and the Participating Pumpers, and SFPUC staff may seek to enter into Memoranda of Agreement ("MOAs") with these entities, addressing such matters as (a) SFPUC's commitments to restore or replace, pursuant to agreed specifications, certain improvements owned by the respective entities, (b) cooperative procedures and fees relating to local permits, if any, inspections, and communications to the public concerning Project construction, (c) the form of necessary encroachment permits or other property agreements for Project construction, and (d) the parties' respective indemnification and insurance obligations; and

WHEREAS, The Project will require Board of Supervisors approval of Mitigation Agreements with irrigators overlying the South Westside Basin under Charter section 9.118; and

WHEREAS, The Project requires the General Manager to negotiate and execute an Operating Agreement with the Participating Pumpers, and related agreements to carry out the Operating Agreement. The Operating Agreement to be negotiated and executed is substantially in the form attached to this Resolution as Attachment C; and

WHEREAS, The Project MMRP requires the SFPUC to negotiate and execute Mitigation Agreements with Cypress Lawn Memorial Park Cemetery; Eternal Home Cemetery; Hills of Eternity/Home of Peace/Salem Cemeteries; Holy Cross Catholic Cemetery; Italian Cemetery; Olivet Cemetery; and Woodlawn Cemetery in Colma, and the California Golf Club in South San Francisco. The Mitigation Agreements to be negotiated and executed are substantially in the form attached to this Resolution as Attachment D; and

WHEREAS, The Project MMRP requires the SFPUC to 1) negotiate and execute an amendment to the 2009 Water Supply Agreement (WSA) with the SFPUC's wholesale water customers regarding delivery of replacement water from the Regional Water System as an interim mitigation action to irrigators overlying the South Westside Basin; and 2) negotiate and execute a wheeling agreement with California Water Service Company for delivery of replacement water to irrigators overlying the South Westside Basin as an interim mitigation action; and

WHEREAS, Implementation of the Project mitigation measures will involve consultation with, or required approvals by, state regulatory agencies, including but not limited to the following: California Department of Health, San Francisco Bay Regional Water Quality Control Board, State Water Resources Control Board, Bay Area Air Quality Management District, State Historic Preservation Officer, and California Department of Fish and Game; and

WHEREAS, The Project may require the SFPUC General Manager to apply for and execute various necessary permits, encroachment permits, or other approvals with, including but not limited to, the California Department of Transportation; County of San Mateo; Town of Colma, and cities of Daly City, Millbrae, San Bruno, and South San Francisco, and those permits shall be consistent with SFPUC existing fee or easement interests, where applicable, and will include terms and conditions including, but not limited to, maintenance, repair and relocation of improvements and possibly indemnity obligations; now, therefore, be it

RESOLVED, This Commission has reviewed and considered the FEIR, finds that the FEIR is adequate for its use as the decision-making body for the actions taken herein, and hereby adopts the CEQA Findings, including the Statement of Overriding Considerations, attached hereto as Attachment A and incorporated herein as part of this Resolution by this reference thereto, and adopts the MMRP attached to this Resolution as Attachment B and incorporated herein as part of this Resolution by this reference thereto, and authorizes a request to the Board of Supervisors to adopt the same CEQA Findings, Statement of Overriding Considerations and MMRP; and be it

FURTHER RESOLVED, That this Commission hereby approves Project No. CUW30103, Regional Groundwater Storage and Recovery Project and authorizes staff to proceed with actions necessary to implement the Project consistent with this Resolution, including advertising for construction bids, provided, however, that staff will return to seek Commission approval for award of the construction contract; and be it

FURTHER RESOLVED, That this Commission hereby authorizes the SFPUC General Manager and/or the Director of Real Estate to undertake the process, in compliance with Government Code Section 7260 et seq., with the San Francisco Charter and all applicable laws, for possible acquisition of interests (temporary or permanent) in the following real property in San Mateo County (1) Assessor's Parcel # 002-410-050 in Daly City, owned by Lake Merced Golf and Country Club, (2) Assessor's Parcels # 002-072-240, -250 and 002-201-650 in Daly City, owned by West Lake Associates/John Daly Blvd. Assoc, (3) Assessor's Parcels # 006-111-540 and 006-111-460 in Daly City, owned by Jefferson Elementary School District, (4) Assessor's Parcel # 008-421-120 in Colma, owned by TSE Serramonte, L.P. and leased by Kohl's Department Store, (5) Assessor's Parcels (unknown) for property owned by BART/SAMTRANS in South San Francisco, (6) Assessor's Parcel # 010-212-100 in South San Francisco, owned by Costco Wholesale Corporation, (7) Assessor's Parcel # 093-331-080 in South San Francisco, owned by the City of South San Francisco, (8) Assessor's Parcel # 010-292-210 in South San Francisco, owned by Kaiser Foundation Hospitals, (9) Assessor's Parcel # 093-220-010 in Millbrae, leased by OSH/Lowes Corporation, and (10) Assessor's Parcel # 014-320-010 in San Bruno, owned by the U.S.A., and to seek Board of Supervisors' approval if necessary, and provided that any necessary Board approval has been obtained, to accept and execute final agreements, and any other related documents necessary to consummate the transactions contemplated therein, in such form, approved by the City Attorney; and be it

FURTHER RESOLVED, The General Manager will confer with the Commission during the negotiation process on real estate agreements as necessary, and report to the Commission on all agreements submitted to the Board of Supervisors for approval; and be it

FURTHER RESOLVED, That this Commission hereby authorizes the General Manager to negotiate and execute Memoranda of Agreement, if necessary, to perform work on the property of the City of South San Francisco, Town of Colma, Lake Merced Golf Club, Jefferson Elementary School District and the Participating Pumpers (collectively the "Project MOAs") in a form that the General Manager determines is in the public interest and is acceptable, necessary, and advisable to effectuate the purposes and intent of this Resolution, and in compliance with the Charter and all applicable laws, and approved as to form by the City Attorney. The Project MOAs may address such matters as (a) SFPUC's commitments to restore or replace, pursuant to agreed specifications, certain improvements owned by the respective local jurisdictions, (b) cooperative procedures and fees relating to local permits, inspections, and communications to the public concerning Project construction, (c) the form of necessary encroachment permits or other property licenses required to permit Project construction, and (d) the parties' respective indemnification and insurance obligations, subject to the San Francisco Risk Manager's approval; and be it

FURTHER RESOLVED, That this Commission hereby authorizes the SFPUC General Manager to seek Board of Supervisors approval for the Controller's release of reserve for the Project; and be it

FURTHER RESOLVED, That this Commission hereby authorizes the SFPUC General Manager to negotiate and execute an Operating Agreement with the City of Daly City, the City of San Bruno, and California Water Service Company, substantially in the form attached to this Resolution as Attachment C, along with more detailed site specific agreements for the operation of Project wells by the Participating Pumpers and the shared use of facilities owned by the Participating Pumpers for water treatment and distribution, as contemplated by the Operating Agreement; and be it

FURTHER RESOLVED, That this Commission hereby authorizes the SFPUC General Manager to negotiate and execute Mitigation Agreements with Cypress Lawn Memorial Park Cemetery; Eternal Home Cemetery; Hills of Eternity/Home of Peace/Salem Cemeteries; Holy Cross Catholic Cemetery; Italian Cemetery; Olivet Cemetery; and Woodlawn Cemetery in Colma, and the California Golf Club in South San Francisco substantially in the forms attached to this Resolution as Attachment D, and to seek Board of Supervisors approval of the Mitigation Agreements under Charter Section 9.118, along with the approval of the settlement of any CEQA appeals filed by these irrigators based on the terms of the Mitigation Agreements; and be it

FURTHER RESOLVED, That this Commission authorizes the General Manager, or his designee, to consult with, or apply for, and, if necessary, seek Board of Supervisors' approval, and if approved, to accept and execute permits or required approvals by state regulatory agencies, including but not limited to, the California Department of Public Health, the Regional Water Quality Control Board, the State Water Resources Control Board, the Bay Area Air Quality Management District, the State Historic Preservation Officer, and the California Department of Fish and Wildlife, including terms and conditions that are within the lawful authority of the agency to impose, in the public interest, and, in the judgment of the General Manager, in consultation with the City Attorney, are reasonable and appropriate for the scope and duration of the requested permit or approval, as necessary for the Project; and be it

FURTHER RESOLVED, That this Commission authorizes the General Manager, or his designee, to apply for and execute various necessary permits and encroachment permits or other approvals with, including but not limited to, the California Department of Transportation; County of San Mateo; Town of Colma; and the cities of Daly City, Millbrae, San Bruno, and South San Francisco, which permits or approvals shall be consistent with SFPUC's existing fee or easement interests, where applicable. To the extent that the terms and conditions of the permits will require SFPUC to indemnify the respective jurisdictions, those indemnity obligations are subject to review and approval by the San Francisco Risk Manager. The General Manager is authorized to agree to such terms and conditions, including but not limited to those relating to maintenance, repair and relocation of improvements, that are in the public interest, and in the judgment of the General Manager, in consultation with the City Attorney, are reasonable and appropriate for the scope and duration of the requested use as necessary for the Project; and be it

FURTHER RESOLVED, That this Commission authorizes the General Manager to work with the Director of Real Estate to seek Board approval if necessary, and provided any necessary Board approval is obtained, to accept and execute the real property agreements authorized herein; and be it

FURTHER RESOLVED, That this Commission authorizes the General Manager, or his designee, to enter into any subsequent additions, amendments or other modifications to the permits, licenses, encroachment removal agreements, leases, easements, other Use Instruments or real property agreements, Operating Agreements, and Mitigation Agreements or amendments thereto, as described herein, that the General Manager, in consultation with the Real Estate Services director and the City Attorney, determines are in the best interests of the SFPUC and the City, do not materially decrease the benefits to the SFPUC or the City, and do not materially increase the obligations or liabilities of the SFPUC or the City, such determination to be conclusively evidenced by the execution and delivery of any such additions, amendments, or other modifications.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of August 12, 2014.



Secretary, Public Utilities Commission



San Francisco
Water Power Sewer

Services of the San Francisco Public Utilities Commission

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2019 FEB 11 AM 11:44

525 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102
T 415.554.3155
F 415.554.3150
TTY 415.554.3411

TO: Angela Calvillo, Clerk of the Board ^{AK}

FROM: Christophe Whitmore, Policy and Government Affairs

DATE: February 11, 2019

SUBJECT: Resolution approving the terms and conditions of, and authorizing the General Manager of the San Francisco Public Utilities Commission to execute, a Termination of Lease between the City and County of San Francisco, through its Public Utilities Commission as Landlord, and Orchard Supply Company, LLC as Tenant

Please see the attached resolution approving the terms and conditions of, and authorize the General Manager of the San Francisco Public Utilities Commission to execute, a Termination of Lease between the City and County of San Francisco, through its Public Utilities Commission as Landlord, and Orchard Supply Company, LLC as Tenant, for a portion of SFPUC Parcel 29, representing approximately 4.438 acres of land, in Millbrae, California at a ground rental rate of approximately \$1,304,915 per year over the remaining five-year term of the lease.

The following is a list of accompanying documents (2 sets):

- 1. Board of Supervisors Resolution
- 2. Original Lease (1984)
- 3. SFPUC Reso 14-0127 CUW30103 Regional Groundwater Storage Recovery
- 4. BOS Resolution – Ground Lease First Amendment
- 5. Executed First Amendment to Ground Lease
- 6. SFPUC Reso 19-0016 Approve Termination of Lease - OSH

Please contact Christopher Whitmore at (415) 934-3906 if you need any additional information on these items.

London N. Breed
Mayor

Vince Courtney
President

Ann Moller Caen
Vice President

Francesca Vietor
Commissioner

Anson Moran
Commissioner

Ike Kwon
Commissioner

Harlan L. Kelly, J.
General Manager

OUR MISSION: To provide our customers with high-quality, efficient and reliable water, power and sewer services in a manner that values environmental and community interests and sustains the resources entrusted to our care.



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

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

Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: Orchard Supply Company, LLC, a North Carolina limited liability company	
Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary. President- Timothy L. Cooksey, Executive Vice President and Chief Financial Officer- David M. Denton, Secretary- Ross W, McCannless, Senior Vice President and Chief Accounting Officer- Matthew V. Hollifield, Senior Vice President Corporate Finance and Treasurer- Tiffany L. Mason, Senior Vice President Enterprise Strategic Sourcing and Real Estate- Timothy L. Cooksey. Orchard Supply Company, LLC is a wholly owned subsidiary of Lowe's Companies, Inc., a publicly traded company under ticker symbol LOW.	
Contractor address: 1000 Lowe's Boulevard, Mooresville, NC 28117	
Date that contract was approved:	Amount of contract: Current rent of approximately \$1,304,915 per year.
Describe the nature of the contract that was approved: Ground Lease dated 4/26/1984 as amended by First Amendment to Ground Lease dated 8/4/2016.	
Comments: Contractor is seeking termination of the Ground Lease.	

This contract was approved by (check applicable):

- the City elective officer(s) identified on this form
- a board on which the City elective officer(s) serves San Francisco Board of Supervisors
Print Name of Board
- the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Relocation Appeals Board, and Local Workforce Investment Board) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

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

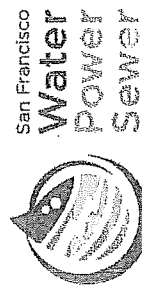
Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Clerk of the Board of Supervisors

Date Signed

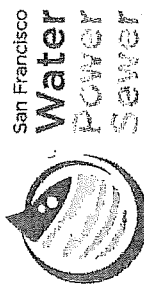
File # 190192
Received in Commission
3/13/19
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Services of the San Francisco Public Utilities Commission

Orchard Supply Company, LLC (OSH) Early Lease Termination

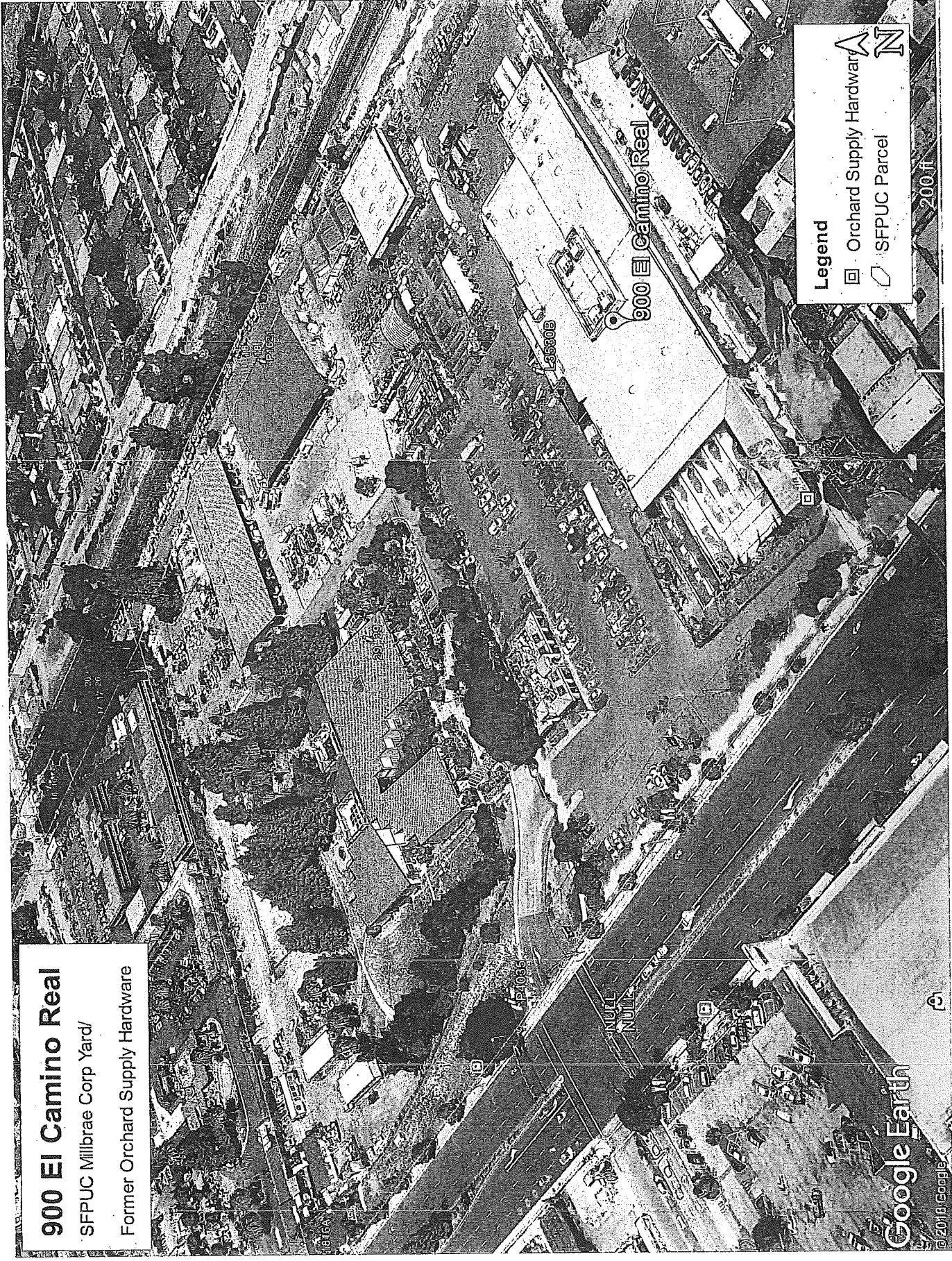
March 13, 2019
Tony Bardo, Assistant Real Estate Director, Real Estate
Services



Legislative Objectives

The proposed legislation would approve:

- Termination of the existing lease between the SFPUC, as landlord, and Orchard Supply Company, LLC, as tenant as of April 30, 2019;
- The terms and conditions of the termination agreement; and
- Amendments or modifications to the termination agreement by the SFPUC General Manager.



900 El Camino Real
SFPUC Millbrae Corp Yard/
Former Orchard Supply Hardware

Legend

- Orchard Supply Hardware
- SFPUC Parcel

200 ft

Google Earth
© 2018 Google

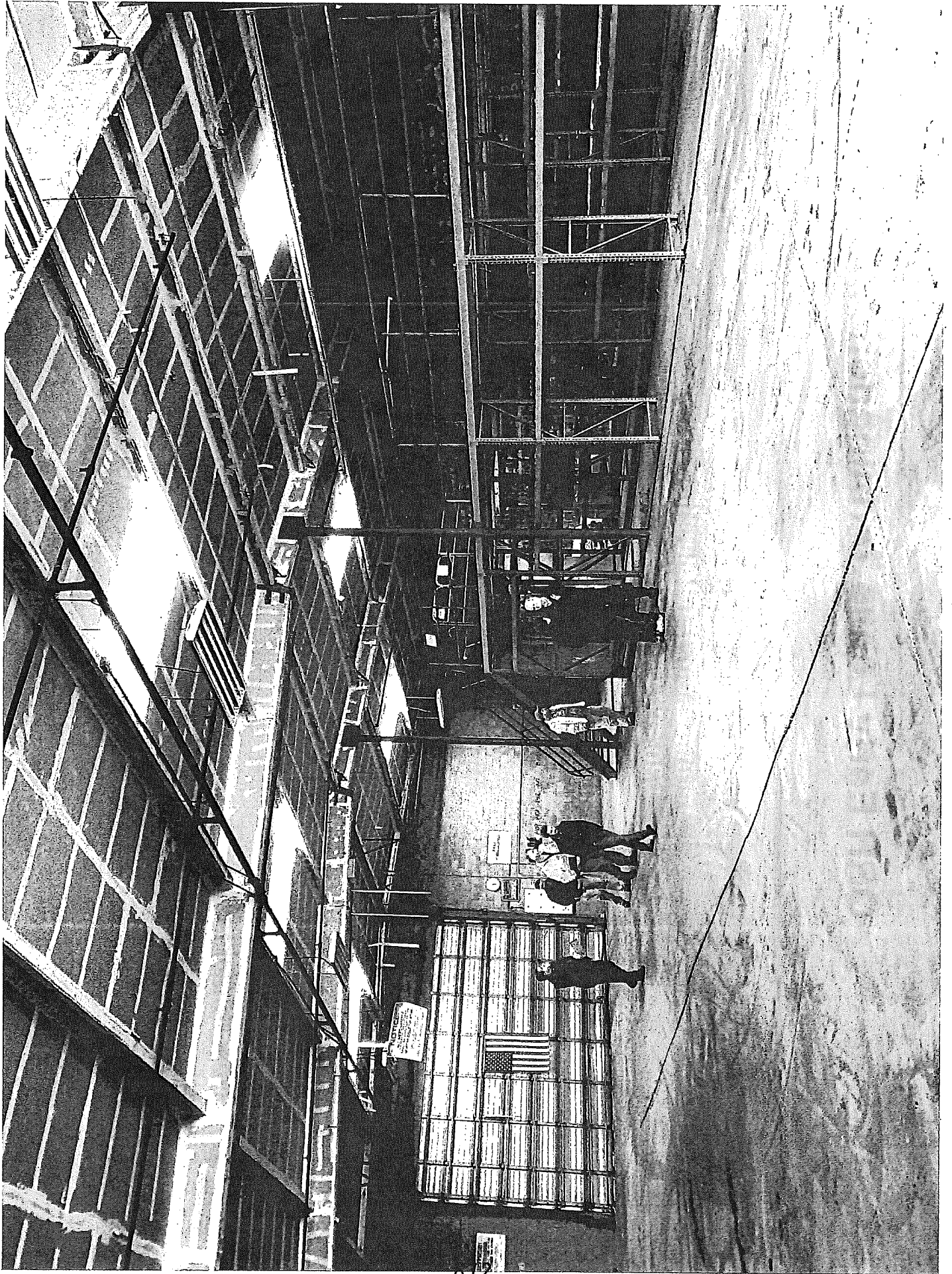
OSH Early Lease Termination Background

- Original lease term 30 years with two (2) ten-year options. OSH exercised the first ten-year option to extend term to April 30, 2024.
- On August 22, 2018 Lowe's Home Centers (OSH's parent) announced the closing of all 99 stores in California.
- OSH offered to terminate the lease as of April 30, 2019. SFPUC wishes to accept the offer.
- The early termination will allow the SFPUC to occupy an existing warehouse and re-lease additional structures to new tenants in the short-term, then redevelop the property to serve SFPUC's current and future utility needs.



OSH Early Lease Termination Analysis

	Scheduled Termination 4/30/2024	Early Termination 4/30/2019	Comments
Land Area (Sq.Ft.)	193,309	186,509	
Rent per Sq.Ft.	\$6.75	\$8.23	42% growth in retail rates (2014-2019)
Ground Rent (5 yrs)	\$6,524,577	\$7,674,845	
Property Tax Reimb (5 yrs)	\$17,077	\$17,077	Inflated 2% per year.
Retail Rent-Store Leases			
Pad-KFC (1 yr)	-	124,200	Current proposed lease.
Pad-New Tenant (4 yrs)	-	496,800	Assumes same rate as KFC.
Box-New Tenant (5 yrs)	-	2,450,155	\$40.50 psf avg rate as of 2018.
Vacancy Loss (rent & Taxes)	-	(2,152,615)	Vacancy during RFP process:
Total Income	\$6,541,654	\$8,610,461	





Questions or comments?

