

CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR

LEASE

GENEVA OFFICE BUILDING AND POWER HOUSE

between the

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through its

RECREATION AND PARKS COMMISSION

and

FRIENDS OF GENEVA OFFICE BUILDING AND POWER HOUSE,
a California nonprofit corporation

for the lease of real property located at
2301 San Jose Avenue, San Francisco, California

Dated as of _____, 20__

TABLE OF CONTENTS

	Page
Section 1 BASIC LEASE INFORMATION; DEFINITIONS	2
1.1 Basic Lease Information.....	2
1.2 Defined Terms.....	4
Section 2 PREMISES; CONDITION OF PREMISES	8
2.1 Premises.....	8
2.2 Condition of Premises.....	8
2.3 SFMTA License.....	9
2.4 Relationship of Lease to LDDA.....	10
Section 3 TERM; EARLY TERMINATION RIGHT	10
3.1 Term.....	10
3.2 Tenant’s Early Termination Option.....	10
Section 4 RENT	10
4.1 Tenant’s Covenant to Pay Rent.....	10
4.2 Additional Rent.....	10
4.3 Manner of Payment of Rent.....	11
4.4 Limitations on Abatement or Setoff.....	11
4.5 Interest on Delinquent Rent.....	11
4.6 Late Charges; Collection Costs.....	11
4.7 Net Lease.....	11
Section 5 USES	12
5.1 Permitted Uses.....	12
5.2 Tenant Proposal to Change Use.....	12
5.3 Advertising and Signs; Approved Signage Program.....	13
5.4 Limitations on Uses by Tenant.....	13
5.5 Building Rules and Regulations.....	13
5.6 Security Matters.....	14
5.7 Name of Building and Areas within Premises.....	14
5.8 Americans with Disabilities Act.....	14
5.9 Rates and Charges.....	14
5.10 Operating Covenants.....	14
Section 6 TAXES AND ASSESSMENTS	16
6.1 Payment of Possessory Interest Taxes and Other Impositions.....	16
6.2 City’s Right to Pay.....	17
Section 7 CONTESTS.....	17
7.1 Right of Tenant to Contest Impositions and Liens and Laws.....	17
Section 8 COMPLIANCE WITH LAWS	17
8.1 Compliance with Laws and Other Requirements.....	17

8.2	Regulatory Approvals.....	18
Section 9	TENANT’S MANAGEMENT AND OPERATING COVENANTS	18
9.1	Operating Standards and Requirements; Management.....	18
9.2	Books and Records; Annual Report; Audit Right.....	19
Section 10	REPAIR AND MAINTENANCE	19
10.1	Covenants to Repair and Maintain the Premises.....	19
Section 11	INITIAL IMPROVEMENTS PURSUANT TO LDDA	22
11.1	Tenant’s Obligation under LDDA to Construct Improvements.....	22
11.2	Title to Improvements.....	22
Section 12	SUBSEQUENT CONSTRUCTION	22
12.1	City’s Approval Required for Subsequent Construction.....	22
12.2	Construction Documents in Connection with Subsequent Construction.....	23
12.3	Construction.....	23
12.4	Construction Standards.....	24
12.5	General Conditions.....	24
12.6	Construction Contracts.....	24
12.7	Tenant’s Duty to Notify City.....	25
12.8	Prevailing Wages.....	25
12.9	Tropical Hardwood and Virgin Redwood Ban.....	25
12.10	Approvals.....	25
12.11	Safety Matters.....	25
12.12	First Source Hiring Ordinance.....	25
12.13	Construction Improvements that Disturb or Remove Exterior Paint.....	26
12.14	Preservative-Treated Wood Containing Arsenic.....	26
12.15	Resource Efficient City Buildings and Pilot Projects.....	26
12.16	As-Built Plans and Specifications.....	26
12.17	Title to Improvements.....	27
12.18	Tenant’s Personal Property.....	27
12.19	City Cooperation.....	27
12.20	Annual Report of Subsequent Construction.....	27
Section 13	UTILITY AND OTHER SERVICES	27
13.1	Utilities and Services.....	27
13.2	Excess Use.....	28
13.3	Interruption of Services.....	28
13.4	Water and Energy Conservation; Mandatory or Voluntary Restrictions.....	28
13.5	Floor Load.....	29
13.6	Antennae and Telecommunications Dishes.....	29
Section 14	DAMAGE OR DESTRUCTION	29
14.1	General; Notice; Waiver.....	29
14.2	Certain Defined Terms.....	30
14.3	Tenant’s Restoration Obligations.....	30

14.4	Major Damage and Destruction or Uninsured Casualty.....	31
14.5	Effect of Termination.....	31
14.6	Distribution Upon Lease Termination.....	31
14.7	Permitted Programming Disruption.....	31
Section 15 CONDEMNATION	32
15.1	Definitions.....	32
15.2	General.....	32
15.3	Total Taking; Automatic Termination.....	32
15.4	Partial Taking; Election to Terminate.....	32
15.5	Rent; Award.....	32
15.6	Partial Taking; Continuation of Lease.....	33
15.7	Temporary Takings.....	33
Section 16 LIENS AND LEASEHOLD MORTGAGES	33
16.1	Liens.....	33
16.2	Leasehold Encumbrances.....	33
16.3	Notices to Mortgagee and Tax Credit Investor.....	35
16.4	Mortgagee's and Tax Credit Investor's Right to Cure.....	35
16.5	Assignment by Mortgagee.....	37
16.6	Transfer of Mortgage.....	37
16.7	Memorandum of Lease.....	38
Section 17 ASSIGNMENT OF RENTS	38
17.1	Assignment of Rents.....	38
Section 18 ASSIGNMENT AND SUBLETTING	38
18.1	Assignments and Subleases.....	38
18.2	Conditions to Assignment or Sublet.....	39
18.3	Pre-Execution Deliveries to City.....	40
18.4	Effect of Sublease or Assignment.....	40
18.5	Assumption by Assignee.....	41
18.6	Indemnity for Relocation Benefits.....	41
18.7	Reasonable Grounds for Withholding Consent.....	41
18.8	Nondisturbance.....	41
18.9	Assignment to Accommodate Sale of Historic Tax Credits and New Market Tax Credit Tax Credit Financing.....	42
Section 19 INDEMNIFICATION OF CITY	42
19.1	Indemnification of City.....	42
19.2	Immediate Obligation to Defend.....	42
19.3	Not Limited by Insurance.....	43
19.4	Survival.....	43
19.5	Defense.....	43
19.6	Release of Claims and Losses Against City.....	43
Section 20 INSURANCE	43

20.1	Premises and Liability Coverage.....	43
20.2	Certificates of Insurance; Right of City to Maintain Insurance.	46
20.3	Insurance of Others.	47
20.4	City Entitled to Participate.	47
20.5	City’s Self Insurance.	47
20.6	Release and Waiver.....	47
Section 21	HAZARDOUS MATERIALS	47
21.1	Hazardous Materials Compliance.....	47
21.2	Hazardous Materials Indemnity.	48
21.3	Hazardous Substance Disclosure.....	49
Section 22	EVENTS OF DEFAULT; TERMINATION	49
22.1	Events of Default.....	49
Section 23	REMEDIES	50
23.1	City’s Remedies Generally.....	50
23.2	Right to Keep Lease in Effect.	50
23.3	Right to Perform Tenant’s Covenants.	51
23.4	Right to Terminate Lease.	51
23.5	Equitable Relief.....	51
23.6	Continuation of Subleases and Agreements.....	52
Section 24	NO WAIVER	52
24.1	No Waiver.	52
24.2	No Accord or Satisfaction.	52
Section 25	ESTOPPEL CERTIFICATES.	52
25.1	Tenant Certificate.....	52
25.2	City Certificate.....	53
Section 26	APPROVALS BY CITY	53
26.1	Approvals by City.	53
Section 27	SURRENDER OF PREMISES	53
27.1	Condition of Premises.	53
27.2	Termination of Subleases.	53
Section 28	HOLD OVER	53
28.1	Holdover Without Consent.....	53
28.2	Holdover With Consent.....	54
Section 29	NOTICES	54
29.1	Notices.....	54
Section 30	CITY ENTRY	54
30.1	City Entry.	54
30.2	City Reservations.	55

Section 31	EMPLOYMENT	55
31.1	First Source Hiring Ordinance.	55
31.2	Wages and Working Conditions; Theatrical Services.	55
31.3	Supervision of Minors.	56
31.4	Employee Signature Authorization Ordinance.	56
31.5	Tenant Control; No Joint Venture.	56
Section 32	REPRESENTATIONS AND WARRANTIES OF TENANT	57
32.1	Tenant Representations.	57
Section 33	SPECIAL PROVISIONS	57
33.1	Non-Discrimination in City Contracts and Benefits Ordinance.	57
33.2	MacBride Principles - Northern Ireland.	58
33.3	Tobacco Product Advertising Prohibition.	58
33.4	Conflict of Interest.	59
33.5	Drug-Free Workplace.	59
33.6	Waiver of Relocation Assistance Rights.	59
33.7	Public Records; Sunshine Ordinance.	59
33.8	Requiring Health Benefits for Covered Employees.	59
33.9	Intellectual Property; Music Broadcasting Rights.	60
33.10	Notification of Limitations on Contributions.	60
33.11	Food Service Waste Reduction.	61
Section 34	GENERAL	61
34.1	Time of Performance.	61
34.2	Interpretation of Agreement.	61
34.3	Successors and Assigns.	62
34.4	Interpretation of Lease; Approvals.	62
34.5	No Third Party Beneficiaries.	62
34.6	Real Estate Commissions.	62
34.7	Counterparts.	62
34.8	Entire Agreement.	62
34.9	Amendment.	63
34.10	Governing Law; Selection of Forum.	63
34.11	Extensions by City.	63
34.12	Attorneys' Fees and Costs.	63
34.13	Effective Date.	64
34.14	Severability.	64
34.15	Limitation on Liability.	64

EXHIBITS TO LEASE

- EXHIBIT A - Description of the Premises
- EXHIBIT B - Utility Responsibility Areas
- EXHIBIT C - Sublease Conditions; Form of Indemnity

LEASE

THIS LEASE (“**Lease**”), dated for reference purposes as of _____, 20__, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**City**” or “**Landlord**”), acting by and through its Recreation and Park Commission (the “**Commission**”), and the FRIENDS OF GENEVA OFFICE BUILDING AND POWER HOUSE, a California non-profit public benefit corporation (“**Tenant**”), and is made with reference to the facts and circumstances described in the Recitals set forth below.

RECITALS

A. City owns the Geneva Avenue Office Building and Power House (the “**Building**”) located at 2301 San Jose Avenue in San Francisco, California, as more particularly described on *Exhibit A* attached hereto (the “**Property**”). The Building is comprised of two adjoining structures: a two-story office building containing approximately 13,000 square feet of space and a single-story car shed, known as the Powerhouse, containing approximately 3,000 square feet of space. The Building was designated as City Landmark No. 180 by the San Francisco Board of Supervisors on January 26, 1986. The Building was severely damaged in the 1989 Loma Prieta Earthquake, and fell into general disrepair.

B. The Commission has jurisdiction over the Property and is responsible, through City’s Recreation and Park Department (the “**Department**”), for its operation and management. The Department identified the Building as a possible site for youth and teen arts, community center, and related uses consistent with the Department’s mission. In 2004, the Department, City’s Municipal Transportation Agency (“**SFMTA**”), and Caltrans cooperated on a project to stabilize the Building in a manner designed to make the Building less likely to collapse in an earthquake. The stabilization work did not include the work required to make the Building seismically safe for occupancy, or necessary electrical, mechanical or plumbing upgrades or other refurbishment or renovations. The Department did not have funding to permit the Department to perform seismic retrofitting of the Building or to construct improvements necessary for the use of the Building for recreational purposes.

C. Tenant is a non-profit 501(c)(3) corporation devoted to revitalizing and managing the Building as a dedicated space where artists, youth, and community members can convene, exchange, learn, create and exhibit artistic and cultural works. Tenant proposed to preserve the Building for the public benefit by (1) rehabilitating the exterior and interior of the Building; (2) bringing the Building into compliance with current regulatory requirements, including the San Francisco Building Code and the Americans with Disabilities Act; (3) seismically strengthening the Building; and (4) developing the Building for use as a community center, including, among other things, classrooms, meeting rooms, a theater, a café, exhibition and event spaces and a limited amount of retail space (collectively, the “**Project**”), and following completion of the Project, to operate the Building as a community center providing programming for youth and adults in the surrounding neighborhood, the city of San Francisco, and the region.

D. In furtherance of Tenant’s goals of raising gifts in support of the design and construction costs of the Project and of completing the Project, City and Tenant entered into a Lease Disposition and Development Agreement, dated as of _____, 2013 (the “**LDDA**”), pursuant to which City agreed to lease the Property to Tenant, and Tenant agreed to lease the Property from Landlord, on the terms and conditions set forth herein, upon satisfaction of certain conditions precedent set forth in the LDDA. By their execution and delivery of this Lease, the Parties acknowledge that such conditions precedent have been satisfied or waived.

E. During the term of the LDDA, Tenant investigated the Building and Property and performed such due diligence regarding the Building and Property and their suitability for the purposes contemplated by this Lease as determined necessary by Tenant, and Tenant completed improvements to the Building.

F. Prior to the execution of this Lease, Tenant and/or the City obtained a number of Regulatory Approvals related to this Lease and the Project contemplated under the LDDA. On December 4, 2008, the San Francisco Planning Commission certified the Balboa Park Station Area Plan Final Environmental Impact Report, Planning Department Case No. 2004.1059E (the "FEIR"), and after several years of analysis, community outreach, and public review, the Balboa Park Station Area Plan was adopted on April 7, 2009. The Building is located in the Transit Station Area Subarea of the Balboa Park Station Area Plan. The San Francisco Planning Department determined that the Project was consistent with the development density established by the Balboa Park Station Area Plan and that there were no project-specific effects that are peculiar to the project or its site that were not analyzed in the FEIR, and concluded that the Project qualified for an exemption from further environmental review under California Environmental Quality Act ("CEQA") Guidelines Section 15183 and issued a Certificate of Determination. of Exemption from Environmental Review on November 14, 2013. Certain Project Mitigation Measures set forth in FEIR will apply to the Project. By letter dated _____, 2014 (the "Determination Letter"), the City's Planning Department determined that this Lease is consistent with the requirements of City's Planning Code Section 101.1 and is in conformity with the City's General Plan *[add if required:]*, subject to certain conditions specified in the Determination Letter]. In a Certificate of Determination dated _____, 2014, the City's Planning Department determined that the Project is categorically exempt from environmental review under CEQA State Guidelines. Section 153019A0 or Class 1. *[Edit as required.]* On _____, 2014, the Recreation and Park Commission, by Resolution No. ___ - ___, among other things, authorized and directed the General Manager to (i) enter into the LDDA, and (ii) seek approval from the Board of Supervisors to execute this Lease.

G. This Lease will have numerous public benefits, and will lessen the burden on the Department in operating and maintaining the Property and in providing public programming, and the monetary value of the services and functions that Tenant will provide hereunder exceeds the fair market value of Premises. Accordingly, no base rent will be payable under this Lease.

H. City and Tenant now desire to enter into this Lease, upon all of the terms and conditions hereof.

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, City and Tenant agree as follows:

Section 1 BASIC LEASE INFORMATION; DEFINITIONS

1.1 Basic Lease Information.

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

Lease Reference Date: _____, 20____

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

Tenant: FRIENDS OF GENEVA OFFICE BUILDING AND POWER HOUSE, a California non-profit public benefit corporation

Premises (Section 2.1): The building known as the "Geneva Avenue Office Building and Power House" located at 2301 San Jose Avenue in San Francisco, California (the "**Building**"), and certain real property surrounding the Building generally delineated on the attached *Exhibit A*.

Term (Section 2.3): Approximately 55 years, commencing on the Commencement Date and ending on the Expiration Date, subject to Tenant’s early termination rights described below.

Commencement Date: _____, 20____, which is the date of the Close of Escrow (as such term is defined in the LDDA)

Expiration Date: _____, 20_____

Tenant’s Early Termination Right (Section 3.2): Tenant shall have the option to terminate this Lease early by providing 180 days prior written notice to City. See Section 3.2.

Rent (Section 4): No base rent is payable hereunder.

Use (Section 5): Providing recreational, educational and cultural programming, including opportunities for job training and apprenticeships in areas including, but not limited to, the culinary, media, literary, visual, dance, musical, performing, film/cinema/television production, digital, design and technical arts, as described in Section 5 (the “Primary Mission”), and in connection therewith the Premises may be used for: (i) administrative/office use, (ii) arts rehearsals and performances, (iii) visual and design arts studios, (iv) classrooms, (v) theater, (vi) public and private special events and exhibitions, (vii) operation of a café and culinary training, and (viii) the operation of a visitor-serving retail as permitted on park property. See Section 5.

Initial Improvements/Deferred Items (Section 11.1): Tenant has the obligation under the LDDA to perform certain improvements and alterations to the Premises prior to the Commencement Date of this Lease. To the extent the Certificate of Completion issued in connection with the LDDA was conditioned upon Tenant’s completion of Deferred Items (as defined in the LDDA), Tenant’s completion of such Deferred Items at the time(s) and in the manner provided is an obligation under this Lease. See Section 11.1.

Utilities and Services (Section 13.1): City shall provide, at its sole cost and expense, electricity, water and gas services to those portions of the Premises generally depicted with the designation “Landlord Utility Area” on the attached *Exhibit B* (the “**Landlord Utility Area**”), which Landlord Utility Area includes the office building entry area and reception area, staff offices, first floor hallway, community meeting room, student lounge, and the design, audio/visual and literary arts studios and related spaces..

Tenant shall be responsible, at its sole cost and expense, for electricity, water, sewer and gas services to those portions of the Premises generally depicted with the designation “Tenant Utility Area” on the attached *Exhibit B* (the “**Tenant Utility Area**”), which Tenant Utility Area includes the proposed restaurant and kitchen, retail space, Powerhouse, theater and related spaces, including storage areas, stairwells and restrooms.

Tenant shall ensure that separate meters are installed to measure electricity, water and gas service to the Landlord Utility Area (for

which City is responsible) and the Tenant Utility Area (for which Tenant is responsible).

Tenant shall pay for garbage and recycling disposal and all telephone, fax and internet connection charges, including the cost of bringing any such service(s) to locations in the Premises.

Security Deposit: Not required.

Notice Address of City
(Section 29.1): Recreation and Park Department
McLaren Lodge Annex
San Francisco, California 94117
Attention: [_____]
Facsimile: [_____]

with a copy to: Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Attn: Real Estate/Finance Team
Fax No.: (415) 554-4755

Address for Tenant
(Section 29.1): Friends of Geneva Office Building and Power House
755 Ocean Avenue
San Francisco, CA 94112
Attention: Daniel Weaver
Facsimile: (415) 586-8357

with a copy to: Gibson, Dunn & Crutcher LLP
555 Mission Street
San Francisco, CA 94105
Attention: Mary G. Murphy
Facsimile: (415) 374-8480

Definitions: For purposes of this Lease, initially capitalized terms not otherwise defined in this Lease shall have the meanings ascribed to them in Section 1.2. In the event of any conflict between a definition given in Section 1.2 and any more specific provision of this Lease, the more specific provision shall control.

Other Noteworthy Provisions:

1.2 Defined Terms.

If not defined elsewhere in this Lease, initially capitalized terms shall have the meanings ascribed to them in this Section:

Additional Rent means any and all sums that may become due or be payable by Tenant under this Lease.

Agents means, when used with reference to either party to this Lease or any other person or party so designated, the members, officers, directors, commissioners, employees, agents, contractors and vendors of such party or other person, and their respective heirs, legal representatives, successors and assigns.

Approved Signage Program means, if and to the extent previously approved in writing by the General Manager in his or her reasonable discretion, the exterior signage program with respect to the Property, as provided in Section 5.3.

Assignments mean any assignment, encumbrance, pledge or otherwise transfer of any part of Tenant's interest in or rights with respect to the Premises or its leasehold estate hereunder.

Attorneys' Fees and Costs means reasonable attorneys' fees, costs, expenses and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and other reasonable costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, including such fees and costs associated with execution upon any judgment or order, and costs on appeal.

Bona Fide Institutional Lender means any one or more of the following, whether acting in its own interest and capacity or in a fiduciary capacity for another person: a savings bank, a savings and loan association, a commercial bank or trust company or branch thereof, an insurance company, a governmental agency, a real estate investment trust, an employees' welfare, benefit, pension or retirement fund or system, an investment banking, merchant banking or brokerage firm, or any other person or persons which, at the time of a Mortgage is recorded, has (or is controlled by a person having) assets of at least \$500 million in the aggregate (or the equivalent in foreign currency), and is regularly engaged in the financial services business.

Commencement Date is defined in the Basic Lease Information.

Construction Documents is defined in Section 12.2.

Default Rate is defined in Section 4.5.

Department means City's Recreation and Park Department.

Department's Mission means the mission to serve City residents by providing appropriate recreational, cultural and educational programs.

Disabled Access Laws means the Americans With Disabilities Act of 1990 and Title 24 of the California Code of Regulations and all other applicable federal, state, local and administrative laws, rules, regulations, orders and requirements intended to provide equal accessibility for persons with disabilities.

Effective Date is defined in Section 33.13.

Encumber means create any Mortgage.

Event of Default is defined in Section 22.1.

Expiration Date is defined in the Basic Lease Information as the same may be extended.

General Manager means the General Manager of the San Francisco Recreation and Park Department.

Hazardous Material means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.) or under Sections 25281 or 25316 of the California Health & Safety Code; any "hazardous waste" as defined in Section 25117 or listed under Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing Improvements on the Premises, any Improvements to be constructed on the Premises by or

on behalf of Tenant, or are naturally occurring substances on, in or about the Premises, and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids, and lead containing materials.

Hazardous Material Claims means any and all enforcement, Investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed under any Hazardous Materials Laws, together with any and all Losses made or threatened by any third party against City, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Material Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in the value of the Premises or any Improvements, the loss or restriction of the use or any amenity of the Premises or any Improvements, and Attorneys' Fees and Costs.

Hazardous Material Laws means any present or future federal, state or local Laws relating to Hazardous Material (including, without limitation, its Handling, transportation or Release) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises (including the Improvements), including, without limitation, soil, air, air quality, water, water quality and groundwater conditions. Hazardous Materials Laws include, but are not limited to, City's Pesticide Ordinance (Chapter 39 of the San Francisco Administrative Code).

Impositions means all taxes, assessments, liens, levies, charges or expenses of every description, levied, assessed, confirmed or imposed on the Premises, any of the improvements or personal property located on the Premises, Tenant's leasehold estate, any subleasehold estate, or any use or occupancy of the Premises hereunder.

Improvements means all buildings, structures, fixtures and other improvements erected, built, placed, installed or constructed upon or within the Premises, including, but not limited to, the Initial Improvements.

Indemnified Parties means City, including, but not limited to, all of its boards, commissions, departments, agencies, employees and member and other subdivisions, including, without limitation, all of the Agents of City and all of their respective heirs, legal representatives, successors and assigns, and each of them.

Indemnify means indemnify, protect, reimburse, defend and hold harmless.

Index means the Consumer Price Index for All Urban Consumers (base years 1982-1984 = 100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is changed so that the base year differs from that used as of the date most immediately preceding the Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

Indexed means the product of the number to be Indexed multiplied by the percentage increase, if any, in the Index from the first day of the month in which the Commencement Date occurred to the first day of the most recent month for which the Index is available at any given time.

Initial Improvements has the meaning set forth in Section 11.1.

Initial Term means the period from the Commencement Date until the Expiration Date set forth in the Basic Lease Information, unless earlier terminated in accordance with the terms of this Lease.

Investigate or Investigation when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion of the site or the Improvements or which have been, are being, or threaten to be Released into the environment. Investigation shall include, without limitation,

preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.

Invitees when used with respect to Tenant means the customers, patrons, invitees, guests, members, licensees, assignees and subtenants of Tenant and the customers, patrons, invitees, guests, members, licensees, assignees and sub-tenants of subtenants.

Law or Laws means any one or more present and future laws, ordinances, rules, regulations, permits, authorizations, orders and requirements, to the extent applicable to the parties or to the Premises or any portion thereof, or to Tenant's use of the Premises, whether or not in the present contemplation of the parties.

Loss or Losses when used with reference to any Indemnity means any and all claims, demands, losses, liabilities, costs, damages (including foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits, and other proceedings, judgments and awards and costs and expenses (including, without limitation, reasonable Attorneys' Fees and Costs, and consultants' fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise.

Minor Alterations has the meaning set forth in Section 12.1(b).

Mortgage means any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance.

Mortgagee means the holder or holders of a Mortgage and, if the Mortgage is held by or for the benefit of a trustee, agent or representative of one or more financial institutions, the financial institutions on whose behalf the Mortgage is being held. Multiple financial institutions participating in a single financing secured by a single Mortgage shall be deemed a single Mortgagee for purposes of this Lease.

Permitted Uses has the meaning set forth in Section 5.1

Personal Property means all fixtures, furniture, furnishings, equipment, machinery, supplies, software and other tangible personal property, whether now or hereafter located in, upon or about the Premises, belonging to Tenant and/or in which Tenant has or may hereafter acquire an ownership interest, together with all present and future attachments, accessions, replacements, substitutions and additions thereto or therefore.

Pre-Existing Hazardous Material as defined in Section 21.2.

Premises has the meaning set forth in Section 2.1(a).

Primary Mission has the meaning set forth in Section 1

Primary Use has the meaning set forth in Section 5.1

Property has the meaning set forth in Recital A.

Release when used with respect to Hazardous Material means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any Improvements constructed under this Lease by or on behalf of Tenant, or in, on, under or about the Premises or any portion thereof.

Remediate or Remediation when used with reference to Hazardous Materials means any activities undertaken to clean up, remove, transport, dispose, contain, treat, stabilize, monitor or otherwise control Hazardous Materials located in, on, under or about the Premises or which have been, are being, or threaten to be Released into the environment. Remediation includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323.

Rent means the sum of base rent, if any, payable hereunder, and Additional Rent.

Restore and Restoration mean the restoration, replacement, or rebuilding of the Improvements (or the relevant portion thereof) in accordance with all Laws then applicable (including code upgrades) to substantially the same condition they were in immediately before an event of damage or destruction, or in the case of a Taking, the restoration, replacement, or rebuilding of the Improvements to an architectural whole.

Sublease means any lease, sublease, license, concession or other agreement by which Tenant leases, subleases, demises, licenses or otherwise grants to any person in conformity with the provisions of this Lease, the right to occupy or use any portion of the Premises (whether in common with or to the exclusion of other persons).

Subsequent Construction as defined in Section 12.1(a).

Subtenant means any person or entity leasing, occupying or having the right to occupy any portion of the Premises under and by virtue of a Sublease.

Tax Credit Investor means any investor investing equity into the Initial Improvements in consideration of being allocated historic rehabilitation tax credits or new market tax credits.

Tenant's Personal Property means all furniture, trade fixtures, office equipment and articles of movable personal property installed in the Premises by or for the account of Tenant, without expense to City, and that can be removed without structural or other damage to the Premises.

Term shall have the meaning set forth in Section 3.1.

Unmatured Event of Default means any event, action or inaction that, with the giving of notice or the passage of time, or both, would constitute an Event of Default under this Lease.

Section 2 PREMISES; CONDITION OF PREMISES

2.1 Premises.

(a) Lease of Premises; Description. Subject to the terms and conditions of this Lease, City hereby leases the Property to Tenant, and Tenant hereby leases the Property from City. The Property and all other Improvements now and hereafter located on the Property are referred to in this Lease as the “**Premises**.” The Parties reserve the right, upon mutual agreement of the General Manager and Tenant, to enter into memoranda setting forth the legal description of the Property or technical corrections thereto to reflect any non-material changes occurring during or after the development of the Project, and upon full execution thereof, such memoranda shall be deemed to become a part of this Lease.

(b) Permitted Title Exceptions. The interests granted by City to Tenant hereunder are subject to any and all existing title exceptions of record, together with any exceptions that Tenant either knew of or reasonably should have known as a result of its due diligence prior to entering into this Lease.

(c) No Subsurface Rights. Nothing in this Lease gives Tenant any right to any subsurface rights, including but not limited to any mineral, oil, gas, water, or other rights relative to the land.

2.2 Condition of Premises.

(a) Accessibility Inspection Disclosure. California law requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist (“CASp”) to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. Tenant is hereby advised that the Premises have not been inspected by a CASp.

(b) Energy Consumption. Tenant acknowledges and agrees that City has delivered a Disclosure Summary Sheet, Statement of Energy Performance, Data Checklist, and Facility Summary (all as defined in the California Code of Regulations, Title 20, Division 2, Chapter 4, Article 9, Section 1680)

for the Premises no less than 24 hours prior to Tenant's execution of this Lease. ***[NOTE TO RECPARK: Since this lease is for the entire building that is more 10,000 square feet or more, RecPark will need to create an account, or update an existing account, for the building on the EPA's Energy Star program Portfolio Manager website at least 31 days before executing the lease, and provide certain energy efficiency disclosures to the tenant at least 24 hours before executing the lease. This note should be removed prior to the execution of the Lease.]***

(c) **"As-Is With All Faults"**. Except with respect to those portions of the Initial Improvements, if any, that City elects or is required to perform following Close of Escrow (as defined in the LDDA) pursuant to the terms of the LDDA (including, if applicable, Remediation of Hazardous Materials), By taking possession of the Premises, Tenant agrees that the Premises have been delivered by City and accepted by Tenant in its "as is with all faults" condition. Tenant specifically acknowledges and agrees that neither City nor any of its officers or agents has made, and there is hereby disclaimed to the fullest extent, any representation or warranty, express or implied, of any kind, with respect to the condition of the Premises, the suitability or fitness of the Premises or appurtenances to the Premises for the development, use or operation of the Premises as contemplated by this Lease, any compliance with Laws or land use or zoning regulations, any matter affecting the use, value, occupancy or enjoyment of the Property, or any other matter whatsoever pertaining to the Premises. ***[NOTE: Tenant should determine, based solely on its own investigation, that any work City is to perform pursuant to the LDDA has been completed. This Lease is As-Is.]***

(d) **Release**. As part of its agreement to accept the Premises in its "As Is With All Faults" condition set forth above, effective upon the Commencement Date, or, if later, the date Tenant takes possession of the Premises, Tenant, on behalf of itself and its successors and assigns, shall be deemed to waive any right to recover from, and forever release, acquit and discharge, City and its Agents of and from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that Tenant may now have or that may arise on account of or in any way be connected with (i) the physical, geotechnical or environmental condition of the Premises as of the Commencement Date, including, without limitation, any Hazardous Materials in, on, under, above or about the Premises, and (ii) the Premises' compliance as of the Commencement Date with any Laws applicable to the Premises, including without limitation, Hazardous Materials Laws. In connection with the foregoing release, Tenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM OR HER MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR.

Tenant agrees that the release contemplated by this Section includes unknown claims for Losses pertaining to the subject matter of this release. Accordingly, Tenant hereby waives the benefits of Civil Code Section 1542, or under any other statute or common law principle of similar effect, in connection with the releases contained in this Section. Notwithstanding anything to the contrary in this Lease, the foregoing release shall survive any termination of this Lease. Notwithstanding the foregoing, City shall not be released under this Section 2.2(d) with respect to its performance of its obligations specifically set forth in the Lease or its performance of obligations specifically set forth in the LDDA which City is obligated to perform following Close of Escrow.

Initials: _____

2.3 SFMTA License.

The Parties acknowledge and agree that during the Term of this Lease Tenant will require access to certain City owned property located immediately adjacent to the Property to the south and the east, which property is under the control and jurisdiction of the San Francisco Municipal Transportation Agency

("SFMTA", and such property, the "SFMTA Property"), for purposes of ingress to and egress from the freight elevator and loading dock located on the eastern wall of the Building. Access to the SFMTA Property is presently governed by a memorandum of agreement between the Department and the SFMTA (the "SFMTA/RPD MOU"), dated for reference purposes only as of _____, 20___. Further, Tenant and the City and County of San Francisco, acting by and through the San Francisco Municipal Transportation Agency ("SFMTA"), are parties to that certain *[insert name of license/agreement]*, dated _____, 20__ (the "SFMTA License"), pursuant to which Tenant has the right during the term of this Lease to access certain City-owned property under the jurisdiction of the SFMTA located immediately adjacent to the Property to the south and the east (the "SFMTA Property") for purposes of ingress and egress to the freight elevator and loading dock located on the eastern wall of the Building. Tenant shall not do or grant to others the right to do anything in, on, under or about the Premises or the SFMTA Property that would violate the SFMTA/RPD MOU or the SFMTA License. The General Manager shall reasonably cooperate with Tenant's efforts to enforce Tenant's rights under the SFMTA/RPD MOU and the SFMTA License during the Term of this Lease, but City, as Landlord under this Lease, shall have no direct obligations under the SFMTA/RPD MOU or the SFMTA License. At the time of any assignment of Tenant's interest in this Lease, Tenant shall assign Tenant's interest in the SFMTA License to such assignee.

2.4 Relationship of Lease to LDDA.

This Lease describes the rights and obligations of Tenant and City during the Term. This Lease also shall be subject to the provisions of the LDDA until the Certificate of Completion is recorded in accordance with the LDDA. Until the recording of the Certificate of Completion, the LDDA will govern the development of the Initial Improvements in the event of any inconsistency between this Lease and the LDDA. Other than the construction of the Initial Improvements, in the event of any conflict or inconsistency between this Lease and the LDDA with respect to the Premises or the lease, development, use or occupancy thereof, the provisions of this Lease shall control over any such inconsistent or conflicting provisions of the LDDA.

Section 3 TERM; EARLY TERMINATION RIGHT

3.1 Term.

The Term of this Lease shall commence on the Effective Date (the "Commencement Date"). The Lease shall expire on the Expiration Date as defined in the Basic Lease Information, unless sooner terminated in accordance with the terms of this Lease. City shall deliver the Premises to Tenant on the Commencement Date in their then existing as is condition as provided above, with no obligation of City to make any improvements, repairs or alterations in connection with such delivery.

3.2 Tenant's Early Termination Option.

Tenant shall have the right to terminate this Lease at any time by delivering to City not less than one hundred eighty (180) days prior written notice of termination, which termination notice shall specify the early termination date. Upon Tenant's valid exercise of this termination right, this Lease shall terminate without cost or liability to Tenant or City on the date specified in Tenant's termination notice, or such earlier or later date as may be agreed upon by the parties, and Tenant shall vacate and surrender the Premises in the condition required under this Lease by such date.

Section 4 RENT

4.1 Tenant's Covenant to Pay Rent.

During the Term of this Lease, Tenant shall pay Rent for the Premises to City at the times and in the manner provided in this Section 4.

4.2 Additional Rent.

Except as otherwise provided in this Lease, all costs, fees, interest, charges, expenses, reimbursements and obligations of every kind and nature relating to the Premises that may arise or

become due during the Term of, or in connection with, this Lease, whether foreseen or unforeseen, which are payable by Tenant to City pursuant to this Lease, shall be deemed Additional Rent. As used in this Lease “**Rent**” means Additional Rent.

4.3 Manner of Payment of Rent.

Tenant shall pay all Rent to City in lawful money of the United States of America at the address for notices to City specified in this Lease, or to such other person or at such other place as City may from time to time designate by notice to Tenant. Rent shall be due and payable at the times provided in this Lease, provided that if no date for payment is otherwise specified, or if payment is stated to be due “upon demand,” “promptly following notice,” “upon receipt of invoice,” or the like, then such Rent shall be due twenty (20) days following the giving by City of such written demand, notice, invoice or the like to Tenant specifying that such sum is presently due and payable.

4.4 Limitations on Abatement or Setoff.

Tenant shall pay all Rent, including any Additional Rent, at the times and in the manner in this Lease provided without any abatement, setoff, deduction, or counterclaim whatsoever (except as specifically set forth in this Lease).

4.5 Interest on Delinquent Rent.

If any Rent is not paid within twenty (20) days following written demand for payment of such Rent, such unpaid amount shall bear interest from the date due until paid at an annual interest rate (the “**Default Rate**”) equal to the greater of (i) ten percent (10%) or (ii) five percent (5%) in excess of the rate the Federal Reserve Bank of San Francisco charges, as of the date payment is due, on advances to member banks and depository institutions under Sections 13 and 13a of the Federal Reserve Act; provided, in no event shall the Default Rate exceed any applicable usury or similar Law. Payment of interest shall not excuse or cure any default by Tenant.

4.6 Late Charges; Collection Costs.

Tenant acknowledges and agrees that late payment by Tenant to City of Rent will cause City increased costs not contemplated by this Lease. The exact amount of such costs is extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, without limiting any of City’s rights or remedies hereunder, if any Rent is not paid within twenty (20) days following the due date, then Tenant shall immediately pay to City a late charge equal to five percent (5%) of such delinquent rent amount (the “**Late Charge**”). Tenant shall also pay reasonable attorney’s fees incurred by City by reason of Tenant’s failure to pay Rent by the due date. Late Charge shall accrue interest at the rate of ten percent (10%) per annum, compounded monthly, from the due date to the date of payment. Except as provided above, such late charge may be assessed without notice and, except as provided above, without cure periods, and regardless of whether such late payment results in an Event of Default. The Parties agree that the Late Charge and reimbursement for attorney’s fees represents a fair and reasonable estimate of the cost which City will incur by reason of a late payment by Tenant. Amounts due under this Section 4.6 are in addition to, not in lieu of, amounts due under Section 4.5. Payment of Late Charge shall not excuse or cure any default by Tenant.

4.7 Net Lease.

It is the purpose of this Lease and intent of City and Tenant that, except as expressly stated to the contrary in this Lease, all Rent shall be absolutely net to City, so that this Lease shall yield to City the full amount of the Rent at all times during the Term, without deduction, abatement or offset. Except as otherwise expressly set forth in this Lease, under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties shall City be expected or required to incur any expense or make any payment of any kind with respect to this Lease or Tenant’s use or occupancy of the Premises, including any improvements, except as specifically set forth in the LDDA. By taking possession of the Premises for operations pursuant to this Lease following receipt of the Certificate of Completion in accordance with the provisions of the LDDA, Tenant acknowledges that City

has satisfied its obligations under the LDDA (subject to completion of any punch list items or other deferred matters that are City's responsibility as specifically indicated in the Certificate of Completion).

Section 5 USES

5.1 Permitted Uses.

Tenant shall use the Premises for the purpose of providing recreational, educational and cultural programming for youth and adults in the surrounding neighborhood, the city of San Francisco, and the region (the "**Primary Use**"), including opportunities for job training and apprenticeships in areas including, but not limited to, the culinary, media, literary, visual, dance, musical, performing, film/cinema/television production, digital, design and technical arts. In connection with such Primary Use, Tenant may perform all acts reasonable and necessary in connection with the use, operation, development and maintenance of the Premises for the Primary Use, including, but not limited to: (i) administrative/office use, (ii) arts rehearsals and performances, (iii) visual and design arts studios, (iv) classrooms, (v) theater, (vi) special events and public and private exhibitions, (vii) operation of a café and culinary training, and (viii) the operation of visitor-serving retail as permitted for park property, all as reasonably related to the Primary Use and the Primary Mission. The foregoing permitted uses are collectively defined in this Lease as the "**Permitted Uses.**" Tenant shall obtain all permits as may be required under applicable Law in accordance with Tenant's use of the Premises. Tenant's use and operations on the Premises shall be commensurate in quality with other programming offered by the Department. Some or all of the Permitted Uses may be performed by subtenants or licensees, in compliance with the provisions of Section 18 below.

5.2 Tenant Proposal to Change Use.

If Tenant reasonably determines during the Term of this Lease that the programming to be conducted by Tenant or others in the Premises as required under this Lease is no longer the best use of the Building with respect to the Department's Mission, Tenant may submit in writing proposed new Primary Uses and Permitted Uses that are consistent with the Department's Mission for City's consideration, together with a management plan for the operation of the Premises for the proposed new Primary Uses and Permitted Uses, supporting studies and analysis, and such other materials as Tenant would like City to consider regarding the proposed change of use ("Tenant's Change in Use Proposal").

The General Manager shall consider Tenant's Change in Use Proposal and confer with Tenant regarding such proposal, and will reasonably cooperate in exploring the feasibility of Tenant's Change in Use Proposal, subject to budgetary and fiscal restraints, provided that if the General Manager, in his or her sole discretion, determines that the Department does not have sufficient funds available for fully exploring and, if applicable, acting on such proposal at the time of Tenant's Change in Use Proposal, the General Manager shall notify Tenant in writing of the General Manager's estimate of shortfall in available funds (the "Estimated Shortfall Notice"). Costs of considering Tenant's Change in Use Proposal and, if applicable, in pursuing any consents therefor, may include such costs as costs (if any) incurred by the Department and other City agencies related to conducting studies and public outreach and information, the costs of City's Planning Department and other City agencies and departments in performing the tasks and activities associated with any environmental review, and the cost to the Department and other City agencies and departments in negotiating, preparing, or adopting any amendment to this Lease or other document providing for the change in use, including any ancillary documents or legislation. If the General Manager delivers an Estimated Shortfall Notice, Tenant may, at its election, agree to pay a portion of the cost required for exploring the feasibility of Tenant's Change in Use Proposal and, if applicable, in pursuing any consents therefor.

If the General Manager, in his or her sole discretion, determines that the programming in the Premises by Tenant or others under this Lease is not the best use of the Building, and that this Lease should be amended to allow Tenant to use the Premises in the manner described in Tenant's Change in Use Proposal, based on Tenant's Change in Use Proposal and, if applicable, on other studies and public outreach performed by the Department, then General Manager shall present such proposed change in use

and negotiated lease amendment, if applicable, to the Commission for its review and consideration. The Board of Supervisors has delegated to the Commission the authority to approve amendments to this Lease documenting approved changes in use provided the uses so allowed are consistent with the Department's Mission.

5.3 Advertising and Signs; Approved Signage Program.

Tenant shall have the right to install signs and advertising inside the Premises that are not visible from the exterior of the Building. The Building is included on the National Register of Historic Places. At any time and from time to time during the Term, Friends shall have the right to submit for the General Manager's written approval (which may be granted or withheld in the General Manager's reasonable discretion) a proposed signage program (or a proposed replacement signage program) for the Property, and following approval by the General Manager and such signage program (or replacement signage program) shall be deemed to be the "Approved Signage Program" from and after the date of such approval. Each Approved Signage Program shall (i) establish limitations on the number of signs permitted to be erected on the exterior of the Property, (ii) establish limitations on the size of any sign erected on the exterior of the Property, (iii) address construction, design standards, maintenance and removal obligations, and (iii) be compliant with the requirements of the United States Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (36 Code of Federal Regulations § 67.7; the "**Secretary's Standards**"). Tenant may not place any advertisements or signs, including but not limited to awnings, canopies and banners, on the exterior of the Building, or any signs or advertising on the interior of the Building that are visible from the outside, except (i) in compliance with the requirements of California State Historic Preservation Office and the National Park Service and (ii) either (A) in compliance with the Approved Signage Program or (B) following written approval by the General Manager, which approval can be given or withheld in the reasonable discretion of the General Manager. Prior to any such installation Tenant shall obtain at Tenant's expense any required permits for such signage and installation. Nothing in this Section 5.3 shall prohibit installation or maintenance of the signage included in the Initial Improvements.

5.4 Limitations on Uses by Tenant.

Tenant shall not use, occupy or permit the use or occupancy of any of the Premises in any unlawful manner or for any illegal purpose, or permit any waste on or about the Premises. Tenant shall not do anything, or permit anything to be done, in or about the Premises which would be prohibited by a standard form fire insurance policy or subject City to potential premises liability, and Tenant shall take commercially reasonable precautions to eliminate any nuisances or hazards relating to its activities on or about the Premises. Tenant shall not conduct any business, place any sales display, or advertise in any manner in on the exterior portions of the Premises, except as set forth in Section 5.3 or as approved by City in its regulatory capacity in accordance with City's standard permitting process for the use of streets and sidewalks. Without limiting the foregoing, Tenant shall not conduct or permit on or about the Premises any of the following activities ("**Prohibited Activities**"): (i) any activity that creates a public nuisance; (ii) any activity that is not within the Permitted Uses or otherwise approved by General Manager in writing; (iii) any activity or object that will overload or cause damage to the Premises or include more persons than is permitted by the City's Fire Marshall; (iv) use of the Premises for sleeping or personal living quarters; or (v) any use by a group or organization that violates the nondiscrimination provisions set forth in this Lease.

5.5 Building Rules and Regulations.

Tenant shall establish and maintain reasonable rules and regulations for the Building consistent with industry standards. Furthermore, City may make reasonable additions or modifications to the rules and regulations, which shall be binding upon Tenant's users or licensees, provided that such additions or modifications shall not reduce City's obligations hereunder nor materially adversely interfere with Tenant's business in the Premises, and such additions or modifications are not in conflict with the provisions of this Lease and do not materially increase the burdens or obligations upon Tenant.

5.6 Security Matters.

Tenant at all times shall be responsible for on-site security in and about the Premises. Tenant shall have an affirmative obligation to use and operate the Premises in a safe and secure manner for all patrons and staff.

5.7 Name of Building and Areas within Premises.

Tenant acknowledges that any proposed change in the name of the Building shall be subject to the Commission's naming policy and the process and procedures established by the Commission in connection with such policy, and shall be subject to the approval of the Commission. In addition, Tenant acknowledges that if Tenant desires to name rooms or areas within the Premises to recognize major donors to the Project or to Tenant's programs conducted within the Premises, or to recognize other honorees approved by City, such naming shall be subject to the Commission's naming policy, gift policy, and donor recognition guidelines in effect at the time, and shall be subject to approval of the Commission. Any signage designating names of rooms, areas, or components of the Premises, and any plaques commemorating donations to Tenant, shall be removed by Tenant at Tenant's sole cost and expense at the expiration or termination of this Lease, except as otherwise specifically approved by the Commission in writing.

5.8 Americans with Disabilities Act.

Tenant acknowledges that the Americans with Disabilities Act (the "ADA") requires that programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Tenant further acknowledges its obligation to comply with the ADA and any other federal, state or local disability rights legislation. Without limiting Tenant's obligations under this Lease to comply with applicable Laws, Tenant warrants that it will fulfill that obligation, and that it will not discriminate against disabled persons in the provision of services, benefits or activities pursuant to this Lease.

5.9 Rates and Charges.

The rates and charges for classes and services offered and goods sold by Tenant or others at the Premises shall not unreasonably exceed the prices charged by similar businesses in San Francisco. Notwithstanding the foregoing, classes and programs offered by Tenant for job training or career development shall be subsidized and shall be offered to low income individuals for free or at reduced prices, generally consistent with the policy adopted by the Department or the Commission from time to time for eligibility for the Department's scholarship program for recreation programs offered by the Department.

5.10 Operating Covenants.

(a) Continuous Use; Full Program. Commencing not later than the date that is six (6) months after delivery of the Certificate of Completion under the LDDA, and subject to Permitted Programming Disruptions, as defined below, Tenant shall continuously use, maintain and operate the entire Premises, or cause the entire Premises to be continuously used, maintained and operated, for the Permitted Uses, and shall not allow the Premises or major areas within the Premises to remain unoccupied or unused without City's prior written consent, which City may give or withhold in its reasonable discretion. Tenant shall use the Premises, and cause each Subtenant and licensee to use and operate its business in the Premises, in a professional manner, commensurate with the standard of use and operation of other Department facilities, and, subject to Permitted Programming Disruptions, shall use diligent and good faith steps to provide a full program of classes and other programs and services that serve youth and other members of the public and promote strong attendance at the Premises. Tenant (or others on behalf of Tenant) shall actively program the Building with youth-focused arts programming by offering daily, weekday classes throughout the during the academic year, and more robust programming during the summer months (the "Minimum Programming"). As used herein, "Permitted Programming Disruptions" means: (A) reasonable and periodic gaps, not to exceed six (6) months each, in continuous use of portions

of the Premises or in providing full programming that result from (i) changes in or modifications to programming or staffing, or (ii) customary vacancies in sublease space that may arise from time to time in connection with retenanting; or (B) vacancies or programming disruptions resulting from required repairs or construction of alterations or improvements, provided that Tenant shall use reasonable efforts to minimize the period during which Tenant or any subtenant is required to vacate portions of the Premises and to minimize any disturbance to programming during the performance of such work, and if such vacancy or disruption exceeds six (6) months, Tenant shall provide City with a written explanation of the reasons such required repairs or construction could not be performed in a manner that would result in a shorter disruption; or (C) vacancies or programming disruptions resulting from a casualty or condemnation event, in which case the provisions of Article 14 or Article 15, as applicable, shall control. Tenant shall use reasonable diligence to minimize disruptions in programming or resulting from Permitted Programming Disruptions, including, as applicable, shifting the location of classes to portions of the Premises not impacted by the alterations, improvements or casualty where feasible and providing interim staff to temporarily replace outside staff for scheduled classes where practicable. Tenant shall provide City with prompt written notice of Permitted Programming Disruptions exceeding ten (10) business days.

(b) Management, Staffing and Funding. Tenant shall provide appropriate management and development staff for the operation of the Premises, shall adequately fund the use, maintenance and operation of the Premises consistent with Tenant's obligations under this Lease, including maintaining a reasonable annual repair and capital plan and budget and sufficient reserves to fund such plan in accordance with the budget.

(c) Supplemental Funding. Tenant shall use its reasonable efforts to raise private funds for the purposes of funding educational programs and scholarships and supplementing other operating and capital costs for Tenant's operations at the Premises, to the extent of any projected shortfall between Tenant's operating income and such costs.

(d) Management and Operational Plans. Prior to the Commencement Date Tenant submitted to City a management and operation plan describing Tenant's goals for staffing, operations, programs, and capital improvements at the Premises. Not less frequently once every five (5) years Tenant shall provide to City an updated management and operation plan. If the General Manager has reasonable concerns that the updated management and operation plan is not consistent with the Department's Mission or will not realistically allow Tenant to comply with the maintenance and operational requirements of this Lease, City shall provide Tenant with written notice of such concerns, and Tenant will consult with and carefully consider the views of the General Manager or his her designee regarding such concerns. In addition, on or before _____ of each year of the Term, Tenant shall submit to City a report detailing its management and operations during the prior year. Within sixty (60) days of such submittal (or such longer period of time as mutually agreed by the Parties), Tenant and the General Manager or his or her designee shall meet to discuss such report.

(e) Subject to Permitted Programming Disruptions, if Tenant fails to provide the Minimum Programming, City may provide Tenant with written notice of such failure. Tenant shall attempt in good faith to correct such deficiency in programming within sixty (60) calendar days of such notice. If the deficiency cannot be corrected within the 60-day period, Tenant may at Tenant's election submit a written proposal for the correction along with a specific timeline for such cure (a "Programming Cure Proposal") no later than thirty (30) days after the date of the original notice from City. Tenant's Programming Cure Proposal shall be subject to approval by the General Manager. If Tenant does not timely submit a Programming Cure Proposal and the deficiency is not corrected by the end of the 60-day period, Tenant shall be in default of this Lease. If Tenant timely submits a Programming Cure Proposal and the General Manager disapproves of Tenant's Programming Cure Proposal, the General Manger shall provide Tenant with written notice of such disapproval, together with the reasons for such disapproval. Within thirty (30) days of receipt by Tenant of such written disapproval notice, Department staff and Tenant shall meet in good faith to consider methods and timing for curing the programming deficiency, and Tenant may at Tenant's election submit a revised proposal for the correction along with a specific

timeline for such cure (a “Revised Programming Cure Proposal”) no later than thirty (30) days after the date of such meeting. If Tenant timely submits a Revised Programming Cure Proposal and the General Manager disapproves of Tenant’s Revised Programming Cure Proposal, the General Manger shall provide Tenant with written notice of such disapproval, together with the reasons for such disapproval. If the General Manager disapproves the original Programming Cure Proposal and Tenant does not thereafter timely submit a Revised Programming Cure Proposal and the deficiency is not corrected by the end of the original 60-day period, Tenant shall be in default of this Lease. If Tenant timely submits a Programming Cure Proposal or a Revised Programming Cure Proposal which is not disapproved by the General Manager, and thereafter fails to cure the deficiency within the period provided in such proposal, Tenant shall be in default under this Lease. The foregoing opportunity to correct deficiencies in Minimum Programming shall not apply to failure to comply with any other specific obligation under this Lease.

Section 6 TAXES AND ASSESSMENTS

6.1 Payment of Possessory Interest Taxes and Other Impositions.

(a) Payment of Possessory Interest Taxes; Reporting Requirements. Subject to Tenant’s rights under Section 7.1, Tenant shall pay or cause to be paid, prior to delinquency, all possessory interest and property taxes legally assessed, levied or imposed by applicable Laws on the Premises or any of the improvements or personal property located on the Premises or arising out of Tenant’s leasehold estate created by this Lease, to the full extent of installments or amounts payable or arising during the Term. All such taxes shall be paid directly to City’s Tax Collector or other charging authority prior to delinquency, provided that if applicable Law permits Tenant to pay such taxes in installments, Tenant may elect to do so in which event only those installments that are due and payable prior to the expiration or earlier termination of the Lease shall be payable by Tenant. In addition, Tenant shall pay any fine, penalty, interest or cost as may be charged or assessed for nonpayment or delinquent payment of such taxes. Tenant specifically recognizes and agrees that this Lease creates a possessory interest which is subject to taxation, and that this Lease requires Tenant to pay any and all possessory interest taxes levied upon Tenant’s interest pursuant to an assessment lawfully made by City’s Assessor; provided, that Tenant shall have the right to contest the validity, applicability or amount of any such taxes in accordance with Section 7. San Francisco Administrative Code Sections 23.38 and 23.39 require that the City, as landlord under this Lease, report certain information relating to this Lease, and any renewals thereof, to the County Assessor within sixty (60) days after any such transaction, and that Tenant report certain information relating to any assignment of or sublease under this Lease to the County Assessor within thirty (30) days after such assignment or sublease transaction. Tenant agrees to comply with these requirements.

(b) Other Impositions. Subject to Tenant's rights under Section 7.1, Tenant shall pay or cause to be paid all Impositions to the full extent of installments or amounts payable or arising during the Term (subject to the provisions of Section 6.1(c)), which may be legally assessed, levied, confirmed or imposed on or in respect of or be a lien upon the Premises, any of the improvements or personal property now or hereafter located thereon, the leasehold estate created hereby, or any subleasehold estate permitted hereunder, including any taxable possessory interest which Tenant, or any subtenant or any other person may have acquired pursuant to this Lease. Tenant shall pay all Impositions directly to the taxing authority, prior to delinquency, provided that if any applicable Law permits Tenant to pay any such Imposition in installments, Tenant may elect to do so in which event only those installments that are due and payable prior to the expiration or earlier termination of the Lease shall be payable by Tenant. In addition, Tenant shall pay any fine, penalty, interest or cost as may be assessed for nonpayment or delinquent payment of any such Imposition. Impositions shall include all such taxes, assessments, fees and other charges whether general or special, ordinary or extraordinary, foreseen or unforeseen, or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing of every character. The foregoing or subsequent provisions notwithstanding, Tenant shall not be responsible for any Impositions arising from or related to, City’s interest as landlord under this Lease.

(c) Prorations. All Impositions imposed for the tax years in which the Commencement Date occurs or during the tax year in which this Lease terminates shall be apportioned and prorated between Tenant and City on a daily basis.

(d) Proof of Compliance. Within a reasonable time (but in any event, not more than fifteen (15) days) following City's written request which City may give at any time and give from time to time, Tenant shall deliver to City copies of official receipts of the appropriate taxing authorities, or other proof reasonably satisfactory to City, evidencing the timely payment of such Impositions.

6.2 City's Right to Pay.

Unless Tenant is exercising its right to contest under and in accordance with the provisions of Section 7, if Tenant fails to pay and discharge any Impositions (including without limitation, fines, penalties and interest) prior to delinquency and fails to pay same thereafter for more than ten (10) days after written demand from City that Tenant pay same, City, at its sole and absolute option, may (but is not obligated to) pay or discharge the same, and the amount so paid by City (including any interest and penalties thereon paid by City), together with interest at the Default Rate computed from the date City makes such payment, shall be deemed to be and shall be payable by Tenant as Additional Rent, and Tenant shall reimburse such sums to City within thirty (30) days following demand.

Section 7 CONTESTS

7.1 Right of Tenant to Contest Impositions and Liens and Laws.

Tenant shall have the right to contest the amount, validity or applicability, in whole or in part, of any possessory interest tax, property tax, or other Imposition or other lien, charge or encumbrance, against or attaching to the Premises or any portion of, or interest in, the Premises, including any lien, charge or encumbrance arising from work performed or materials provided to Tenant or other person to improve the Premises or any portion of the Premises, or the application of any Law to Tenant or the Premises, by appropriate proceedings conducted in good faith and with due diligence. Tenant shall give notice to City within a reasonable period of time of the commencement of any such contest and of the final determination of such contest. Nothing in this Lease shall require Tenant to pay any Imposition as long as it contests the validity, applicability or amount of such Imposition or Law in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition or Law to be forfeited to the entity levying such Imposition as a result of its nonpayment. If any Law requires, as a condition to such contest, that the disputed amount be paid under protest, or that a bond or similar security be provided, Tenant shall be responsible for complying with such condition as a condition to its right to contest. Tenant shall be responsible for the payment of any interest, penalties or other charges which may accrue as a result of any contest, and Tenant shall provide a statutory lien release bond or other security reasonably satisfactory to City in connection with any such contest. Without limiting Section 19, Tenant shall Indemnify City for any such fines, penalties, costs, expenses or fees, including Attorneys' Fees and Costs, resulting from Tenant's failure to pay any Imposition or Tenant's contest of an Imposition or Law.

Section 8 COMPLIANCE WITH LAWS

8.1 Compliance with Laws and Other Requirements.

Tenant shall promptly comply, at no cost to City, with all present or future Laws relating to the Premises or the use or occupancy thereof and with any and all recorded covenants, conditions and restrictions affecting the Property or any portion thereof. Tenant acknowledges that the Permitted Uses under Section 5.1 do not limit Tenant's responsibility to obtain Regulatory Approvals for such uses, including but not limited to, building permits. Tenant further understands and agrees that it is Tenant's obligation, at no cost to City, to cause the Premises and Tenant's uses thereof to be conducted in compliance with all Disabled Access Laws. The parties acknowledge and agree that Tenant's obligation to comply with all Laws provided herein is a material part of the bargained for consideration under this Lease. Tenant's obligation under this Section shall include, without limitation, the responsibility of Tenant to make repairs and alterations to the Premises other than the making of structural repairs or

alterations to the Building except to the extent such structural repairs or alterations are required due to Tenant's alterations to or Tenant's particular use of the Premises. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel City to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

8.2 Regulatory Approvals.

(a) Responsible Party. Tenant understands and agrees that Tenant's use of the Premises hereunder may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Tenant shall be solely responsible for obtaining any and all such regulatory approvals. Tenant shall bear all costs associated with applying for and obtaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Tenant (subject to Tenant's right to contest pursuant to Section 7), and City shall have no liability, monetary or otherwise, for any such fines or penalties. Without limiting the other indemnification provisions of this Lease, Tenant shall Indemnify City and any Indemnified Party from and against any and all such fines and penalties, together with Attorneys' Fees and Costs, for which City may be liable in connection with Tenant's failure to obtain or comply with any Regulatory Approval or in connection with the litigation against or appeal or contest of, any Regulatory Approval or any conditions thereof.

(b) City Acting as Owner of Real Property. Tenant understands and agrees that City is entering into this Lease in its proprietary capacity, as the holder of fee title to the Premises, and not in its capacity as a regulatory agency of City. Tenant understands that City's entering into this Lease shall not be deemed to imply that Tenant will be able to obtain any required approvals from City departments, boards or commissions which have jurisdiction over the Premises, including City itself in its regulatory capacity. By entering into this Lease, City is in no way modifying Tenant's obligations to cause the Premises to be used and occupied in accordance with all Laws, as provided herein.

Section 9 TENANT'S MANAGEMENT AND OPERATING COVENANTS

9.1 Operating Standards and Requirements; Management.

(a) Following completion of the Initial Improvements Tenant shall operate Premises in a commercially reasonable manner consistent with achieving the Primary Use and the Project goals. Tenant shall be exclusively responsible, at no cost to City, for the management and operation of the Premises. In connection with managing and operating the Premises, Tenant shall provide (or require others, including, without limitation, Subtenants, to provide) such services as may be necessary or appropriate to achieve and maintain operating standards commensurate with that of facilities managed by the Department, including, but not limited to, (a) repair and maintenance of the Improvements, (b) those utility services that are Tenant's obligations hereunder, (c) cleaning, janitorial, extermination, and trash removal, (d) landscaping and groundskeeping, (e) security services, (f) marketing the Premises, selection of Subtenants and negotiation of Subleases and Event Permits (subject to the requirements of Section 18 below), (g) enforcement of reasonable rules and regulations for the conduct of Subtenants and others present on the Premises, (h) collection of rents and other receivables and preparation of statements, (i) use reasonable efforts to enforce, as fully as practicable, the compliance by Subtenants and permittees with the terms, covenants and conditions of their Subleases or permits, (i) placement of insurance and payment of premiums and securing certificates of insurance from Subtenants, permittees and persons working on the Premises, if applicable, (j) preparing a budget that permits Tenant to pay operating expenses and meet debt service obligations, and (k) establishing and maintaining books and records and systems of account covering operations of the Premises in accordance with sound accounting practices.

(b) Tenant, at its election, shall either manage the Premises and negotiate and enter into Subleases and Event Permits by its staff or shall engage one or more third-party entities to manage

and market the Premises. Tenant shall manage the Premises, whether directly or indirectly, in a commercially reasonable manner consistent with sound facility management practices. If City determines in its reasonable judgment that the Premises are not being operated, managed or subleased in accordance with the requirements and standards of this Lease, City may provide Tenant with written notice of such defect in operation, management or subleasing. Within thirty (30) days of receipt by Tenant of such written notice, City staff and Tenant shall meet in good faith to consider methods for improving the operating, management or subleasing of the Premises, and Tenant shall cure the defects in performance, which cure must begin as soon as practicable and in all events within forty five (45) days after City's notice and must be completed within seventy-five (75) days after the date of City's notice, provided that if the deficiency cannot be corrected within the 75-day period, Tenant shall submit a written proposal for the correction along with a specific timeline for such cure no later than thirty (30) days after the date of the meeting between Tenant and City. Tenant's proposal shall be subject to approval by the Department at Department's reasonable discretion. If the deficiency is not corrected by the end of the 75-day period, or if the Department has not accepted Tenant's plan for cure by such date, Tenant shall be in default of this Lease. No contract for the operation or management or leasing of the Premises entered into by Tenant shall be binding on City and no act or omission of a manager pursuant to any management agreement, or otherwise, shall in any manner excuse Tenant's failure to perform any of its obligations under this Lease.

9.2 Books and Records; Annual Report; Audit Right.

Tenant shall keep accurate books and records according to generally accepted accounting principles. On or before the date which is ninety (90) days following the close of each year during the Term and ninety (90) days following the end of the Term, Tenant shall deliver to City an itemized statement of income and expenditures by Tenant for such year, which statement shall set forth income and expenditures by department for the year just concluded broken down by category (such as subtenant rental, event rental, income from classes, and donations received) and a cash flow table that itemizes expenditures on staff and consultant salaries, utilities and maintenance, capital improvements, and the like (the "**Annual Statement**"), certified as correct by an officer of Tenant and in form delivered to Tenant's board of directors, or if no such form which such detail was delivered to Tenant's board of directors, in a form satisfactory to City. Tenant agrees to make its books and records available to City, or to any City auditor, or to any auditor or representative designated by City, for the purpose of examining such books and records to determine the accuracy of Tenant's earnings and expenses. Such books and records shall be kept for four (4) years and shall be maintained and/or made available in San Francisco to City's representative for the purpose of auditing or re-auditing. In addition, Tenant shall promptly provide to City its annual report and Form 990 tax form.

Section 10 REPAIR AND MAINTENANCE

10.1 Covenants to Repair and Maintain the Premises.

(a) Tenant's Duty to Maintain and Repair. Throughout the Term of this Lease, Tenant shall maintain and repair, at no expense to City, the non-structural, interior components of the Premises in good repair and working order and in a clean, secure, safe and sanitary condition. Subject to Section 10.1(b), and Section 15 of this Lease, Tenant shall promptly make (or cause others to make) all necessary or appropriate non-structural, interior repairs, including repair of wear and tear. Tenant shall make such repairs with materials, apparatus and facilities with materials, apparatus and facilities at least equal in quality, appearance and durability to the materials, apparatus and facilities repaired or replaced. Without limiting the foregoing, Tenant shall promptly make all such repairs and replacements: (a) at no cost to City, (b) by licensed contractors or qualified mechanics, and (c) in accordance with any applicable Laws. In addition to the foregoing, subject to the provisions of Section 10.1(b), Tenant shall be responsible for regularly scheduled maintenance to the structural and exterior components of the Building, including the roof (collectively, the "**Structural Components**") as more particularly described in the Maintenance Budget, as defined below.

(b) Capital Repair Budget; Replacement Reserve Account. Tenant shall engage a qualified professional to develop a 35-year asset reserve analysis for the Premises (the “**Reserve Study**”), which Reserve Study shall include a schedule for repair, replacement, major maintenance, and improvement of Structural Components, Building systems, and other capital improvements, fixtures or equipment located on or used in connection with the operation of the Premises which are subject to wearing out during the useful life of the Buildings on the Premises (“**Capital Repairs and Replacements**”). Tenant, in consultation with the Department, shall develop a schedule for periodic deposits into a separate depository account (the “**Replacement Reserve Account**”) in the amount reasonably adequate for the payment of all reasonably anticipated costs of Capital Repairs and Replacements, which schedule shall be subject to the reasonable approval or disapproval of the General Manager (as so approved, the “**Capital Repair Budget**”). The schedule for deposits into the Replacement Reserve Account shall be informed by the Reserve Study and shall take into account Tenant’s desire to fund major Capital Repairs and Replacements with donations from periodic capital campaigns tied to specific scheduled or anticipated Capital Repairs and Replacements, whenever possible, rather than by ongoing monthly deposits. Tenant shall make deposits of \$10,000 into the Replacement Reserve Account in each of the five (5) years commencing on the Close Date under the LDDA on a schedule determined by Tenant. Thereafter, Tenant shall keep a working fund of \$50,000, as Indexed, in the Replacement Reserve Account (subject to withdrawal and replenishment as described below), and shall make additional deposits from time to time as required to fund the Replacement Reserve Account, at a minimum, to the levels proposed in the Capital Repair Budget or recommended by City’s Controller, as provided below, if applicable. If Tenant withdraws funds from the Replacement Reserve Account such that the resulting balance is \$25,000 or less, as Indexed, Tenant shall replenish the Replacement Reserve Account to a minimum balance of \$50,000, as Indexed, within twenty-four (24) months of the withdrawal. If Tenant withdraws funds from the Replacement Reserve Account such that the resulting balance is less than \$50,000 as Indexed, but greater than \$25,000, as Indexed, Tenant shall replenish the Replacement Reserve Account to a minimum balance of \$50,000, as Indexed, within twelve (12) months of the withdrawal. The funds in the Replacement Reserve Account shall be used by Tenant only for Capital Repairs and Replacements, and shall not be used to fund program costs or for any other purpose unless Tenant obtains the prior written consent of City, which consent may be withheld in City’s sole discretion. City’s Controller may review the adequacy of deposits to the Replacement Reserve Account periodically and if the Controller determines from time to time in his or her reasonable discretion that the amount in the Replacement Reserve Account is insufficient to fund the cost of the likely expenditures which will be required to be made from such account, City may require an increase in the amount of deposits into the Replacement Reserve Account upon one hundred eighty (180) days prior written notice to Tenant, and Tenant shall thereupon make such adjustments, either by monthly payments or by capital campaign funds or otherwise, as reasonably agreed by City and Tenant. City’s Controller shall include in its written notice to Tenant a written explanation of the reasons for requiring an increase in the monthly deposits into the Replacement Reserve Account. Tenant shall deliver to City annually a statement from the depository institutions in which the Replacement Reserve Account is held, showing the then current balance in such account and any activity on such account which occurred during the immediately prior year. In the event that Tenant has withdrawn funds from the Replacement Reserve Account within the immediately prior year, Tenant shall include with the delivery of such statement, an explanation of such withdrawal. In connection with any such expenditure, Tenant shall provide City with any other documentation related thereto, reasonably requested by City. The insufficiency of any balance in the Replacement Reserve Account shall not abrogate Tenant’s obligation to fulfill all preservation and maintenance covenants in this Lease. Notwithstanding the foregoing, if Capital Repairs and Replacements are required during the final five (5) years of the Term, Tenant may propose that City and Tenant share the cost of such Capital Repairs and Replacements in a manner that takes into account the useful life of the repair or replacement and the remaining Lease Term, such that Tenant is responsible only for that portion of the cost attributable to the time period prior to the expiration of the Term, and if City does not agree to fund the balance of the cost of the required Capital Repairs and Replacements City shall so notify

Tenant and Tenant may either terminate this Lease by providing written notice of termination to City, or Tenant may elect to make such Capital Repairs and Replacements at Tenant's cost.

(c) Inspection Reports. Not less frequently than once every seven (7) years, Tenant shall conduct an inspection and physical needs assessment for the Premises to identify replacements and repairs required to maintain the Premises in good order and repair and to keep the Improvements from deteriorating, and shall cause to be prepared a written report (the "**Inspection Report**") detailing the results of such inspection and assessment. The Inspection Report shall identify capital repairs and improvements which are reasonably required to preserve, repair or replace capital improvements, fixtures or equipment located on or used in connection with the operation of the Premises as well as routine maintenance and repairs. At City's request, Tenant shall cooperate with City to ensure maintenance and repair data is provided promptly to City's Capital Planning Committee staff for inclusion in the master City property database currently known as Facility Renewal and Replacement Model (FRRM).

(d) No City Duty to Maintain. City shall not, as a result of this Lease, have any obligation to make repairs or replacements of any kind or maintain the Premises or any portion of any of them, including the Structural Components.

(e) Cooperation in Identifying Funding Sources. City and Tenant shall use reasonable efforts to identify funding for any unexpected repairs not identified in the Maintenance Budget and not otherwise the obligation of Tenant under this Lease, and if such funding is identified, to perform such repairs.

(f) Right to Terminate; Tenant Right to Perform Repairs. If Structural Components require repair, and City elects to not make the repair, then City shall so notify Tenant and either City or Tenant may either terminate this Lease by providing the other written notice of termination, or Tenant may elect to make such repair (in which case, City may not terminate this Lease), in which case such work shall be performed following an open and fair competitive bid process approved in writing by the General Manager in his or her reasonable discretion. Any and all licenses and agreements entered into by Tenant for use of the Premises must acknowledge Tenant's and City's repair and termination rights as set forth in this Lease, and waive any rights against City in the event of any such repair or termination as permitted by this Lease. Tenant waives any and all claims for damages, injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises or any other loss, in the event of City exercises its right to repair the Premises or to terminate this Lease following damage or destruction or as otherwise permitted hereunder. In making any such repairs, City shall comply with the applicable requirements of the California State Historic Preservation Office and the National Park Service, and use commercially reasonable efforts to minimize disruption to Tenant's use of the Premises.

(g) Tenant Waivers. Except as expressly set forth above, (i) City shall have no obligation to make repairs or replacements of any kind or maintain the Premises or any portion thereof, and (ii) Tenant waives the benefit of any existing or future law that would permit Tenant to make repairs or replacements at City's expense, or abate or reduce any of Tenant's obligations under, or terminate, this Lease, on account of the need for any repairs or replacements. Without limiting the foregoing, Tenant hereby waives any right to make repairs at City's expense as may be provided by Sections 1932(1), 1941 and 1942 of the California Civil Code, as any such provisions may from time to time be amended, replaced, or restated.

(h) Notice. Tenant shall deliver to City, promptly after receipt, a copy of any notice which Tenant may receive from time to time: (i) from any governmental authority having responsibility for the enforcement of any applicable Laws, asserting that the Premises is in violation of such Laws; or (ii) from the insurance company issuing or responsible for administering one or more of the insurance policies required to be maintained by Tenant under this Lease, asserting that the requirements of such insurance policy or policies are not being met. City shall deliver to Tenant, promptly after receipt, a copy of any notice which City may receive from time to time from any governmental authority having

responsibility for the enforcement of any applicable Laws, asserting that the Premises is in violation of such Laws.

Section 11 INITIAL IMPROVEMENTS PURSUANT TO LDDA

11.1 Tenant's Obligation under LDDA to Construct Improvements.

Tenant has the obligation under the LDDA to perform certain improvements and alterations to the Premises (the "**Initial Improvements**"). To the extent the Certificate of Completion issued in connection with the LDDA was conditioned upon Tenant's completion of Deferred Items (as defined in the LDDA), Tenant's agreement to complete such Deferred Items at the time(s) and in the manner provided shall be an obligation under this Lease, and failure to do so shall be a default hereunder.

11.2 Title to Improvements.

As used in this Lease, "**Improvements**" means all buildings, structures, fixtures and other improvements erected, built, placed, installed or constructed upon or within the Premises, including, but not limited to, the Initial Improvements. During the Term of this Lease, Tenant shall own all of the Improvements, including all Subsequent Construction (as defined in Section 12 below) and all appurtenant fixtures, machinery and equipment installed therein (except for trade fixtures and other personal property of Subtenants). At the expiration or earlier termination of this Lease, title to the Improvements, including appurtenant fixtures (but, except as otherwise set forth in this Lease, excluding trade fixtures and, other Personal Property of Tenant and its Subtenants), will vest City without further action of any Party, and without compensation or payment to Tenant. Tenant and its Subtenants shall have the right at any time, or from time to time, including, without limitation, at the expiration or upon the earlier termination of the Term of this Lease to remove trade fixtures and other Personal Property from the Premises in the ordinary course of business; provided, however, that if the removal of Personal Property causes damage to the Premises, Tenant shall promptly cause the repair of such damage at no cost to City.

Section 12 SUBSEQUENT CONSTRUCTION

12.1 City's Approval Required for Subsequent Construction.

(a) Subsequent Construction. Following completion of the Initial Improvements, Tenant shall not make or permit any alterations to the Building or to the heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security and other mechanical, electrical, communications systems of the Building, and shall not make or permit any construction, alterations, installations, additions or improvements (collectively, "**Subsequent Construction**"), in, to or about the Premises, except for Minor Alterations, without City's prior written consent in each instance, which consent shall not be unreasonably withheld.

(b) Minor Alterations. Unless otherwise required under Section 12.1(a), City's approval hereunder shall not be required for (a) the installation, repair or replacement of furnishings, fixtures, equipment or decorative improvements which do not materially affect the structural integrity of the Improvements, (b) recarpeting, repainting the interior of the Premises, or similar alterations, (c) any other Subsequent Construction which does not require a building permit, approval from the Planning Department or other Departments of the City or SHPO, or (d) any other Subsequent Construction costing less than One Hundred Thousand Dollars (\$100,000), as Indexed (collectively, "**Minor Alterations**").

(c) Notice by Tenant; General Approval. At least thirty (30) days before commencing any Subsequent Construction which requires City's approval under Section 12.1(a) above, Tenant shall notify City of such planned Subsequent Construction. City shall have the right to object to any such Subsequent Construction, to the extent that such Subsequent Construction requires City's approval, by providing Tenant with written notice of such objection within thirty (30) days after receipt of such notice from Tenant. If City does not approve or object to the proposed Subsequent Construction within the thirty (30) day period described above, then Tenant may submit a second written notice to City

that such objection was not received within the period provided by this Section 18.1(b) and requesting City's response.

(d) All Subsequent Construction shall be done at Tenant's expense in accordance with plans and specifications approved by City (to the extent plans are reasonably required), only by duly licensed and bonded contractors or mechanics (which contractors or mechanics shall be subject to the prior approval of City if the proposed work exceeds One Hundred Thousand Dollars (\$100,000), as Indexed) and, if City's approval was required, subject to any conditions that City may reasonably impose at the time of approval. At least twenty (20) days before commencing any Subsequent Construction, excluding any Minor Alterations, Tenant shall notify City of such planned Subsequent Construction.

12.2 Construction Documents in Connection with Subsequent Construction.

With regard to any Subsequent Construction (excluding Minor Alterations), Tenant shall prepare and submit to City, for review and written approval hereunder, reasonably detailed schematic drawings. City may waive the submittal requirement of schematic drawings if it determines in its reasonable discretion that the scope of the Subsequent Construction does not warrant such initial review. Schematic drawings, if required, shall generally include perspective drawings sufficient to illustrate the Improvements to be constructed, a site plan at appropriate scale showing relationships of the Improvements with their respective uses, building plans, floor plans and elevations sufficient to describe the development proposal, and the general architectural character, and the location and size of uses, of the proposed work, and building sections showing height relationships of the areas noted above. Tenant shall prepare and submit to City, for review and written approval hereunder (following City's approval of schematic drawings, if required) preliminary and final construction documents (collectively "**Construction Documents**"), which are consistent with the approved schematic drawings, if applicable. Construction Documents means plans, specifications and working drawings for Improvements, setting forth in detail all aspects of the design, function and construction of the Improvements (including architectural, structural, mechanical, electrical, materials and such other elements as may be appropriate), in form sufficient for obtaining permits and bidding all elements of construction, and in otherwise in conformity with all of the requirements of this Lease. Construction Documents shall be prepared by a qualified architect or structural engineer duly licensed in California. City shall approve or disapprove schematic drawings and Construction Documents submitted to it for approval within thirty (30) days following receipt, and any disapproval shall state in writing the reasons for disapproval. If City deems the Construction Documents incomplete, City shall notify Tenant of such fact. If City disapproves Construction Documents, and Tenant revises or supplements, as the case may be, and resubmits such Construction Documents, City shall promptly review the revised or supplemented Construction Documents to determine whether the revisions satisfy the objections or deficiencies cited in City's previous notice of rejection. Upon receipt by Tenant of a disapproval of Construction Documents from City, Tenant (if it still desires to proceed) shall revise such disapproved portions of such Construction Documents in a manner that addresses City's written objections to the extent acceptable to Tenant. Tenant shall resubmit such revised portions to City as soon as possible after receipt of the notice of disapproval. City shall approve or disapprove such revised portions in the same manner as provided above for approval of Construction Documents (and any proposed changes therein) initially submitted to City.

12.3 Construction.

(a) Conditions. Tenant shall not commence any Subsequent Construction until the following conditions have been satisfied or waived by City: (i) except with respect to Minor Alterations, City shall have approved the final Construction Documents; (ii) Tenant shall have obtained all permits and other regulatory approvals necessary to commence such construction; and (iii) Tenant shall have submitted to City in writing its good faith estimate of the anticipated total construction costs of the Subsequent Construction if such estimated cost exceeds Twenty Five Thousand Dollars (\$25,000), as Indexed. If such good faith estimate exceeds One Hundred Thousand Dollars (\$100,000) , as Indexed,

Tenant shall also submit, at City's request, evidence reasonably satisfactory to City, of Tenant's ability to pay such costs as and when due.

(b) Reports. During periods of construction, Tenant shall submit to City upon City's reasonable request, but not more frequently than monthly, written progress reports, along with appropriate backup documentation.

12.4 Construction Standards.

All construction on the Premises shall be accomplished expeditiously, diligently and in accordance with good construction and engineering practices and applicable Laws. Tenant shall undertake commercially reasonable measures to minimize damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected by such work. Dust, noise and other effects of such work shall be controlled using commercially-accepted methods customarily used to control deleterious effects associated with construction projects in populated or developed urban areas.

12.5 General Conditions.

All construction on the Premises shall be subject to the following terms and conditions:

(a) All construction work shall be performed in compliance with all Laws, including but not limited to Disabled Access Laws and any historic preservation requirements.

(b) City shall have no responsibility for costs of any Subsequent Construction; Tenant shall pay (or cause to be paid) all such costs.

(c) Tenant shall be responsible for all required insurance.

(d) Tenant shall resolve any and all disputes arising out of the construction in a manner which shall allow work to proceed expeditiously.

(e) City and its Agents shall have the right to enter areas in which construction is being performed to inspect the progress of the work provided such inspections do not unreasonably interfere with the construction. City shall use reasonable efforts to provide prior written or telephonic notice of such entry. Such access shall be subject to Tenant's reasonable security and safety measures. Nothing in this Lease, however, shall be interpreted to impose an obligation upon City to conduct such inspections or any liability in connection therewith.

12.6 Construction Contracts.

Except as otherwise agreed by City in writing, any construction contract for Subsequent Construction (a "**Construction Contract**") shall include terms and conditions: (A) requiring contractor to obtain performance and payment bonds guaranteeing in full the contractor's performance and payment of subcontractors under the Construction Contract; (B) naming City and its boards, commissions, directors, officers, agents, and employees as co-indemnitees with respect to Tenant's contractor's obligation to indemnify and hold harmless Tenant and its directors, officers, agents, and employees from all Losses directly or indirectly arising out of, connected with, or resulting from the contractor's performance or nonperformance under the Construction Contract; (C) requiring Tenant and contractor (as applicable) to obtain and maintain insurance coverages reasonably acceptable to City, including general liability and builder's risk insurance coverage that names City and its directors, officers, agents, and employees as additional insureds under the terms of the policies, (D) identifying City as an intended third party beneficiary of the Construction Contract, with the right to enforce the terms and conditions of the Construction Contract and pursue all claims thereunder as if it were an original party thereto; (E) consenting to the assignment of the Construction Contract to the City, in whole or in part, including but not limited to the assignment of (i) all express and implied warranties and guarantees from the contractor, all subcontractors and suppliers, (ii) all contractual rights related to the correction of nonconforming work, and (iii) the right to pursue claim(s) for patent and latent defects in the work and the completed project; and (F) providing for the contractor's(s') obligation, for a period of at least one (1)

year after the final completion of construction of the Improvements, to correct, repair, and replace any work that fails to conform to the Final Construction Documents (as the same may be revised during construction pursuant to properly approved change orders) and damage due to: (i) faulty materials or workmanship; or (ii) defective installation by such contractor(s) of materials or equipment manufactured by others.

12.7 Tenant's Duty to Notify City.

Tenant shall promptly notify City in writing of (i) any written communication that Tenant may receive from any governmental, judicial or legal authority, giving notice of any claim or assertion that the Property, Building or any completed improvements fail in any respect to comply with applicable laws, rules and regulations; (ii) any known material adverse change in the physical condition of the Property, including, without limitation, any damage suffered as a result of earthquakes; (iii) any known default by any contractor or subcontractor or material supplier; or (iv) any known material adverse change in the financial condition or business operations of any contractor or subcontractor or material supplier that is reasonably anticipated to interfere with the completion of the applicable construction.

12.8 Prevailing Wages.

Tenant agrees that any person performing labor in the construction on the Premises shall be paid not less than the highest prevailing rate of wages and that Tenant shall include, in any contract for construction a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed and shall use reasonable diligence to enforce such contract provisions. Tenant further agrees that, during the performance of any construction at the Premises during the Term, Tenant shall comply with all the provisions of Section 6.22(E) of the San Francisco Administrative Code, as if the construction contracts had been awarded by the City and County of San Francisco.

12.9 Tropical Hardwood and Virgin Redwood Ban.

Neither Tenant nor any of its contractors shall provide any items to City in the construction of improvements or otherwise in the performance of this Lease that are tropical hardwood, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood, or virgin redwood wood products. In the event Tenant fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Tenant shall be liable for liquidated damages as set forth in Chapter 8.

12.10 Approvals.

Tenant understands and agrees that City is entering into this Lease in its proprietary capacity and not as a regulatory agency with certain police powers. Notwithstanding anything to the contrary herein, no approval by City of the plans for any construction (including the schematic design documents or Construction Documents) nor any other approvals by City hereunder shall be deemed to constitute approval of any governmental or regulatory authority with jurisdiction over the Premises. All approvals or other determinations of City as landlord hereunder may be made by the General Manager unless otherwise specified herein.

12.11 Safety Matters.

Tenant, while performing any construction or maintenance or repair of the Building, shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining portions of the Premises and the surrounding property, or the risk of injury to members of the public, caused by or resulting from the performance of its work.

12.12 First Source Hiring Ordinance.

City has adopted a First Source Hiring Ordinance (Board of Supervisors Ordinance No. 264-98) which establishes specific requirements, procedures and monitoring for first source hiring of qualified

economically disadvantaged individuals for entry level positions. Tenant agrees to comply with the First Source Hiring Ordinance to the extent applicable and shall enter into a First Source Hiring Agreement meeting applicable requirements of Section 83.9 of the First Source Hiring Ordinance.

12.13 Construction Improvements that Disturb or Remove Exterior Paint.

Tenant, on behalf of itself and its Agents, employees, officers and contractors, shall comply with all requirements of the San Francisco Building Code Chapter 36 and all other applicable local, state, and Federal laws, including but not limited to the California and United States Occupational and Health Safety Acts and their implementing regulations, when the work of improvement or alteration disturbs or removes exterior or interior lead-based or “presumed” lead-based paint (as defined below). Tenant, its Agents, employees, officers and contractors shall give to City three (3) business days prior written notice of any disturbance or removal of exterior or interior lead-based or presumed lead-based paint. Tenant acknowledges that the required notification to the Department of Building Inspection regarding the disturbance or removal of exterior lead-based paint pursuant to Chapter 36 of the San Francisco Building Code does not constitute notification to City as Tenant under the Lease and similarly that notice under the Lease does not constitute notice under Chapter 36 of the San Francisco Building Code. Further, Tenant and its Agents, employees, officers and contractors, when disturbing or removing exterior or interior lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter (“HEPA”) local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool; and (e) heat guns operating above 1,100 degrees Fahrenheit. Tenant covenants and agrees to comply with the requirements of Title 17 of the California Code of Regulations when taking measures that are designed to reduce or eliminate lead hazards. Paint on the exterior or interior of buildings built before January 1, 1979 is presumed to be lead-based paint unless a lead-based paint test, as defined by Chapter 36 of the San Francisco Building Code, demonstrates an absence of lead-based paint on the interior or exterior surfaces of such buildings. Lead-based paint is “disturbed or removed” if the work of improvement or alteration involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on a surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface.

12.14 Preservative-Treated Wood Containing Arsenic.

Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term “preservative-treated wood containing arsenic” shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Tenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Tenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term “saltwater immersion” shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

12.15 Resource Efficient City Buildings and Pilot Projects.

Tenant acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 707 relating to resource-efficient City buildings and resource-efficient pilot projects. Tenant hereby agrees that it shall comply with all applicable provisions of such code sections.

12.16 As-Built Plans and Specifications.

Tenant shall furnish to City one copy of as-built plans and specifications for Subsequent Construction (reproducible transparencies and CAD files) within one hundred twenty (120) days

following completion; provided, however, Tenant shall continue to own the rights to such as built plans and specifications until the expiration or earlier termination of the Lease. If Tenant fails to provide such as-built plans and specifications to City within the time period specified herein, and such failure continues for an additional thirty (30) days following written request from City, City will thereafter have the right to cause an architect or surveyor selected by City to prepare as-built plans and specifications showing such Subsequent Construction, and the reasonable cost of preparing such plans and specifications shall be reimbursed by Tenant to City as Additional Rent. Nothing in this Section shall limit Tenant's obligations, if any, to provide plans and specifications in connection with Subsequent Construction under applicable regulations adopted by City in its regulatory capacity.

12.17 Title to Improvements.

Tenant shall have the right to remove and safely store City's personal property at any time during the Term, provided Tenant shall return the same to the Premises upon the expiration or earlier termination of the Lease. Notwithstanding anything to the contrary in the Lease, equipment, additions and other property attached or affixed to or installed in the Premises by Tenant which can be removed without structural damage to the Premises (e.g., sound systems, seating, lights, and similar improvements), but not including any such items if included as part of the Initial Improvements, shall remain Tenant's property and may be removed at any time so long as Tenant repairs any damage to the Premises caused by such removal. Tenant shall not have the right to remove the Initial Improvements (excluding any portion of the Initial Improvements that constitute Personal Property), all of which shall be delivered to City upon Lease termination or expiration.

12.18 Tenant's Personal Property.

All Tenant's Personal Property shall be and remain Tenant's property (not including the Initial Improvements to the extent the same do not constitute Personal Property, which are and shall remain City's property). Tenant may remove its Personal Property at any time during the Term.

12.19 City Cooperation.

Upon Tenant's request, City, acting in its proprietary capacity as a landlord but not in any regulatory capacity, shall reasonably cooperate with Tenant, in accordance with industry custom for landlords, in connection with Tenant's applications for permits and other governmental approvals in connection with the operation of the Premises or construction of any improvements under this Lease. Nothing in the foregoing shall limit or alter City's discretion as landlord for approvals or consents as described elsewhere in this Lease.

12.20 Annual Report of Subsequent Construction.

Tenant shall submit an annual report to City detailing any Subsequent Construction (including Minor Alterations) made to the Premises during the immediately preceding year.

Section 13 UTILITY AND OTHER SERVICES

13.1 Utilities and Services.

(a) City shall provide, at its sole cost and expense, electricity, water and gas services to those portions of the Premises generally depicted with the designation "Landlord Utility Area" on the attached *Exhibit B* (the "**Landlord Utility Area**"). City, in its proprietary capacity as fee owner of the real property comprising the Premises and landlord under this Lease, shall not be required to provide any utility services to those portions of the Premises generally depicted with the designation "Tenant Utility Area" on the attached *Exhibit B* (the "**Tenant Utility Area**"), which Tenant Utility Area includes the proposed restaurant and kitchen, retail space, Powerhouse, theater and related spaces, including storage areas, stairwells and restrooms. Tenant shall be responsible, at its sole cost and expense, for electricity, water, sewer and gas services to the Tenant Utility Area. Tenant will pay or cause to be paid as the same become due all deposits, charges, meter installation fees, connection fees and other costs for all public or

private utility services at any time rendered to the Tenant Utility Area or any part of the Tenant Utility Area, and will do all other things required for the maintenance and continuance of all such services.

(b) Tenant shall ensure that separate meters are installed to measure electricity, water and gas service to the Landlord Utility Area (for which City is responsible) and the Tenant Utility Area (for which Tenant is responsible). The Parties anticipate that such meters will be installed as part of the Initial Improvements (as defined in Section 11.1).

(c) Tenant shall pay for garbage and recycling disposal and all telephone, fax and internet connection charges for the entire Premises, including the cost of bringing any such service(s) to locations in the Premises.

13.2 Excess Use.

If Tenant requires any utilities or services not provided by City hereunder, Tenant shall pay any and all costs of such utilities and services. Without limiting the foregoing, Tenant shall not: (a) connect or use any apparatus, device or equipment that will impair the proper functioning or capacity of the Building Systems; or (b) connect any apparatus, device or equipment through electrical outlets or facilities except in the manner for which such outlets or facilities are designed; or (c) maintain at any time an electrical demand load in excess of the amount the Building's electrical systems were designed to support.

13.3 Interruption of Services.

City's obligation to provide utilities and services for the Landlord Utility Area is subject to applicable Laws and shutdowns for maintenance and repairs, for security purposes, or due to strikes, lockouts, labor disputes, fire or other casualty, acts of God, or other causes beyond the control of City. In the event of an interruption in, or failure or inability to provide any service or utility for the Landlord Utility Area for any reason, such interruption, failure or inability shall not constitute an eviction of Tenant, constructive or otherwise, or impose upon City any liability whatsoever, including, but not limited to, liability for consequential damages or loss of business by Tenant, however City shall use reasonable and diligent efforts to restore or to cause the restoration of the interrupted service, if the cause of the interruption or failure is within City's reasonable control in its capacity as owner of the Premises. Further, Tenant agrees, with respect to any public utility services provided to the Premises by City's utility company (if applicable), that no act or omission of City in its capacity as a provider of public utility services shall abrogate, diminish, or otherwise affect the respective rights, obligations and liabilities of Tenant and City under this Lease, or entitle Tenant to terminate this Lease or to claim any abatement or diminution of Rent, except as expressly set forth herein to the contrary. Further, Tenant covenants not to raise as a defense to its obligations under this Lease, or assert as a counterclaim or cross-claim in any litigation or arbitration between Tenant and City relating to this Lease, any losses arising from or in connection with City's provision (or failure to provide) public utility services. Tenant hereby waives the provisions of California Civil Code Section 1932(1) or any other applicable existing or future Legal Requirement permitting the termination of this Lease due to such interruption, failure or inability. The foregoing shall not constitute a waiver by Tenant of any claim it may or may not in the future have (or claim to have) against any such utility provider including City's utility company.

13.4 Water and Energy Conservation; Mandatory or Voluntary Restrictions.

In the event any law, ordinance, code or governmental or regulatory guideline imposes mandatory or voluntary controls on City or the Premises or any part thereof, relating to the use or conservation of energy, water, gas, light or electricity or the reduction of automobile or other emissions, or the provision of any other utility or service provided with respect to this Lease, or in the event City is required or elects to make alterations to any part of the Building in order to comply with such mandatory or voluntary controls or guidelines or to save power, water or other utility charges, such compliance and the making of such alterations shall in no event entitle Tenant to any damages, relieve Tenant of the obligation to pay the full Rent and Additional Charges hereunder or to perform each of its other covenants hereunder or constitute or be construed as a constructive or other eviction of Tenant, provided that City shall consult

with Tenant prior to the construction of any such alterations in order to minimize the effect of any such improvement on the operations of Tenant under this Lease. Without limiting the foregoing, Tenant acknowledges that City shall have the right to install, at City's cost, solar panels, wind turbines and other energy-generating equipment on the roof of the Building so long as: (i) the same shall not interfere with equipment installed by Tenant on the roof in accordance with the terms of this Lease; (ii) the same shall not adversely affect the stability of the roof or materially interfere with Tenant's operations at the Premises; (iii) the same shall be permitted by Law (including those relating to historic preservation); and (iv) the same shall not have an adverse effect on any historic tax credits that have been or will be issued with respect to the Premises.

13.5 Floor Load.

Without City's prior written consent, which City shall not unreasonably withhold, condition or delay, Tenant shall not place or install in the Premises any equipment that weighs in excess of the normal load-bearing capacity of the floors of the Building; provided that it shall not be unreasonable for City to withhold consent to any such placement or installation if City's engineers are not satisfied that the improvements suggested by Tenant are sufficient to support such placement or installation and not cause damage to the Building. If City consents to the placement or installation of any such machine or equipment in the Premises, Tenant, at no cost to City, shall reinforce the floor of the Premises, pursuant to plans and specifications approved by City and otherwise in compliance with the constructions provisions of this Lease, as necessary to assure that no damage to the Premises or the Building or weakening of any structural supports will be occasioned thereby.

13.6 Antennae and Telecommunications Dishes.

Except as set forth in approved plans as part of the Initial Improvements performed pursuant to the LDDA, no antennae or telecommunications dish or other similar facilities may be installed on the roof or exterior of the Premises without the prior written approval of the General Manager, which approval shall not be unreasonably withheld, conditioned or delayed. Any wireless telecommunications systems shall be subject to City's approval pursuant to City's policies on the siting and requirements for wireless telecommunications, as the same may be amended or modified from time to time. No such antennae shall interfere with City's plans for solar panels or wind turbines on the roof of the Building or City's emergency communications and transmission facilities (if any) and, to the extent existing at the time approval to the same was requested, City's non-emergency communications and transmission facilities of City (if any).

Section 14 DAMAGE OR DESTRUCTION

14.1 General; Notice; Waiver.

(a) General. If at any time during the Term any damage or destruction occurs to all or any portion of the Premises, including the Improvements thereon, and including, but not limited to, any Major Damage and Destruction, the rights and obligations of the Parties shall be as set forth in this Section.

(b) Notice. If there is any damage to or destruction of the Premises or of the Improvements thereon or any part thereof, which could materially impair use or operation of the Improvements for their intended purposes for a period of thirty (30) days or longer, Tenant shall promptly, but not more than ten (10) days after the occurrence of any such damage or destruction, give written notice thereof to City describing with as much specificity as is reasonable the nature and extent of such damage or destruction.

(c) Waiver. The Parties intend that this Lease fully govern all of their rights and obligations in the event of any damage or destruction of the Premises. Accordingly, City and Tenant each hereby waive the provisions of Sections 1932(2) and 1933(4) of the California Civil Code, as such sections may from time to time be amended, replaced, or restated.

14.2 Certain Defined Terms.

Major Damage or Destruction means damage to or destruction of all or any portion of the Improvements on the Premises (a) to the extent that the hard costs of Restoration will exceed One Million Dollars (\$1,000,000) or (b) which cannot reasonably be repaired within two hundred ten (210) days after the date of the damage or (c) during the last five (5) years of the Term.

Restore and Restoration have the meanings set forth in Section 1.

Tenant Force Majeure means events which result in delays in Tenant's performance of its obligations hereunder due to causes beyond Tenant's control and not caused by the acts or omissions of the Tenant, such as acts of nature or of the public enemy, fires, floods, earthquakes, strikes, freight embargoes, and unusually severe weather; delays of contractors or subcontractors due to any of these causes; the presence of Hazardous Materials or other concealed conditions on the Premises that would substantially delay or materially and adversely impair the Tenant's ability to construct on the Premises; substantial interruption of work because of other construction by third parties in the immediate vicinity of the Premises; archeological finds on the Premises; strikes, delay in the granting of permits and other governmental approvals beyond reasonable time periods and substantial interruption of work because of labor disputes; inability to obtain materials or reasonably acceptable substitute materials (provided that Tenant has ordered such materials on a timely basis and Tenant is not otherwise at fault for such inability to obtain materials). Force Majeure does not include failure to obtain financing or have adequate funds, or any event that could have been avoided by exercising that standard of foresight and due diligence that any ordinary, prudent and competent person would exercise under the circumstances. In the event of the occurrence of any such delay, the time or times for performance of the obligations will be extended for the period of the delay; provided, however, (i) within thirty (30) days after the beginning of any such delay, Tenant shall have first notified City in writing of the cause or causes of such delay and claimed an extension for the reasonably estimated period of the delay, and (ii) Tenant cannot, through commercially reasonable and diligent efforts (not including the incurring of overtime premiums or the like), make up for the delay. Under no circumstances shall an event of Tenant Force Majeure exceed twelve months without City's consent.

Uninsured Casualty means any of the following: (1) an event of damage or destruction occurring at any time during the Term for which the costs of Restoration (including the cost of any required code upgrades) are not insured under the policies of insurance that Tenant is required to carry under Section 20 hereof, or (2) an event of damage or destruction occurring at any time during the Term, which is covered under Tenant's policies of insurance that Tenant is required to carry under Section 20 hereof, but where the cost of Restoration (including the cost of any required code upgrades) will exceed the net proceeds of any insurance payable (or which would have been payable but for Tenant's default in its obligation to maintain insurance required to be maintained hereunder) plus the amount of any applicable policy deductible. Damage or destruction due to flood or earthquake shall be deemed an Uninsured Casualty notwithstanding that there may be insurance coverage.

14.3 Tenant's Restoration Obligations.

If all or any portion of the Improvements are damaged or destroyed by an event not constituting an Uninsured Casualty or Major Damage or Destruction for which Tenant elects to terminate this Lease under Section 14.4, then Tenant shall, subject to Section 14.4 hereof, within a reasonable period of time, commence and diligently, subject to Tenant Force Majeure, Restore the Premises to substantially the condition they were in immediately before such damage or destruction, to the extent possible in accordance with then applicable Laws. Except as set forth below, all insurance proceeds received by Tenant for the repair or rebuilding of the Premises shall be used by Tenant for the repair or rebuilding of the Premises. All restoration performed by Tenant shall be in accordance with the procedures set forth in Section 12 relating to Subsequent Construction and shall be at Tenant's sole expense. Such destruction, in and of itself, shall not terminate this Lease.

14.4 Major Damage and Destruction or Uninsured Casualty.

(a) Tenant's Election to Restore or Terminate. If an event of Major Damage or Destruction or Uninsured Casualty occurs at any time during the Term, then Tenant shall provide City with a written notice (the "**Casualty Notice**") either (1) electing to commence and complete Restoration of the Premises to substantially the condition they were in immediately before such Major Damage or Destruction or Uninsured Casualty to the extent possible in accordance with then applicable Law and in accordance with any restoration work to be performed by City in accordance with the terms of this Lease; or (2) electing to terminate this Lease (subject to Section 14.4(b)). Tenant shall provide City with the Casualty Notice no later than ninety (90) days following the occurrence of such Major Damage or Destruction or Uninsured Casualty. If Tenant elects to Restore the Improvements, all of the provisions of Section 12 that are applicable to Subsequent Construction of the Improvements shall apply to such Restoration of the Improvements to substantially the condition they were in prior to such Major Damage or Destruction as if such Restoration were Subsequent Construction. .

(b) Condition to Termination; Payment of Insurance Proceeds. As a condition precedent to Tenant's right to terminate the Lease upon the occurrence of either of the events set forth in Section 14.4(a) above, Tenant, in its election to terminate described in Section 14.4(a), shall state the estimated cost of Restoration of the Premises, and the amount by which the estimated cost of Restoration exceeds insurance proceeds payable. Upon receipt by Tenant of any insurance proceeds paid on account of such casualty for the repair or rebuilding of the Premises, Tenant shall promptly pay or cause to be paid to City such insurance proceeds recoverable by Tenant after first reimbursing any Mortgagee for the outstanding balance of any loan used to fund the cost of constructing the Initial Improvements or Subsequent Construction. Upon such event, Tenant shall provide to City a statement of such costs and the remaining debt, certified as true and correct, together with appropriate backup documentation.

14.5 Effect of Termination.

If Tenant elects to terminate the Lease under Section 14.4 above, then this Lease shall terminate on the date that Tenant shall have fully complied with all provisions of the first sentence of Section 14.4(b). Upon such termination, the Parties shall be released thereby without further obligations to the other party as of the effective date of such termination subject to payment to City of accrued and unpaid Rent, up to the effective date of such termination; provided, however, that the indemnification provisions hereof shall survive any such termination with respect to matters arising before the date of any such termination. City's right to receive insurance proceeds under this Lease shall survive the termination or expiration of the Lease.

14.6 Distribution Upon Lease Termination.

If Tenant is obligated to restore the Premises as provided herein and the Lease is terminated as a result of an Event of Default by Tenant, then at the time of termination Tenant shall transfer to City all remaining insurance proceeds for the repair or rebuilding of the Premises, or the right to such proceeds if not yet received, in order to allow City to complete the restoration of the Premises.

14.7 Permitted Programming Disruption.

If the fire or other casualty damages the Premises, and Tenant or any subtenant ceases to use any portion of the Premises as a result of such damage, then vacancies or programming disruptions resulting from such casualty shall be a "Permitted Programming Disruption," during the period the Premises or portion thereof are rendered unusable by such damage and repair, based upon the extent to which the damage and repair prevents Tenant or such subtenant from operating in the applicable portion of the Premises.

Section 15 CONDEMNATION

15.1 Definitions.

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

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

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

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

15.2 General.

If during the Term or during the period between the execution of this Lease and the Commencement Date, there is any Taking of all or any part of the Premises or any interest in this Lease, the rights and obligations of the parties hereunder shall be determined pursuant to this Section. City and Tenant intend that the provisions hereof govern fully in the event of a Taking and accordingly, the parties each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.110, 1265.120, 1265.130 and 1265.140 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

15.3 Total Taking; Automatic Termination.

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

15.4 Partial Taking; Election to Terminate

(a) If there is a Taking of any portion (but less than all) of the Premises, then this Lease shall terminate in its entirety under either of the following circumstances: (i) if all of the following exist: (A) the partial Taking renders the remaining portion of the Premises untenable or unsuitable for continued use by Tenant, or the Taking is of areas that are necessary for Tenant to derive sufficient income to perform its obligations hereunder (i.e., part or all of the Tenant Utility Area), and (B) Tenant elects to terminate; or (ii) if there is a partial Taking of a substantial portion of the Premises, then City or Tenant shall have the right to terminate this Lease in its entirety; provided, however, that this Lease shall not terminate if Tenant agrees to, and does, fully perform all of its obligations hereunder.

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

15.5 Rent; Award.

Upon termination of this Lease pursuant to an election under Section 15.4 above, City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease and any Improvements Pertaining to the Realty), and Tenant shall have no claim against City for the value of any unexpired term of this

Lease, provided that Tenant shall receive any Award made specifically to Tenant for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property.

15.6 Partial Taking; Continuation of Lease.

If there is a partial Taking of the Premises under circumstances where this Lease is not terminated in its entirety under Section 15.4 above, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the parties shall be as follows: (a) any Award shall be payable first to City to be applied to the restoration or repair of the balance of the Premises not taken, to the extent required to render such portion of the Premises tenantable, (b) Tenant shall be entitled to that portion of the balance of the Award attributable to the Tenant Utility Area, and (c) City shall be entitled to that portion of the balance of the Award attributable to portions of the Premises other than the Tenant Utility Area (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease), and Tenant shall have no claim against City for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property.

15.7 Temporary Takings.

Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to all or any part of the Premises for a limited period of time not in excess of one hundred eighty (180) consecutive days, this Lease shall remain unaffected thereby, and Tenant shall continue to perform all of the terms, conditions and covenants of this Lease; provided that Tenant shall be relieved from all obligations under this Lease requiring possession of that portion of the Premises so condemned for the period of such temporary Taking. In the event of such temporary Taking, Tenant shall be entitled to receive that portion of any Award representing compensation for the Tenant's use or occupancy of the Premises during the applicable Taking and City shall be entitled to receive that portion of the Award representing compensation for City's use or occupancy of the Premises (if any) during the applicable Taking.

Section 16 LIENS AND LEASEHOLD MORTGAGES

16.1 Liens.

Tenant shall keep the Premises free from any liens arising out of any work performed, material furnished or obligations incurred by or for Tenant. In the event Tenant does not, within thirty (30) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, City shall have, in addition to all other remedies, the right, but not the obligation, to cause the lien to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by City and all expenses incurred by it in connection therewith (including, without limitation, Attorneys' Fees and Costs) shall be payable to City by Tenant upon written demand, accompanied by supporting invoices. City shall have the right to post on the Premises any notices that City may deem proper for the protection of City, the Premises, and the Building, from mechanics' and materialmen's liens. Tenant agrees to indemnify, defend and hold City and its Agents harmless from and against any claims for mechanic's, materialmen's or other liens in connection with any repairs or construction on the Premises, or materials furnished or obligations incurred by or for Tenant.

16.2 Leasehold Encumbrances.

(a) Tenant's Right to Mortgage Leasehold. Except as expressly permitted in this Section 16.3, Tenant shall not Encumber Tenant's leasehold interest in the Premises, the Building, the Improvements or the Lease. Any Mortgage that is not permitted hereunder shall be deemed to be a violation of this Lease on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced. Pursuant to the terms and to the extent permitted by this Section 16.2, Tenant shall have the right to Encumber Tenant's leasehold estate created by this Lease by way of a

leasehold Mortgage; provided that, notwithstanding any foreclosure thereof, Tenant shall remain liable for the payment of Rent and for the performance of all other obligations under this Lease. Tenant shall promptly notify City of any lien or encumbrance of which Tenant has knowledge and which has been recorded against or attached to the Improvements or Tenant's leasehold estate hereunder whether by act of Tenant or otherwise.

(b) Leasehold Mortgage Subject to this Lease. With the exception of the rights expressly granted to Mortgagees in this Lease, the execution and delivery of a Mortgage shall not give or be deemed to give a Mortgagee any greater rights than those granted to Tenant hereunder. Notwithstanding anything to the contrary set forth herein, any rights given hereunder to Mortgagees shall not apply to more than one Mortgagee at any one time. If at any time there is more than one Mortgage constituting a lien on any portion of the Premises, the lien of the Mortgage prior in time to all others shall be vested with the rights under this Section 16 to the exclusion of the holder of any junior Mortgage.

(i) No Invalidation of Mortgage by Tenant Default. No failure by Tenant or any other party to comply with the terms of any Mortgage, including, without limitation, the use of any proceeds of any debt, the repayment of which is secured by the Mortgage, shall be deemed to invalidate, defeat or subordinate the lien of the Mortgage. Notwithstanding anything to the contrary in this Lease, neither the occurrence of any default under a Mortgage, nor any foreclosure action or conveyance in-lieu-of foreclosure, nor any action taken by a Mortgagee as permitted under the terms of the Mortgage or to cure any default of Tenant under this Lease, shall, by itself, constitute an Event of Default under this Lease, however such matters may be evidence of Tenant's failure to operate the Premises in accordance with the operating standards set forth herein.

(ii) Purpose of Mortgage; Protections Limited to Permitted Mortgagees. A Mortgage may be given only to a Bona Fide Institutional Lender, or to any other lender approved by City in its sole discretion (it being agreed that such other lender may include a philanthropic organization that engages in philanthropic lending, if such organization is otherwise acceptable to City). A Mortgage shall be made only to finance any Subsequent Construction, or for the purpose of refinancing a permitted Mortgage, and shall not be cross-collateralized or cross defaulted with any other debt of Tenant or any other party. Tenant shall not be permitted to refinance a permitted Mortgage in order to take out cash for application to property other than the Premises or for application to the obligations of Tenant other than those created under this Lease.

(iii) Rights Subject to Lease; Restoration Obligations. All rights acquired by the Mortgagee under a Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights of the City hereunder. None of such covenants, conditions and restrictions is or shall be waived by City by reason of the giving of the Mortgage, except as expressly provided in this Lease or otherwise specifically waived by City in writing. Except as set forth below, no Mortgagee shall be obligated to restore any damage to the Premises; provided, however, (i) that nothing in this Section shall be deemed or construed to permit or authorize any such holder to devote the Premises or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements permitted under this Lease, and (ii) in the event that the Mortgagee obtains title to the leasehold and chooses not to complete or restore the improvements where Tenant otherwise has the obligation to so restore, it shall so notify City in writing of its election within forty-five (45) days following its acquisition of the tenancy interest in this Lease and shall sell its tenancy interest with reasonable diligence to a purchaser that shall be obligated to restore the improvements as required under this Lease, but in any event the Mortgagee shall cause such sale to occur within six (6) months following the Mortgagee's written notice to City of its election not to restore. If Mortgagee fails to sell its tenancy interest using good faith efforts within such six (6) month period, it shall not constitute a default hereunder, but the Mortgagee shall be obligated by the provisions of this Lease to restore the improvements to the extent Tenant is required under this Lease to so restore, and all such work shall be performed in accordance with all the requirements set forth in this Lease.

(iv) Required Notice Provision in Mortgage. Tenant agrees to have any Mortgage provide: (a) that the Mortgagee shall by registered or certified mail give written notice to City of the occurrence of any event of default under the Mortgage; (b) that City shall be given notice at the time any Mortgagee initiates any foreclosure action; and (c) that the disposition and application of insurance and condemnation awards shall be in accordance with the provisions of this Lease.

16.3 Notices to Mortgagee and Tax Credit Investor.

(a) Copies of Notices. Subject to subsection (b) below, City shall give a copy of each default notice City gives to Tenant from time to time of the occurrence of a default or an Event of Default, to a Mortgagee or Tax Credit Investor that has given to City written notice substantially in the form provided in subsection (b). Copies of such notices shall be given to the Mortgagee and Tax Credit Investor at the same time as notices are given to Tenant by City, addressed to the Mortgagee and Tax Credit Investor at the address last furnished to City. City's delay or failure to give such notice to the Mortgagee or Tax Credit Investor shall not be deemed to constitute a default by City under this Lease, but such delay or failure shall extend for the number of days until such notice is given, the time allowed to the Mortgagee to cure any default by Tenant. Any such notices to Mortgagee shall be given in the same manner as provided in Section 29 below.

(b) Notice From Mortgagee or Tax Credit Investor to City. The Mortgagee and Tax Credit Investor shall be entitled to receive notices from time to time given to Tenant by City under this Lease in accordance with subsection (a) above, provided such Mortgagee or Tax Credit Investor shall have delivered a notice to City in substantially the following form:

“The undersigned does hereby certify that it is the [Mortgagee][Tax Credit Investor], as such term is defined in that certain Lease entered into by and between the City and County of San Francisco, as landlord, and _____, as tenant (the “**Lease**”), of Tenant's interest in the Lease of the premises known as the Geneva Avenue Office Building and Power House, a legal description of which is attached hereto as Exhibit A. The undersigned hereby requests that copies of any and all default notices from time to time given under the Lease by City to Tenant be sent to the undersigned at the following address: _____.”

16.4 Mortgagee's and Tax Credit Investor's Right to Cure.

If Tenant shall enter into a Mortgage in compliance with the provisions of this Lease, then, so long as any such Mortgage shall remain unsatisfied of record, and with respect to the Tax Credit Investor, the following provisions shall apply:

(a) Cure Periods. In the case of any notice of default given by City to Tenant, the Mortgagee and Tax Credit Investor shall each have the same concurrent cure periods as are given Tenant under this Lease for remedying a default or causing it to be remedied plus an additional fifteen (15) days thereafter for a monetary default or an additional thirty (30) days thereafter for a nonmonetary default, and City shall accept such performance by or at the instance of the Mortgagee or Tax Credit Investor as if the same had been made by Tenant within the applicable cure periods under the Lease.

(b) Foreclosure. Notwithstanding anything contained in this Lease to the contrary, upon the occurrence of an Event of Default, other than an Event of Default due to a default in the payment of money or other default reasonably susceptible of being cured prior to Mortgagee obtaining possession, City shall take no action to effect a termination of this Lease if, within thirty (30) days after notice of such Event of Default is given to Mortgagee, a Mortgagee shall have (x) obtained possession of the Premises (including possession by a receiver), or (y) notified City of its intention to institute foreclosure proceedings or otherwise acquire Tenant's interest under the Lease, and thereafter promptly commences and prosecutes such proceedings with diligence and dispatch and completes such proceedings no later than six (6) months thereafter. A Mortgagee, upon acquiring Tenant's interest under this Lease, shall be required promptly to cure all monetary defaults and all other defaults then reasonably susceptible of being cured by such Mortgagee. The foregoing provisions of this subsection (b) are subject to the following: (i) no Mortgagee shall be obligated to continue possession or to continue foreclosure

proceedings after the defaults or Events of Default hereunder referred to shall have been cured; (ii) nothing herein contained shall preclude City, subject to the provisions of this Section, from exercising any rights or remedies under this Lease (other than a termination of this Lease to the extent otherwise permitted hereunder) with respect to any other Event of Default by Tenant during the pendency of such foreclosure proceedings; and (iii) the Mortgagee shall agree with City in writing to comply during the period City forebears from terminating this Lease with the terms, conditions and covenants of this Lease that are reasonably susceptible of being complied with by the Mortgagee. Notwithstanding anything to the contrary, the Mortgagee shall have the right at any time to notify City that it has relinquished possession of the Premises to Tenant, or that it will not institute foreclosure proceedings or, if such foreclosure proceedings have commenced, that it has discontinued them, and, in such event, the Mortgagee shall have no further liability from and after the date it delivers such notice to City, and, thereupon, City shall be entitled to seek the termination of this Lease and/or any other available remedy as provided in this Lease. If Mortgagee is prohibited by any process or injunction issued by any court having jurisdiction of any bankruptcy or insolvency proceedings involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition, provided that Mortgagee shall (i) have fully cured any Event of Default due to a default in the payment of money, (ii) continue to pay currently such monetary obligations as and when the same become due, and (iii) perform all other obligations of Tenant under this Lease to the extent that they are reasonably susceptible of being performed by the Mortgagee. Notwithstanding anything herein to the contrary, to the extent the Mortgagee is not reasonable capable of performing an obligation under this Lease, such obligations shall apply to and remain effective on a prospective basis to any assignee or transferee of the Mortgagee notwithstanding Mortgagee's inability to perform. Notwithstanding anything to the contrary above, if the Premises are not used by Tenant or Mortgagee or a designee of Mortgagee as required in Section 5 above and such non-use continues for a period of twelve (12) months, then City shall have the right to terminate this Lease by providing thirty (30) days notice of termination, subject to Tenant's and/or Mortgagee's right to cure by commencing operations during the thirty (30) day period and continuing thereafter in accordance with Section 5.

(c) Construction. Subject to subsection (b) above, if an Event of Default occurs following any damage but prior to restoration of the improvements, the Mortgagee, either before or after foreclosure or action in lieu thereof, shall not be obligated to restore the improvements beyond the extent necessary to preserve or protect the improvements or construction already made, unless the Mortgagee expressly assumes Tenant's obligations to City by written agreement reasonably satisfactory to City, to restore, in the manner provided in this Lease, the improvements. Upon assuming Tenant's obligations to restore, the Mortgagee or any transferee of Mortgagee shall not be required to adhere to the existing construction schedule, but instead all dates set forth in this Lease for such restoration or otherwise agreed to shall be extended for the period of delay from the date that Tenant stopped work on the restoration to the date of such assumption.

(d) New Lease. In the event of the termination of this Lease before the expiration of the Term, except as a result of damage or destruction to the Premises as in Section 14 or a Taking as set forth in Section 15, City shall serve upon the Mortgagee written notice that this Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to City. The Mortgagee shall thereupon have the option to obtain a New Lease (a "**New Lease**") in accordance with and upon the following terms and conditions:

(i) Upon the written request of the Mortgagee, within thirty (30) days after service of such notice that this Lease has been terminated, City shall enter into a New Lease of the Premises with the Mortgagee within such period or its designee, subject to the provisions set forth in this Section and provided that the Mortgagee assumes all of Tenant's obligations under any subleases or contracts affecting the Premises then in effect; and

(ii) Such New Lease shall be entered into at the sole cost of the Mortgagee, shall be effective as of the date of termination of this Lease, and shall be for the remainder of the Term of this Lease and at the Rent and upon all the agreements, terms, covenants and conditions hereof, in substantially the same form as this Lease (provided however, that Mortgagee shall not be required to comply with any Laws or ordinances adopted by the City after the Commencement Date hereof to the extent that such Laws or ordinances would not have been applicable to Tenant under this Lease). Such New Lease shall require the Mortgagee to perform any unfulfilled obligation of Tenant under this Lease. Upon the execution of such New Lease, the Mortgagee shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for such termination, and shall pay all expenses, including Attorneys' Fees and Costs incurred by City in connection with such defaults and termination, the recovery of possession of the Premises, and the preparation, execution and delivery of the New Lease. Effective upon the commencement of the term of any New Lease, any sublease or contract then in effect shall be assigned and transferred to Mortgagee.

(e) Nominee. Any rights of a Mortgagee under this Section 16 may be exercised by or through its nominee or designee (other than Tenant) which is an affiliate of the Mortgagee; provided, however, no Mortgagee shall acquire title to the Lease through a nominee or designee which is not a person otherwise permitted to become Tenant hereunder; provided, further that the Mortgagee may acquire title to the Lease through a wholly owned (directly or indirectly) subsidiary of the Mortgagee.

(f) Limited to Permitted Mortgagees. Notwithstanding anything herein to the contrary, the provisions of this Section 16 shall inure only to the benefit of the holder of a Mortgage which is permitted hereunder.

(g) Consent of Mortgagee. No material modification, termination or cancellation of this Lease (herein, a “**change**”) shall be effective as against a permitted Mortgagee unless a copy of the proposed change shall have been delivered to the Mortgagee and such Mortgagee shall have approved the change in writing, which approval shall not be unreasonably withheld, conditioned or delayed. Any Mortgagee shall either approve or disapprove the proposed modification, termination, cancellation or surrender, as applicable, with specified reasons for any disapproval together with reasonable requirements that if satisfied would obtain Mortgagee's approval, in writing within thirty (30) days after delivery of a copy thereof. Mortgagee's failure to deliver an approval or disapproval notice within such thirty (30) day period shall be deemed approval.

(h) Limitation on Liability of Mortgagee. Notwithstanding anything herein to the contrary, no Mortgagee shall be liable to perform Tenant's obligations under this Lease unless and until the Mortgagee acquires Tenant's rights under this Lease.

16.5 Assignment by Mortgagee.

The foreclosure of any Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Mortgage, or any conveyance of the leasehold estate hereunder from Tenant to any Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of City or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance City shall recognize the Mortgagee or other transferee in connection therewith as the tenant under this Lease. Such Mortgagee's or transferee's right thereafter to transfer, assign or sublet this Lease or a New Lease shall be subject to the restrictions of Section 18.

16.6 Transfer of Mortgage.

City hereby consents to the transfer of a Mortgage, provided such transfer is to a Bona Fide Institutional Lender and otherwise satisfies the requirements of this Lease, and in the event of any such transfer, the new holder of the Mortgage shall have all the rights of its predecessor Mortgagee hereunder until such time as the Mortgage is further transferred or released from the leasehold estate.

16.7 Memorandum of Lease.

In the event the recordation of a memorandum of this Lease (a “**Memorandum of Lease**”) is necessary in connection with a Mortgage permitted under this Lease, Tenant shall have the right to at its sole cost to record a Memorandum of Lease confirming the existence of this Lease, and commencement and expiration dates and option dates, and referencing the actual Lease for all other provisions. In such event, the City agrees to prepare, execute and acknowledge such Memorandum of Lease in recordable form, and deliver the Memorandum of Lease to Tenant for Tenant's execution and recordation at Tenant's cost. If such a Memorandum of Lease is recorded, then upon expiration or earlier termination of this Lease, Tenant agrees promptly to execute, acknowledge and deliver to City, upon written request by City, a termination of such Memorandum of Lease in such form as City may reasonably request, for the purpose of terminating any continuing effect of the previously recorded Memorandum of Lease as a cloud upon title to the Premises, and Tenant shall indemnify, defend and hold harmless City from and against any and all claims, demands, liabilities, actions, losses, costs and expenses, including (but not limited to) reasonable attorneys' fees, arising out of or in connection with Tenant's failure to so promptly execute such termination of Memorandum of Lease.

Section 17 ASSIGNMENT OF RENTS

17.1 Assignment of Rents.

Tenant hereby assigns to City, as security for Tenant's performance of its obligations under this Lease, all of Tenant's right, title and interest in and to all rents and fees due or to become due from any present or future subtenant, licensee, concessionaire, or other person occupying or providing services or goods on or to the Premises (collectively, “Assigned Rents”), but such assignment shall be subject to the right of Tenant to collect such rents until the date of any default hereunder. City shall apply amount collected hereunder to the Rent due under this Lease. The foregoing assignment shall be subject and subordinate to any assignment made to a Mortgagee under Section 16.2 of which City has been made aware in writing until such time as City has terminated this Lease, at which time the rights of City in all rents and other payments assigned pursuant to this Section 17.1 shall become prior and superior in right. Such subordination shall be self-operative. However, in confirmation thereof, City shall, upon the request of a Mortgagee, execute a subordination agreement reflecting the subordination described in this Section in form and substance reasonably satisfactory to such Mortgagee and to City. Notwithstanding the foregoing, if this Lease terminates by reason of an Event of Default, any Mortgagee which actually collected any rents from any Subtenants pursuant to any assignment of rents or subleases made in its favor shall promptly remit to City the rents so collected (less the actual and reasonable cost of collection) to the extent necessary to pay City any Rent, through the date of termination of this Lease.

Section 18 ASSIGNMENT AND SUBLETTING

18.1 Assignments and Subleases.

(a) Generally; Consent of City. Except as otherwise specifically permitted hereunder, Tenant shall not directly or indirectly (including, without limitation, by merger, acquisition, sale or other transfer of any controlling interest in Tenant), voluntarily or by operation of Law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises, any Improvements or its leasehold estate hereunder (“**Assign**” or an “**Assignment**”), or permit any portion of the Premises or any Improvements to be occupied by anyone other than itself, or sublet any portion of the Premises or any permitted Improvements thereon (“**Sublet**” or a “**Sublease**”), without the General Manager's or the Commission's prior written consent in each instance.

(b) Assignment. Tenant may not Assign all or any portion of its rights under the Lease without the prior written consent of the Commission, which it may withhold in its sole and absolute discretion. If City rejects a proposed assignment, City shall provide Tenant with written notice of its reasons for doing so. If City fails to respond to a request for consent to a proposed Assignment within sixty (60) days, City shall be deemed to have refused to give its consent.

(c) Sublease. The Parties agree that an important component of Tenant's annual operating budget will derive from Tenant subletting facilities within the Premises. Tenant shall have the right to sublet all or a portion of the Premises at any time, provided, however, (i) Tenant shall have provided prior written notice to City of a proposed Sublease of one year or more, and City shall have the right to reasonably object to such Sublease within forty-five (45) days of receipt of notice, and (ii) the proposed use of the sublet space shall be consistent with the Primary Uses. The rent charged to each subtenant shall be determined by Tenant, in its sole and absolute discretion, and shall accrue solely to Tenant, except as otherwise specifically provided herein. If City fails or declines to respond to Tenant within the applicable forty-five (45) day period described above, then Tenant may at Tenant's election provide written notice to City that no disapproval was received, and provided that such notice displays prominently on the envelope enclosing such notice and the first page of such notice, substantially the following words: "SUBLEASE APPROVAL REQUEST FOR GENEVA CAR BARN. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND COULD RESULT IN THE REQUEST BEING DEEMED APPROVED," the Sublease shall be deemed approved if City does not disapprove the Sublease within ten (10) days of such notice.

(d) Event Permits. The Parties agree that an important component of Tenant's annual operating budget will derive from Tenant renting facilities within the Premises for short term one time uses ("**Events**"). Tenant shall have the right to rent any facility within the Premises for a short term one-time use or consecutive short term one-time uses without obtaining City's consent, provided such Event complies with City's then-current event permitting requirements, which include obtaining the approvals from the San Francisco Fire, Police, and Alcoholic Beverage Control Departments as well as any specialized licenses. Tenant shall also obtain a Dance Hall Keeper Permit from the San Francisco Police Department. Tenant shall develop a template for the written agreement to be used by Tenant for such Events (the "**Event Permit**"), and shall submit such template to the City for the approval or reasonable disapproval of the General Manager or his or her designee prior to entering into any Event Permits. The provisions of Section 18.2 below shall apply to such rentals as if they were subleases.

18.2 Conditions to Assignment or Sublet.

Any Assignment of this Lease or Sublease or Event Permit is further subject to the satisfaction of the following conditions precedent (or written waiver thereof by the General Manager, which waiver may be withheld in the sole discretion of the General Manager), each of which is hereby agreed to be reasonable as of the date hereof:

(a) any assignee, by instrument in writing reasonably approved by the General Manager (in consultation with the City Attorney), for itself and its successors and assigns, and expressly for the benefit of City, must agree to be subject to all of the conditions and restrictions to which Tenant is subject and must expressly assume all of the obligations of Tenant under this Lease, and any subtenant, by instrument in writing reasonably approved by the General Manager (in consultation with the City Attorney) must agree to be subject to all of the applicable conditions and restrictions of this Lease as they relate to the subtenancy. It is the intent of this Lease, to the fullest extent permitted by Law and excepting only in the manner and to the extent specifically provided otherwise in this Lease, that no transfer of this Lease, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, may operate, legally or practically, to deprive or limit City of or with respect to any rights or remedies or controls provided in or resulting from this Lease with respect to the Premises and the construction of the Improvements that City would have had, had there been no such transfer or change;

(b) other than with respect to a Minor Event Permit, all instruments and other legal documents involved in effecting the transfer shall have been submitted to City for review, including the agreement of sale, transfer, Sublease, Event Permit or equivalent, and City shall have approved such documents, and with respect to an Event Permit for use of part of the Premises for a period of two (2) weeks or less (a "**Minor Event Permit**"), the form of the permit and other legal document shall have been approved by City and Tenant shall have the right to make commercially reasonable modifications to

such form in the course of negotiations with the applicable assignee so long as such modification does not materially adversely affect City's rights;

(c) there shall be no Event of Default or Unmatured Event of Default on the part of Tenant under this Lease;

(d) in the event of an Assignment, the proposed transferee has the qualifications and has demonstrated to City's reasonable satisfaction that it is capable, financially and otherwise, of performing each of Tenant's obligations under this Lease and any other documents to be assigned;

(e) any assignee, subtenant or permittee is subject to the jurisdiction of the courts of the State of California;

(f) the proposed Assignment is not in connection with any transaction for the purposes of syndicating the Lease, such as a security, bond or certificates of participation financing as determined by City in its sole discretion;

(g) the permitted uses are consistent with this Lease, including without limitation, the Permitted Uses;

(h) the Subtenant and the Sublease or the permittee and the Event Permit (including a Minor Event Permit), as applicable, are expressly subject to all applicable terms and provisions of this Lease;

(i) the term of any Sublease not requiring City's approval hereunder, including any extension options, shall not exceed one (1) year and does not extend beyond the term of this Lease;

(j) the Subtenant or permittee under an Event Permit (including a Minor Event Permit) indemnifies City for any loss or damage arising in connection with the Sublease in form set forth in **Exhibit C**;

(k) the Subtenant or permittee under an Event Permit (including a Minor Event Permit) provides liability and other insurance reasonably requested by City, naming City as an additional insured, in form and amounts reasonably approved by City; and

(l) the Sublease includes the provisions set forth in **Exhibit C**.

18.3 Pre-Execution Deliveries to City.

Prior to executing a Sublease that requires City's consent, Tenant shall submit a summary of the key terms of the proposed Sublease (i.e., location, proposed use, square footage of the demised premises, length of term, rental rate, tenant improvement allowances and leasing concessions) to City for review by the City for conformance with Permitted Uses and the sublease requirements attached hereto as **Exhibit C**.

18.4 Effect of Sublease or Assignment.

No Sublease or Assignment by Tenant nor any consent by City thereto shall relieve Tenant of any obligation to be performed by Tenant under this Lease, unless City expressly agrees to a release in writing in connection with a City consent to an Assignment and then only to the extent set forth in such release. Any Sublease or Assignment not in compliance with this Section shall be void and, at City's option, shall constitute a material default by Tenant under this Lease. The acceptance of any Rent or other payments by City from a proposed transferee shall not constitute consent to such Sublease or Assignment by City or a recognition of any transferee, or a waiver by City of any failure of Tenant or other transferor to comply with this Section. If there is an Assignment or Sublet, whether in violation of or in compliance with this Section, upon the occurrence and during the continuance of an Event of Default in the event of default by any transferee or successor of Tenant in the performance or observance of any of the terms of this Lease, City may proceed directly against Tenant without the necessity of exhausting remedies against such transferee or successor except to the extent City has released Tenant in writing at the time of City's consent to such transferee or successor.

18.5 Assumption by Assignee.

Each Assignee shall assume all obligations of Tenant under this Lease and, except as provided in Section 18.4, shall be liable jointly and severally with Tenant for the payment of the Rent, and for the performance of all the terms, covenants and conditions to be performed on Tenant's part hereunder. No Assignment shall be binding on City unless Tenant or Transferee has delivered to City a counterpart of the Assignment and an instrument that contains a covenant of assumption by such Assignee reasonably satisfactory in form and substance to City. However, the failure or refusal of such Assignee to execute such instrument of assumption shall not release such Transferee from its liability as set forth above.

18.6 Indemnity for Relocation Benefits.

Without limiting Section 18.5 above, Tenant shall cause every Assignee and Subtenant to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease. Tenant shall Indemnify City and the Indemnified Parties for any and all Losses arising out of any relocation assistance or benefits payable to any Assignee or Subtenant.

18.7 Reasonable Grounds for Withholding Consent.

Where an Assignment or Sublease requires City's reasonable consent, it shall be reasonable (1) for City to withhold its consent if Tenant has not supplied sufficient information (including supplemental materials reasonably requested by City) to enable City to make a reasonable determination whether any applicable condition has been satisfied, and (2) if Tenant is then in default of any of its obligations under this Lease, for City to condition its consent on the cure of such defaults as City may specify in its notice conditionally approving such Assignment or Sublease.

18.8 Nondisturbance.

From time to time upon the request of Tenant, City shall enter into agreements with Subtenants providing generally, with regard to a given Sublease, that in the event of any termination of this Lease, City will not terminate or otherwise disturb the rights of the Subtenant under such Sublease, but will instead honor such Sublease as if such agreement had been entered into directly between City and such Subtenant ("**Non-Disturbance Agreements**"). City shall provide a Non-Disturbance Agreement to a Subtenant only if all of the following conditions are satisfied: (i) the performance by Tenant of its obligations under such Sublease will not cause an Event of Default to occur under this Lease; (ii) the term of the Sublease, including options, does not extend beyond the scheduled Term; (iii) the Sublease contains provisions whereby the Subtenant agrees to comply with applicable provisions of this Lease; (iv) if Tenant is then in default of any of its obligations under this Lease, City may condition its agreement to provide a Non-Disturbance Agreement on the cure of such defaults as City may specify either in a notice of default given under this Lease or in a notice conditionally approving Tenant's request for such Non Disturbance Agreement (and if an Event of Default on the part of Tenant then exists, then City may withhold or condition the giving of a Non-Disturbance Agreement); and (v) the Subtenant shall have delivered to City an executed estoppel certificate certifying such matters as may be reasonably required by City. In addition, City may condition its agreement to provide a Non-Disturbance Agreement on its reasonable approval of the form and material business terms of the Sublease in light of market conditions existing at the time such Sublease is entered into. Each Non-Disturbance Agreement shall be substantially in form and substance agreed upon by Tenant and City, not to be unreasonably withheld by either Party, provided that form shall, at a minimum, provide that (i) the Subtenant agrees that in the event this Lease expires, terminates or is canceled during the term of the Sublease, the Subtenant shall attorn to City (provided City agrees not to disturb the occupancy or other rights of the Subtenant and to be bound by the terms of the Sublease), and (ii) the Sublease shall be deemed a direct lease agreement between the Subtenant and City, provided, however that (a) at the time of the termination of this Lease no uncured default shall exist under the Sublease which at such time would then permit the termination of the Sublease or the exercise of any dispossession remedy provided for therein, and (b) City shall not be liable to the Subtenant for any security deposit or prepaid rent previously paid by such Subtenant to Tenant unless such deposits are transferred to City and except for rent for the current month, if previously paid,

shall not be responsible for any prior act or omission of Tenant, and shall not be subject to any offsets or defenses that the Subtenant may have against Tenant.

18.9 Assignment to Accommodate Sale of Historic Tax Credits and New Market Tax Credit Tax Credit Financing.

City acknowledges that Tenant may desire to convey its interest in this Lease, in the form of a sublease or assignment ("**Tax Credit Assignment**") to a Tax Credit Investor for the purpose of taking advantage of historic preservation tax credits or new market tax credits financing. In such event, Tenant may further desire to sublease back the interest in this Lease assigned to the Tax Credit Investor pursuant to the Tax Credit Assignment. If such arrangement does not involve Tenant's sublease back of all of the interest in the Lease that the Tax Credit Investor assumed pursuant to the Tax Credit Assignment, then, pursuant to the Tax Credit Assignment, the Tax Credit Investor shall assume all rights, duties, obligations and interest of Tenant under the Lease. City's consent shall not be required in the event of an Assignment to and Sublet from (and, following the expiration of the tax credit hold period, an Assignment from) an entity solely for the purpose of taking advantage of historic preservation tax credits or new market tax credits, subject to all of the following conditions: (a) at least thirty (30) days prior to such Assignment, Tenant shall furnish City with the name of the proposed assignee, together with evidence reasonably satisfactory to City that the proposed Assignment is solely for the purpose of taking advantage of historic preservation tax credits or new market tax credits, as applicable (or, following the expiration of the tax credit hold period, for the purpose of terminating the relationship with the Tax Credit Investor); and (b) the conditions set forth in Section 18.2(a), (c), (d), (e), and (f) and Section 18.5 have been satisfied.

Section 19 INDEMNIFICATION OF CITY

19.1 Indemnification of City.

Tenant agrees to and shall Indemnify the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any such Indemnified Party, the Premises or City's interest therein in connection with the occurrence or existence of any of the following: (i) any accident, injury to or death of persons or loss of or damage to property occurring in or on the Premises or any part thereof, except to the extent caused by City or its Agents; (ii) any accident, injury to or death of persons or loss or damage to property occurring in or on the Premises which is caused directly or indirectly by Tenant or any of its Assignees, Subtenants, Agents or Invitees; (iii) any use, possession, occupation, operation, maintenance, or management of the Premises or any part thereof or the SFMTA Property by Tenant or any of its Assignees, Subtenants, Agents or Invitees, (iv) any matter relating to the condition of the Premises caused by Tenant or any of its Assignees, Subtenants, Agents or Invitees; (v) any failure on the part of Tenant or its Agents, Assignees or Subtenants, as applicable, to perform or comply with any of the terms of this Lease or with applicable Laws, rules or regulations, or permits as required under this Lease (subject to any express written release by City in connection with an Assignment, as set forth above); (vi) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof by Tenant or any of its Assignees, Subtenants, Agents or Invitees; and (vii) any legal actions or suits initiated by any user or occupant of the Premises to the extent it relates to such use and occupancy of the Premises or Tenant's operations at the Premises; except in each case to the extent caused by the negligence or willful misconduct of City, City or any of its Agents or a breach of City's obligations under this Lease and except to the extent City is required to Indemnify Tenant for the same under this Lease.

19.2 Immediate Obligation to Defend.

Tenant specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any claim which is actually or potentially within the scope of the indemnity provision of Section 19.1 or any other indemnity provision under this Lease, even if such allegation is or may be groundless, fraudulent or false, and such obligation arises at the time such claim is tendered to Tenant by an Indemnified Party and continues at all times thereafter. If any action, suit or proceeding is brought against any Indemnified Party by reason of any occurrence for which Tenant is obliged to

Indemnify such Indemnified Party, such Indemnified Party will notify Tenant of such action, suit or proceeding within a reasonable time of such Indemnified Party obtaining notice of such claim, or obtaining facts sufficient to constitute inquiry notice for a reasonable person, and thereafter shall cooperate in good faith with Tenant in the defense of such claim at no cost to City or such Indemnified Party. Tenant may, and upon the request of such Indemnified Party will, at Tenant's sole expense, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by counsel designated by Tenant and reasonably approved by such Indemnified Party in writing.

19.3 Not Limited by Insurance.

The insurance requirements and other provisions of this Lease shall not limit Tenant's indemnification obligations under this Lease.

19.4 Survival.

Tenant's obligations under this Section and any other Indemnification in this Lease shall survive the expiration or sooner termination of this Lease for a period of four (4) years. All such Indemnifications are in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities which Tenant may have to City in this Lease, at common law or otherwise.

19.5 Defense.

Tenant shall, at its option but subject to the reasonable consent and approval of City, be entitled to control the defense, compromise, or settlement of any indemnified matter through counsel of the Tenant's own choice (so long as such counsel is reasonably satisfactory to City); provided, however, in all cases City shall be entitled to participate in such defense, compromise, or settlement at its own expense. If the Tenant shall fail, however, in City's reasonable judgment, within a reasonable time following notice from City alleging and describing in reasonable detail the nature of such failure, to take reasonable and appropriate action to defend such suit or claim, City shall have the right promptly to use City Attorney or to hire outside counsel to carry out such defense, at Tenant's sole expense, which expense shall be due and payable to City within thirty (30) days after receipt by the Tenant of an invoice therefore.

19.6 Release of Claims and Losses Against City.

Tenant, as a material part of the consideration of this Lease, hereby waives and releases any and all claims against City and the other Indemnified Parties from any Losses including damages to or loss of goods, wares, goodwill, merchandise, business opportunities, and equipment and by persons in, upon or about the Premises for any cause arising at any time including, without limitation, all claims arising from any joint or concurrent negligence of City or the other Indemnified Parties, but excluding any gross negligence or willful misconduct of City or other Indemnified Parties or breach of the City's obligations under the Lease or claims for which City has otherwise agreed to indemnify Tenant hereunder, and further excluding any claims, demands, or causes of action Tenant may now or hereafter have against City for rights of contribution or equitable indemnity under applicable Laws.

Section 20 INSURANCE

20.1 Premises and Liability Coverage.

(a) Required Types and Amounts of Insurance. Tenant shall, at no cost to City, obtain, maintain and cause to be in effect at all times (except as provided below) from the Commencement Date to the later of (i) the last day of the Term, or (ii) the last day Tenant (A) is in possession of the Premises, or (B) has the right of possession of the Premises, the following types and amounts of insurance:

(i) Builders Risk Insurance. At all times during construction and prior to completion of the Initial Improvements, and during any period of Subsequent Construction, Tenant shall maintain, on a form reasonably approved by City, builders' risk insurance in the amount of 100% of the completed value of all new construction, insuring all new construction, including all materials and equipment incorporated in, on or about the Premises, and in transit or storage off-site, that are or will be

part of the Improvements, against "all risk" or "special form" hazards, including an additional insured City with any deductible (other than earthquake and flood) not to exceed Ten Thousand Dollars (\$10,000).

(ii) Premises Insurance; Earthquake and Flood Insurance. Tenant shall maintain property insurance policies with coverage at least as broad as Insurance Services Office ("ISO") form CP 10 30 06 07 ("Causes of Loss -Special Form", or its replacement), including or excluding earthquake and flood, in an amount not less than 100% of the then-current full replacement cost of the Building and other Improvements and other property being insured pursuant thereto (including building code upgrade coverage), with any deductible (other than earthquake or flood) not to exceed Ten Thousand Dollars (\$10,000.00); provided, however, that as to both earthquake insurance and flood insurance separate sublimits of the insurance required under this Section may be required.

(iii) Commercial General Liability Insurance. Tenant shall maintain "Commercial General Liability" insurance policies with coverage at least as broad as ISO form CG 00 01 12 07, insuring against claims for bodily injury (including death), property damage, personal injury, advertising liability, contractual liability and products and completed operations, occurring upon the Premises (including the Improvements), and operations incidental or necessary thereto, such insurance to afford protection in the following amounts: (A) during construction in an amount not less than Five Million Dollars (\$5,000,000) each occurrence covering bodily injury and broad form property damage including contractual liability (which includes coverage of the indemnity in Section 23.1 and any other indemnity of City by Tenant) independent contractors, explosion, collapse, underground (XCU), and products and completed operations coverage, with an umbrella policy of Ten Million Dollars (\$10,000,000); (B) from and after completion of construction in an amount not less than One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) in the aggregate, with an umbrella policy of Two Million Dollars (\$2,000,000) (the "**Umbrella Policy**"); (C) if Tenant has (or is required under Laws to have) a liquor license and is selling or distributing alcoholic beverages on the Premises, or is selling or distributing food products on the Premises, then liquor liability coverage with limits not less than One Million Dollars (\$1,000,000) each occurrence, with excess coverage provided by the Umbrella Policy, and food products liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence, with excess coverage provided by the Umbrella Policy, as applicable, and (D) Tenant shall require any Subtenant who has (or is required under Laws to have) a liquor license and who is selling or distributing alcoholic beverages and food products on the Premises, to maintain coverage in amounts at least comparable to Tenant's base policies.

(iv) Workers' Compensation Insurance. During any period in which Tenant has employees as defined in the California Labor Code, Tenant shall maintain policies of workers' compensation insurance, including employer's liability coverage with limits not less than the greater of those limits required under applicable Law, and One Million Dollars (\$1,000,000) each accident (except that such insurance in excess of One Million Dollars (\$1,000,000) each accident may be covered by a so-called "umbrella" or "excess coverage" policy, covering all persons employed by Tenant in connection with the use, operation and maintenance of the Premises and the Improvements.

(v) Boiler and Machinery Insurance. Tenant shall maintain boiler and machinery insurance covering damage to or loss or destruction of machinery and equipment located on the Premises or in the Improvements that is used by Tenant for heating, ventilating, air-conditioning, power generation and similar purposes, in an amount not less than one hundred percent (100%) of the actual replacement value of such machinery and equipment.

(vi) Business Automobile Insurance. Tenant shall maintain policies of business automobile liability insurance covering all owned, non-owned or hired motor vehicles to be used in connection with Tenant's use and occupancy of the Premises, affording protection for bodily injury (including death) and property damage in the form of Combined Single Limit Bodily Injury and Property Damage policy with limits of not less than One Million Dollars (\$1,000,000) per occurrence.

(vii) Professional Liability. Tenant shall require all architectural, design, engineering, geotechnical, and environmental professionals under contract with Tenant for the Initial Improvements or any Subsequent Construction to maintain professional liability (errors and omissions) insurance, with limits not less than One Million And No/100 Dollars (\$1,000,000.00) each claim and aggregate, with respect to all professional services provided to Tenant therefore and a deductible of not more than Ten Thousand Dollars (\$10,000) per claim, during any period for which such professional services are engaged and for five (5) years following the completion of any such professional services.

(viii) Environmental Liability Insurance. During the course of any Hazardous Materials Remediation activities, Tenant shall maintain, or cause its contractor or consultant to maintain, environmental pollution or contamination liability insurance, on an occurrence form, with limits of not less than Two Million Dollars (\$2,000,000) each occurrence combined single liability for Bodily Injury, Property Damage and clean-up costs, with the prior written approval of City (such approval not to be unreasonably withheld, conditioned or delayed).

(ix) Other Insurance. Tenant shall obtain such other insurance as is reasonably requested by City's Risk Manager and is reasonably customary for similar premises and uses in the San Francisco Bay Area.

(b) General Requirements. All insurance provided for pursuant to this Section:

(i) Shall be carried under a valid and enforceable policy or policies issued by insurers of recognized responsibility that are rated Best A-VI or better (or a comparable successor rating) and legally authorized to sell such insurance within the State of California;

(ii) As property and boiler and machinery insurance, shall name City as loss payee as its interest may appear, and as to both property and liability insurance shall name as additional insureds the following: "THE CITY AND COUNTY OF SAN FRANCISCO AND ITS OFFICERS, DIRECTORS AND EMPLOYEES." Tenant shall cause such additional insured endorsements to be issued on Form CG2010(1185).

(iii) As to earthquake insurance only:

(1) during the Term of this Lease; unless City reasonably agrees with Tenant that earthquake insurance is not generally commercially available at commercially reasonable rates, such insurance shall be in an amount at least equal to the lesser of (i) the maximum amount as is available at commercially reasonable rates from recognized carriers (with a deductible of up to but not to exceed five percent (5%) of the then-current, full replacement cost of the Building or other property being insured pursuant thereto (including building code upgrade coverage and the cost of any foundations, excavations and footings and without any deduction being made for depreciation), except that a greater deductible will be permitted to the extent that such coverage is not available from recognized insurance carriers or at commercially reasonable rates), and (ii) one hundred percent (100%) of the maximum probable loss that would be sustained by the Premises (based on the full value of the Improvements) as a result of the occurrence of an earthquake measuring 8.3 on the Richter scale (which maximum probable loss shall be determined not less frequently than every five (5) years by a consultant chosen and paid for by Tenant who is reasonably satisfactory to City), with a deductible of up to but not to exceed five percent (5%) of the then-current, full replacement cost of the Improvements or other property being insured pursuant thereto (including building code upgrade coverage and the cost of any foundations, excavations and footings and without any deduction being made for depreciation);

(2) rates for all earthquake insurance required under this Lease shall be deemed to be commercially reasonable in the event that they are less than or equal to one third of one percent (.33%) of the then-current full replacement cost of the improvements;

(iv) As to flood insurance only, unless City reasonably agrees with Tenant in writing that flood insurance is not generally available at commercially reasonable rates:

(1) during construction of the Initial Improvements or any Subsequent Improvement, such insurance shall be in an amount at least equal to the maximum amount as is available at commercially reasonable rates from recognized insurance carriers (with a deductible up to, but not to exceed fifteen percent (15%) of the then-current, full replacement cost of the Improvements or other property being insured pursuant thereto (including building code upgrade coverage and the cost of any foundations, excavations and footings and without any deduction being made for depreciation) except that a greater deductible will be permitted to the extent that such coverage is not available from recognized insurance carriers or at commercially reasonable rates);

(2) from and after completion of the Improvements, such insurance shall be in an amount at least equal to the amount available at commercially reasonable rates from recognized insurance carriers, with a deductible of up to but not to exceed an amount that is necessary to make such flood insurance available at commercially reasonable rates.

(3) rates for all flood insurance required under this Lease shall be deemed to be commercially reasonable in the event that they are less than or equal to one tenth of one percent (.1%) of the then-current full replacement cost of the Improvements;

(v) Shall be evaluated by City for adequacy not less frequently than every five (5) years from the anniversary date of Completion of the Initial Improvements. City may, upon not less than ninety (90) days prior written notice, require Tenant to increase the insurance limits for all or any of its general liability policies if, in the reasonable judgment of the City's Risk Manager, it is the prevailing commercial practice in the San Francisco Bay Area to carry insurance for facilities similar to the Premises in amounts greater than the amounts carried by Tenant with respect to risks comparable to those associated with use of the Premises.

(vi) Shall provide that the insurer shall endeavor to provide thirty (30) days' prior written notice (ten (10) days' prior written notice for nonpayment of premiums) to City of any cancellation, reduction or material modification, or termination of such insurance for any reason;

(vii) As to Commercial General Liability only, shall provide that it constitutes primary insurance to any other insurance available to any additional insured, with respect to claims insured by such policy, and that insurance applies separately to each insured against whom claim is made or suit is brought;

(viii) Each policy of property insurance required hereunder shall provide for waivers of any right of subrogation that the insurer of such party may acquire against each party hereto with respect to any losses and damages that are of the type covered under the policies required by Sections 20.1(a)(i), (ii), or (v);

(ix) Shall be subject to the reasonable approval of City;

(x) Except for professional liability insurance which shall be maintained as provided above, if any of the liability insurance required to be carried by Tenant hereunder is provided under a claims-made form of policy, Tenant shall maintain such coverage continuously throughout the Term, and following the expiration or termination of the Term, Tenant shall maintain, without lapse for a period of two (2) years beyond the expiration or termination of this Lease, coverage with respect to occurrences during the Term that give rise to claims made after expiration or termination of this Lease; and

(xi) Shall for property insurance only, provide that all losses payable under all such policies that are payable to City shall be payable notwithstanding any act or negligence of Tenant.

20.2 Certificates of Insurance; Right of City to Maintain Insurance.

Tenant shall furnish City certificates with respect to the policies required under this Section, together with copies of each such policy (if City so requests) and evidence of payment of premiums, within thirty (30) days after the Commencement Date and, with respect to renewal policies, at least ten

(10) business days after the expiration date of each such policy. If at any time Tenant fails to maintain the insurance required pursuant to Section 20.1, or fails to deliver certificates or policies as required pursuant to this Section, then, upon five (5) days' written notice to Tenant, City may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to City. Within ten (10) days following demand, Tenant shall reimburse City for all amounts so paid by City, together with all costs and expenses in connection therewith and interest thereon at the Default Rate.

20.3 Insurance of Others.

If Tenant requires liability insurance policies to be maintained by Subtenants, contractors, subcontractors or others in connection with their use or occupancy of, or their activities on, the Premises, Tenant shall require that such policies name Tenant and City as additional insureds. Notwithstanding the foregoing, Tenant shall require all contractors and sub-contractors performing work in, on, under, around, or about the Premises and all operators and Subtenants of any portion of the Premises to carry the insurance coverages required by the respective construction contract, sublease, or other agreement governing such party's activities that was approved by City, if applicable.

20.4 City Entitled to Participate.

City shall be entitled to participate in and consent to any settlement, compromise or agreement with respect to any claim for any loss in excess of Fifty Thousand and No/100 Dollars (\$50,000.00) covered by the insurance required to be carried hereunder, but only to the extent that its interest may appear; provided, however, that City's consent shall not be unreasonably withheld.

20.5 City's Self Insurance.

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

20.6 Release and Waiver.

Each party hereby waives all rights of recovery and causes of action, and releases each other party from any Losses occasioned to the property of each such party, which Losses are of the type that are covered under the property policies required by Sections 20.1(a)(i), (ii), to the extent that such loss is reimbursed by an insurer.

Section 21 HAZARDOUS MATERIALS

21.1 Hazardous Materials Compliance.

(a) Compliance with Hazards Materials Laws. Tenant shall comply and use commercially reasonable efforts to cause (i) its Agents, (ii) its Subtenants or operators, and (iii) all of Tenant's Invitees entering upon the Premises (other than City and its Agents), to comply with all Hazardous Materials Laws and prudent business practices. Without limiting the generality of the foregoing, Tenant covenants and agrees that it will not Handle, nor will it permit the Handling of Hazardous Materials on, under or about the Premises, except for (A) standard building materials and equipment that do not contain asbestos or asbestos-containing materials, lead or polychlorinated biphenyl (PCBs), (B) gasoline and other fuel products used to transport and operate vehicles and equipment, (C) any Hazardous Materials which do not require a permit or license from, or that need not be reported to, a governmental agency, which Hazardous Materials are used in the construction and operation of the Initial Improvements, or any Subsequent Construction, and which are reported to, and approved by City prior to any such Handling and, in any case, are used in strict compliance with all applicable laws, (D) janitorial supplies or materials in such limited amounts as are customarily used for such purposes so long as Handling is at all times in full compliance with all Hazardous Material Laws; (E) all food and food products and cleaning and other supplies which are customarily used in similar venues, so long as in each case such Handling is at all times in full compliance with all Hazardous Material Laws; and (F) in connection with the construction of the Initial Improvements.

(b) Notice. Except for Hazardous Materials permitted by Section 20.1(a) above, Tenant shall advise City in writing promptly (but in any event within five (5) days) upon learning or receiving notice of (i) the presence of any Hazardous Materials on, under or about the Premises, (ii) any action taken by Tenant in response to any (A) Hazardous Materials on, under or about the Premises or (B) Hazardous Materials Claims, and (iii) Tenant's discovery of the presence of Hazardous Materials on, under or about any real property adjoining the Premises. Tenant shall inform City orally as soon as possible of any emergency or non-emergency regarding a Release or discovery of Hazardous Materials. In addition, Tenant shall provide City with copies of all communications with federal, state and local governments or agencies relating to Hazardous Materials Laws (other than privileged communications, so long as any non-disclosure of such privileged communication does not otherwise result in any non-compliance by Tenant with the terms and provisions of this Article 21) and all communication with any person relating to Hazardous Materials Claims (other than privileged communications; provided, however, such non-disclosure of such privileged communication shall not limit or impair Tenant's obligation to otherwise comply with each of the terms and provisions of this Lease, including, without limitation, this Article 21).

(c) City's Approval of Remediation. Except as required by law or to respond to an emergency, Tenant shall not take any Remediation in response to the presence, Handling, transportation or Release of any Hazardous Materials on, under or about the Premises unless Tenant shall have first submitted to City for City's approval, which approval shall not be unreasonably withheld or delayed, a written remediation plan and the name of the proposed contractor which will perform the work. If City disapproves of any such remediation plan, City shall specify in writing the reasons for its disapproval. Any such Remediation undertaken by Tenant shall be done in a manner so as to minimize any impairment to the Premises and the operations and use thereof. In the event Tenant undertakes any Remediation with respect to any Hazardous Materials on, under or about the Premises, Tenant shall conduct and complete such Remediation (i) in compliance with all applicable Hazardous Materials Laws and the directives of applicable governmental authorities, and (ii) to the reasonable satisfaction of City. If and to the extent required, City shall sign a manifest indicating City ownership of any existing Hazardous Material removed from the Property by Tenant in connection with the construction of the Initial Improvements or any Subsequent Construction; provided, Tenant and its Agents shall be responsible for the proper Handling, transportation and disposal of the Hazardous Material and any failure to properly Handle, transport or dispose of such material shall be covered by the Hazardous Materials Indemnity set forth in Section 20.2 below.

(i) Pesticide Prohibition. Tenant shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "**Pesticide Ordinance**") that (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, and (iii) require Tenant to submit to the General Manager an integrated pest management ("**IPM**") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the terms of this Lease, (b) describes the steps Tenant will take to meet City's IPM Policy described in Section 300 of the Pesticide Ordinance, and (c) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with City. In addition, Tenant shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

21.2 Hazardous Materials Indemnity.

Without limiting the indemnity in Section 18.1 (except to the extent the same relates to Hazardous Materials), Tenant shall Indemnify the Indemnified Parties from and against any and all Losses which arise out of or relate in any way to any use, Handling, production, transportation, disposal, storage or Release of any Hazardous Materials in or on the Premises at any time during the Term of the Lease and before the surrender of the Premises by Tenant, any Subtenant, Agent or Invitee of Tenant (but excluding City, its Agents or Invitees) directly or indirectly arising out of (a) the Handling, transportation or Release of Hazardous Materials by Tenant, or its Subtenants, Agents or Invitees, (b) any failure by Tenant or its Subtenants, Agents or Invitees to comply with Hazardous Materials Laws in connection with

their use, Handling, production, transportation, disposal, storage or Release of any Hazardous Materials in, on or about the Premises at any time during the Term of the Lease and before their surrender of the Premises; or (c) any failure by Tenant to comply with the obligations contained in Section 20.1. All such Losses within the scope of this Section shall constitute Additional Rent owing from Tenant to City hereunder and shall be due and payable from time to time immediately upon City's request, as incurred. Tenant understands and agrees that its liability to the Indemnified Parties shall arise upon the earlier to occur of (i) discovery of any such Hazardous Materials on, under or about the Premises or the discovery of the disturbance or exacerbation of the pre-existing condition, or (ii) the institution of any Hazardous Materials Claim with respect to such Hazardous Materials, and not upon the realization of loss or damage.

Notwithstanding anything to the contrary in the Lease, Tenant shall not be liable under the Lease with respect to any Hazardous Materials located in, on or under the Premises as of the Effective Date of this Lease ("**Pre-Existing Hazardous Material**") except for liability resulting from the disturbance or exacerbation of Pre-Existing Hazardous Material by Tenant, its Subtenants, or Agents, including but not limited to any disturbance or exacerbation by Tenant in connection with the Initial Improvements or any Subsequent Construction. City shall comply with all Hazardous Material Laws with respect to all Pre-Existing Hazardous Material except for any compliance that is required or triggered as a result of any act of Tenant, its Subtenants, or Agents, including but not limited to the construction of the Initial Improvements or any Subsequent Construction, or any disturbance or exacerbation of the Pre-Existing Hazardous Material.

21.3 Hazardous Substance Disclosure.

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

Section 22 EVENTS OF DEFAULT; TERMINATION

22.1 Events of Default.

The occurrence of any one or more of the following events shall constitute an "**Event of Default**" under the terms of this Lease:

- (a) Tenant fails to pay any Rent to City when due, which failure continues for ten (10) days following written notice from City; provided, however, City shall not be required to give such notice on more than three (3) times during any Lease Year, and failure to pay any Rent thereafter when due shall be an immediate Event of Default without need for further notice;
- (b) Tenant files a petition for relief, or an order for relief is entered against Tenant, in any case under applicable bankruptcy or insolvency Law, or any comparable law that is now or hereafter may be in effect, whether for liquidation or reorganization, which proceedings if filed against Tenant are not dismissed or stayed within sixty (60) days;
- (c) A writ of execution is levied on the leasehold estate which is not released within sixty (60) days, or a receiver, trustee or custodian is appointed to take custody of all or any material part of the property of Tenant, which appointment is not dismissed within one hundred sixty (60) days;
- (d) Tenant makes a general assignment for the benefit of its creditors;
- (e) Tenant abandons the Premises within the meaning of California Civil Code Section 1951.3 (or its successor), which abandonment is not cured within fifteen (15) days after notice of belief of abandonment or vacation from City;

(f) Tenant fails to maintain any insurance required to be maintained by Tenant under this Lease, which failure continues without cure for ten (10) days after written notice from City of such failure;

(g) Tenant violates any other covenant, or fails to perform any other obligation to be performed by Tenant under this Lease at the time such performance is due, and such violation or failure continues without cure for more than thirty (30) days after written notice from City specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such thirty (30)-day period, if Tenant does not within such thirty (30)-day period commence such cure, or having so commenced, does not diligently prosecute such cure to completion within a reasonable time thereafter;

(i) Tenant suffers or permits an Assignment, Sublease or other transfer of this Lease or any interest therein to occur in violation of this Lease, which event is not cured by Tenant within thirty (30) days after written demand by City by an effective rescission of the Assignment, Sublease or transfer or through City's consent; or

(ii) Tenant engages in or allows any use not permitted hereunder which event is not cured by Tenant within ten (10) days after written demand by City, or, if such cure cannot reasonably be completed within such ten (10)-day period, if Tenant does not within such ten (10)-day period commence such cure, and having so commenced, does not diligently prosecute such cure to completion within a reasonable time thereafter and in all events within sixty (60) days.

Section 23 REMEDIES

23.1 City's Remedies Generally.

Upon the occurrence and during the continuance of an Event of Default under this Lease, City shall have all rights and remedies provided in this Lease or available at law or equity that are not otherwise specifically waived or limited pursuant to the terms of this Lease. All of City's rights and remedies granted pursuant to this Lease shall be cumulative, and except as may be otherwise provided by applicable Law or specifically limited pursuant to this Lease, the exercise of any one or more rights shall not preclude the exercise of any others.

23.2 Right to Keep Lease in Effect.

(a) Continuation of Lease. Upon the occurrence of an Event of Default hereunder, City may continue this Lease in full force and effect pursuant to Civil Code Section 1951.4.

(b) No Termination. No act by City allowed by this Section 23.2, nor any appointment of a receiver upon City's initiative to protect its interest under this Lease, nor any withholding of consent to a subletting or assignment or termination of a subletting or assignment in accordance herewith, shall terminate this Lease, unless and until City notifies Tenant in writing that City elects to terminate this Lease.

(c) Application of Proceeds of Reletting. In the event of any such subletting, rents received by City from such subletting shall be applied (i) first, to the payment of the costs of maintaining, preserving, altering and preparing the Premises for subletting, the other costs of subletting, including but not limited to brokers' commissions, Attorneys' Fees and Costs, and expenses of removal of Tenant's Personal Property, trade fixtures and alterations; (ii) second, to the payment of Rent then due and payable hereunder; (iii) third, to the payment of future Rent as the same may become due and payable hereunder; and (iv) fourth, the balance, if any, shall be paid to Tenant upon (but not before) expiration of the term of this Lease. If the rents received by City from such subletting, after application as provided above, are insufficient in any month to pay the rent due and payable hereunder for such month, Tenant shall pay such deficiency to City monthly upon demand. Notwithstanding any such subletting for Tenant's account without termination, City may at any time thereafter, by written notice to Tenant, elect to terminate this Lease by virtue of a previous Event of Default.

23.3 Right to Perform Tenant's Covenants.

City may cure the Event of Default at Tenant's expense, it being understood that such performance shall not waive or cure the subject Event of Default. If City pays any sum or incurs any expense in curing the Event of Default, Tenant shall reimburse City upon demand for the amount of such payment or expense with interest at the Interest Rate from the date the sum is paid or the expense is incurred until City is reimbursed by Tenant. Any amount due City under this subsection shall constitute additional rent hereunder. Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to City under this Lease, if at any time Tenant fails to pay any sums required to be paid by Tenant pursuant to this Lease to any person other than City, or if Tenant fails to perform any obligation on Tenant's part to be performed under this Lease, which failure continues without cure following any applicable cure period specified above, then City may, at its sole option, but shall not be obligated to, pay such sum or perform such obligation for and on behalf of Tenant.

23.4 Right to Terminate Lease.

(a) Damages. City may terminate this Lease at any time after the occurrence (and during the continuation) of an Event of a Default by giving written notice of such termination. Termination of this Lease shall thereafter occur on the date set forth in such notice. Acts of maintenance or preservation, and any appointment of a receiver upon City's initiative to protect its interest hereunder shall not in any such instance constitute a termination of Tenant's right to possession. No act by City other than giving notice of termination to Tenant in writing shall terminate this Lease. On termination of this Lease, City shall have the right to recover from Tenant all sums allowed under California Civil Code Section 1951.2, including, without limitation, the following: (i) the worth at the time of the award of the unpaid Rent which had been earned at the time of termination of this Lease; (ii) the worth at the time of the award of the amount by which the unpaid Rent which would have been earned after the date of termination of this Lease until the time of the award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided; (iii) the worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided; and (iv) any other amount necessary to compensate City for all detriment proximately caused by the default of Tenant, or which in the ordinary course of things would be likely to result therefrom. "The worth at the time of the award" shall be computed by allowing interest at a rate per annum equal to the Default Rate; provided, however, for purposes of subclause (iii) above only, "the worth at the time of the award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

(b) Interest. Rent not paid within twenty (20) days following written demand for payment of such Rent shall bear interest from the date due until paid at the Default Rate.

(c) Waiver of Rights to Recover Possession. In the event City terminates Tenant's right to possession of the Premises, and if such termination is contested by Tenant and City successfully prevails, and in any appeal thereof, Tenant hereby waives any rights to recover or regain possession of the Premises under any rights of redemption to which it may be entitled by or under any present or future Law, including, without limitation, California Code of Civil Procedure Sections 1174 and 1179 or any successor provisions.

(d) No Rights to Transfer or Sublet. Upon the occurrence and continuation of an Event of Default, notwithstanding Section 18, Tenant shall have no right to Assign or Sublease the Premises in whole or in part or to enter into any Event Permits without City's written consent, which may be given or withheld in City's sole and absolute discretion.

23.5 Equitable Relief.

In addition to the other remedies provided in this Lease, City shall be entitled at any time after a default or threatened default by Tenant to seek injunctive relief, an order for specific performance (but not specific performance in connection with Tenant's obligation to continue to occupy and operate the

Premises; provided that the foregoing shall not limit the City's rights under Section 22.2 above), or any other equitable relief, where appropriate to the circumstances of such default.

In addition to the other remedies provided in this Lease, Tenant shall be entitled at any time after a default or threatened default by City to seek injunctive relief, an order for specific performance, or any other equitable relief, where appropriate to the circumstances of such default.

23.6 Continuation of Subleases and Agreements.

If this Lease is terminated prior to the expiration thereof, and subject to any non disturbance agreements entered into by City pursuant to the terms of this Agreement, City shall have the right, at its sole option, to assume any and all agreements by Tenant for the maintenance or operation of the Premises, to the extent assignable by Tenant. Tenant hereby further covenants that, upon request of City following an Event of Default and termination of Tenant's interest in this Lease, Tenant shall execute, acknowledge and deliver to City such further instruments as may be necessary or desirable to vest or confirm or ratify vesting in City the then existing agreements then in force, as above specified, but only to the extent assignable by Tenant.

Section 24 NO WAIVER

24.1 No Waiver.

Neither this Lease nor any terms or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. No failure by City to insist upon the strict performance of any term of this Lease or to exercise any right, power or remedy consequent upon a breach of any such term, shall be deemed to imply any waiver of any such breach or of any such term unless clearly expressed in writing. No waiver of any breach shall affect or alter this Lease, but each and every term, covenant and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof.

24.2 No Accord or Satisfaction.

No submission by Tenant or acceptance by City of full or partial Rent or other sums during the continuance of any failure by Tenant to perform its obligations hereunder shall waive any of City's rights or remedies hereunder or constitute an accord or satisfaction, whether or not City had knowledge of any such failure. No endorsement or statement on any check or remittance by or for Tenant or in any communication accompanying or relating to such payment shall operate as a compromise or accord or satisfaction unless the same is approved as such in writing by City. City may accept such check, remittance or payment and retain the proceeds thereof, without prejudice to its rights to recover the balance of any Rent, including any and all Additional Rent, due from Tenant and to pursue any right or remedy provided for or permitted under this Lease or in law or at equity. No payment by Tenant of any amount claimed by City to be due as Rent hereunder (including any amount claimed to be due as Additional Rent) shall be deemed to waive any claim which Tenant may be entitled to assert with regard to the making of such payment or the amount thereof, and all such payments shall be without prejudice to any rights Tenant may have with respect thereto, whether or not such payment is identified as having been made "under protest" (or words of similar import).

Section 25 ESTOPPEL CERTIFICATES.

25.1 Tenant Certificate.

Tenant shall execute, acknowledge and deliver to City, within fifteen (15) days after a request, a certificate stating to Tenant's knowledge (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications or, if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which any Rent and other sums payable hereunder have been paid, (c) that no notice has been received by Tenant of any default hereunder which has not been cured, except as to defaults specified in such certificate, (d)

Tenant is not aware of any defaults by City, except any defaults specified in such certificate, and (e) attached to the certificate is a true, correct and complete copy of the Lease and any amendments thereto (and Tenant shall attach such copy to the certificate). Any such certificate may be relied upon by City or any successor agency, and any prospective purchaser or mortgagee of City's interest in the Premises or any part thereof. Tenant will also use commercially reasonable efforts (including inserting a provision similar to this Section into every Sublease) to cause Subtenants under Subleases to execute, acknowledge and deliver to City, within twenty (20) business days after request, an estoppel certificate covering the matters described above with respect to such Sublease.

25.2 City Certificate.

City shall execute, acknowledge and deliver to Tenant, within fifteen (15) days after a request, a certificate stating to City's knowledge (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications or if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which Rent and other sums payable hereunder have been paid, (c) whether or not, to the knowledge of City, there are then existing any defaults under this Lease (and if so, specifying the same), and (d) attached to the certificate is a true, correct and complete copy of the Lease and any amendments thereto (and City shall attach such copy to the certificate). Any such certificate may be relied upon by Tenant, any Mortgagee, any Tax Credit Investor or an approved transferee of Tenant's interest under this Lease.

Section 26 APPROVALS BY CITY

26.1 Approvals by City.

Wherever this Lease requires or permits the giving by City of its consent or approval, or whenever an amendment, waiver, notice, or other instrument or document is to be executed by or on behalf of City, the General Manager, or his or her designee, shall be authorized to execute such instrument on behalf of City, except as otherwise provided by applicable law, including City's Charter.

Section 27 SURRENDER OF PREMISES

27.1 Condition of Premises.

Upon the expiration or other termination of the Term of this Lease as may be permitted or may occur pursuant to any other provision of this Lease, Tenant shall quit and surrender to City the Premises, and all Improvements, repairs, alterations, additions, substitutions and replacements thereto, in good order and condition, but with reasonable wear and tear (consistent with Tenant's maintenance obligations under this Lease), casualty and condemnation, if applicable, excepted. Tenant hereby agrees to execute all documents as City may deem necessary to evidence or confirm any such other termination. Upon expiration or termination of this Lease, Tenant and its Agents shall have the right to remove their respective Personal Property and trade fixtures consistent with Section 12.17, but any damage to the Improvements which is caused by their removal of same shall be repaired at Tenant's expense. At City's request, Tenant shall remove, at no cost to City, any Personal Property belonging to Tenant which then remains on the Premises (excluding any personal property owned by other persons).

27.2 Termination of Subleases.

Upon any termination of this Lease, any and all Subleases or other rights of parties acting by and through Tenant shall terminate without further action.

Section 28 HOLD OVER

28.1 Holdover Without Consent.

If Tenant retains possession of any portion of the Premises after the expiration or the earlier termination of this Lease, then unless City expressly agrees to the holdover in writing, Tenant shall pay City, on a month-to-month basis base rent equal to one hundred twenty percent (120%) of the fair market rental (as reasonably determined by City's Director of Real Estate, acting in good faith) for the Premises,

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

28.2 Holdover With Consent.

Any holding over after the expiration of the Term with the express written consent of City shall be construed to automatically extend the Term of this Lease on a month-to-month basis at a base rent equal to the base rent, if any, specified by City in such written consent, together with Additional Rent payable under this Lease, and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term). Tenant's obligations under this Section shall survive the expiration or termination of this Lease.

Section 29 NOTICES

29.1 Notices.

Any notice given under this Lease shall be effective only if in writing and given by delivering the notice in person or by sending it first-class mail or certified mail with a return receipt requested or by overnight courier, return receipt requested, with postage prepaid, to: (a) Tenant, at Tenant's address set forth in the Basic Lease Information; or (b) City, at City's address set forth in the Basic Lease Information; or (c) to such other address as either City or Tenant may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given three (3) business days after the date when it is mailed if sent by first class or certified mail, one (1) business day after the date it is made if sent by overnight courier, or upon the date personal delivery is made. For convenience of the parties, copies of notices may also be given by telefacsimile to the telephone number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither party may give official or binding notice by facsimile. Tenant shall promptly provide City with copies of any and all notices received regarding any alleged violation of laws or insurance requirements or any alleged unsafe condition or practice.

Section 30 CITY ENTRY

30.1 City Entry.

Tenant shall permit City and its Agents to enter the Premises during regular business hours (and at any time in the event of an emergency) upon one (1) business days' prior notice (except in the event of an emergency) for the purpose of (i) inspecting the same for compliance with any of the provisions of this Lease, (ii) performing any work therein that City may have a right to perform under this Lease, (iii) inspecting, sampling, testing and monitoring the Premises or the Improvements or any portion thereof, including buildings, grounds and subsurface areas, as City reasonably deems necessary or appropriate, and (iv) showing the Premises to prospective tenants or other interested parties during the last one hundred eighty (180) days of the Term, and to post notices of non-responsibility; provided, however, City agrees in performing or undertaking any of the foregoing activities to use reasonable efforts to minimize interference with the activities of Tenant. Such access shall be subject to Tenant's reasonable security and safety measures. Tenant shall provide City with a set of keys to all doors in the Premises, and shall provide replacement keys if and when any locks are changed. City shall have the right to use any means that it deems proper to open doors in an emergency in order to obtain access to any part of the Premises,

and any such entry shall not be construed or deemed to be a forcible or unlawful entry into or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof. All locks installed in the Premises (excluding Tenant's vaults, safes or special security areas, if any) shall be keyed to the Building master key system, and City shall at all times have a key with which to unlock all such doors.

30.2 City Reservations.

Notwithstanding anything to the contrary in this Lease, City reserves and retains the right to grant future easements, permits and rights of way over, across, under, in and upon the Premises as City shall determine to be in the public interest, including for the installation, operation, maintenance, and repair of equipment for cellular telephone, radio or other telecommunications services, provided that any such easement, permit or right-of-way shall be conditioned upon the grantee's assumption of liability to Tenant for damage to its property that Tenant may sustain hereunder as a result of the grantee's use of such easement, permit or right-of-way, and provided further that any such easement, permit or right-of-way shall not materially interfere with Tenant's use of the Premises hereunder.

Section 31 EMPLOYMENT

31.1 First Source Hiring Ordinance.

City has adopted a First Source Hiring Ordinance (Board of Supervisors Ordinance No. 264 98) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions. Tenant agrees to comply with all applicable provisions of the First Source Hiring Ordinance and shall, if applicable and upon City's request, enter into a First Source Hiring Agreement that meets the applicable requirements of Section 83.9 of the First Source Hiring Ordinance.

31.2 Wages and Working Conditions; Theatrical Services.

Pursuant to San Francisco Administrative Code Sections 21.C-4 and 21.C-7, unless excepted, Contracts, Leases, Franchises, Permits, and Agreements awarded, let, issued or granted by the City and County of San Francisco for the use of property owned by the City and County of San Francisco shall require any Individual engaged in theatrical or technical services related to the presentation of a Show to be paid not less than the Prevailing Rate of Wages. Individuals engaged in theatrical and technical services include, without limitation, those engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services. Capitalized terms in this Section that are not defined in this Lease shall have the meanings provided in Administrative Code Sections 21.C-4 and 21.C-7.

Tenant agrees to comply with and be fully bound by, and to require its Subcontractors to comply with and be fully bound by, the provisions of Administrative Code Sections 21.C-4 and 21.C-7, including, without limitation, the payment of any penalties for noncompliance and other remedies available to the City. The provisions of Administrative Code Sections 21.C-4 and 21.C-7 are hereby incorporated by reference and made a part of this Lease. Tenant shall cooperate fully with the Labor Standards Enforcement Officer and any other City official or employee, or any of their respective agents, in the administration and enforcement of the requirements of Administrative Code Sections 21.C-4 and 21.C-7, including, without limitation, any investigation of noncompliance by Tenant or its Subcontractors. Tenant agrees that the City may inspect and/or audit any workplace or job site involved in or related to the performance of this Lease, including, without limitation, interviewing Tenant's and any Subcontractor's employees and having immediate access to employee time sheets, payroll records, and paychecks for inspection.

Tenant may obtain a copy of the current Prevailing Rate of Wages from City by contacting its Office of Labor Standards Enforcement. Tenant acknowledges that the City's Board of Supervisors may amend such Prevailing Rate of Wages and agrees that Tenant and any Subcontractors shall be bound by and shall fully comply with any such amendments by the Board of Supervisors.

31.3 Supervision of Minors.

(a) Records Request. If any person applies for employment or for a volunteer position with Tenant, or any subtenant or subcontractor, in which such applicant would have supervisory or disciplinary power over a minor or any person under such applicant's care, then Tenant, and any subtenant or subcontractors providing services at the Premises, shall request from the California Department of Justice records of all convictions or any arrest pending adjudication of such applicant involving the offenses listed in Welfare and Institution Code Section 15660(a), in accordance with the procedures established in California Penal Code Section 11105.3.

(b) Restriction on Hires for Recreational Sites. If Tenant, or any subtenant or subcontractor, is providing services under this Lease at a City park, playground, recreational center or beach (separately and collectively, "**Recreational Site**"), Tenant shall not hire, and shall prevent its subcontractors from hiring, any person for employment or a volunteer position to provide supervisory or disciplinary power over a minor or any person under his or her care if that person has been convicted of any offense listed in Welfare and Institution Code Section 15660(a).

(c) Notice Required for Sites Other Than Recreational Sites. If Tenant, or any of its subtenants or subcontractors, hires an employee or volunteer to provide services to minors at any location other than a Recreational Site, and that employee or volunteer has been convicted of an offense specified in Penal Code Section 11105.3(c), then Tenant shall comply, and cause its subtenants and subcontractors to comply, with Penal Code Section 11105.3(c) and provide written notice to the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer not less than ten (10) days prior to the day the employee or volunteer begins his or her duties or tasks. Tenant shall provide, or cause its subtenants or subcontractors to provide, City with a copy of any such notice at the same time that it provides notice to any parent or guardian, to the extent permitted by law.

(d) General Requirements. Tenant shall expressly require any of its subcontractors with supervisory or disciplinary power over a minor to comply with this Section of the Lease as a condition of its contract with the subcontractor. Tenant acknowledges and agrees that failure by Tenant or any of its subcontractors to comply with any provision of this Section of this Lease shall constitute an Event of Default. Tenant further acknowledges and agrees that such Event of Default shall be grounds for the City to terminate the Lease, partially or in its entirety, to recover from Tenant any amounts paid under this Lease, and to withhold any future payments to Tenant. The remedies provided in this Section shall not limit any other remedy available to the City hereunder, or in equity or law for an Event of Default, and each remedy may be exercised individually or in combination with any other available remedy. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

31.4 Employee Signature Authorization Ordinance.

City has adopted an Ordinance (San Francisco Administrative Code Sections 23.50-23.56) that requires employers of employees in hotel or restaurant projects on City property with more than fifty (50) employees to enter into a "card check" agreement with a labor union regarding the preference of employees to be represented by a labor union to act as their exclusive bargaining representative, if the City has a proprietary interest in the hotel or restaurant project. Tenant acknowledges and agrees that Tenant shall comply, and it shall cause Tenant's subtenants to comply, with the requirements of such Ordinance to the extent applicable to operations within the Premises.

31.5 Tenant Control; No Joint Venture.

Tenant shall have complete control over its employees in the method of performing their work under this Lease. Subject to the provisions of this Lease, Tenant retains the right to exercise full control and supervision of the services and full control of the employment, direction, compensation and discharge of all its employees and Tenant agrees to be solely responsible for all matters relating to its employees. All personnel employed by Tenant shall be employees of Tenant and not of City. Nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between City and Tenant or between City and any other person, or cause City to be responsible in any way for the debts or

obligations of Tenant. The subject of this Lease is a lease with neither party acting as the Agent of the other party in any respect.

Section 32 REPRESENTATIONS AND WARRANTIES OF TENANT

32.1 Tenant Representations.

Tenant represents, warrants and covenants to City as follows, as of the date hereof and as of the Commencement Date:

(a) Valid Existence, Good Standing. Tenant is a nonprofit corporation duly organized and validly existing under the laws of the State of California. Tenant has the requisite power and authority to own its property and conduct its business as presently conducted. Tenant is in good standing in the State of California.

(b) Authority. Tenant has the requisite power and authority to execute and deliver this Lease and the agreements contemplated hereby and to carry out and perform all of the terms and covenants of this Lease and the agreements contemplated hereby to be performed by Tenant.

(c) No Limitation on Ability to Perform. Neither Tenant's articles of organization or operating agreement, nor any applicable Law, prohibits Tenant's entry into this Lease or its performance hereunder. No consent, authorization or approval of, and no notice to or filing with, any governmental authority, regulatory body or other person is required for the due execution and delivery of this Lease by Tenant and Tenant's performance hereunder, except for consents, authorizations and approvals which have already been obtained, notices which have already been given and filings which have already been made. There are no undischarged judgments pending against Tenant, and Tenant and its members have not received notice of the filing of any pending suit or proceedings which might materially adversely affect Tenant's ability to perform under this Lease.

(d) Valid Execution. The execution and delivery of this Lease and the performance by Tenant hereunder have been duly and validly authorized. When executed and delivered by City and Tenant, this Lease will be a legal, valid and binding obligation of Tenant.

(e) Defaults. The execution, delivery and performance of this Lease (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default by Tenant under (A) any agreement, document or instrument to which Tenant is a party or by which Tenant is bound, (B) any law, statute, ordinance, or regulation applicable to Tenant or its businesses, or (C) the articles of incorporation or bylaws of Tenant, and (ii) do not result in the creation or imposition of any lien or other encumbrance upon the assets of Tenant, except as contemplated hereby.

(f) Financial Matters. Except to the extent disclosed to City in writing, neither Tenant nor any of its members (i) have knowledge of a material default under, or received notice asserting that it is in default under, any lease or management agreement or the like, (ii) have filed a petition for relief under any chapter of the U.S. Bankruptcy Code, and (iii) have suffered any material adverse change to its financial condition that could reasonably effect its ability to perform its obligations under this Lease.

The representations and warranties herein shall survive any termination of this Lease to the extent specified in this Lease.

Section 33 SPECIAL PROVISIONS

33.1 Non-Discrimination in City Contracts and Benefits Ordinance.

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

seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant.

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

(c) Non-Discrimination in Benefits. Tenant does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco or with respect to its operations under this Lease 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.

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

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

33.2 MacBride Principles - Northern Ireland.

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

33.3 Tobacco Product Advertising Prohibition.

Tenant acknowledges and agrees that no sales or advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of City, including the Premises and the Property. This advertising prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement

sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

33.4 Conflict of Interest.

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

33.5 Drug-Free Workplace.

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

33.6 Waiver of Relocation Assistance Rights.

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

33.7 Public Records; Sunshine Ordinance.

Tenant understands and agrees that City's Sunshine Ordinance (San Francisco Administrative Code Chapter 67) and the State Public Records Law (Government Code Section 6250 et seq.) (together with any amendments, supplements and successor statutes and ordinances, are hereinafter referred to as the "**Public Records Laws**") apply to this Lease, and any and all records, information, and materials submitted to City. Accordingly, any and all such records, information and materials may be subject to public disclosure in accordance with Public Records Laws, subject to any exceptions or exemptions set forth in the Public Records Laws.

33.8 Requiring Health Benefits for Covered Employees.

Unless exempt, (i) Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time and (ii), the provisions of this Section 33.8 shall apply. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Lease as though fully set forth. The text of the HCAO is available on the web at <http://www.sfgov.org/olse/hcao>. Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Chapter 12Q.

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

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

(c) Tenant's failure to comply with the HCAO shall, subject to applicable notice and cure periods under this Lease, constitute a material breach of this Lease. City shall notify Tenant if such a

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

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

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

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

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

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

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

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

33.9 Intellectual Property; Music Broadcasting Rights.

Tenant shall be solely responsible for obtaining any necessary clearances or permissions for the use of intellectual property on the Premises, including, but not limited to musical or other performance rights. (Note to Tenant: To obtain the appropriate music performance license, you may contact the BMI Licensing Executive toll free at 1-877-264-2137 Monday – Friday, 9-5 p.m. (Central Time) and the American Society of Composers, Authors and Publishers (“ASCAP”) at 1-800-505-4052 Monday – Friday, 9-5 p.m. (Eastern Time).)

33.10 Notification of Limitations on Contributions.

Through its execution of this Lease, Tenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with City for the selling or leasing of any land or building to or from City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a

committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Tenant further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Tenant's board of directors, chairperson, chief executive officer, chief financial officer and chief operating officer (or, if not a corporation, then the equivalent person that directs or participates in directing the affairs or actions of the entity); any person with an ownership interest of more than 20 percent in Tenant; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that Tenant must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

33.11 Food Service Waste Reduction.

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

Section 34 GENERAL

34.1 Time of Performance.

(a) Expiration. All performance dates (including cure dates) expire at 5:00 p.m., San Francisco, California time, on the performance or cure date.

(b) Weekend; Holiday; Business Day. A performance date which falls on a Saturday, Sunday or City holiday is deemed extended to 5:00 pm on the next business day. For purposes of this Lease, a business day means any day except Saturday, Sunday, or a day on which City and County of San Francisco is closed for business.

(c) Days for Performance. All periods for performance or notices specified herein in terms of days shall be calendar days, and not business days, unless otherwise provided herein.

(d) Time of the Essence. Time is of the essence with respect to each provision of this Lease, including, but not limited, the provisions for the exercise of any option on the part of Tenant hereunder and the provisions for the payment of Rent and any other sums due hereunder.

34.2 Interpretation of Agreement.

Whenever an “**Exhibit**” is referenced, it means an attachment to this Lease unless otherwise specifically identified. All such Exhibits are incorporated herein by reference. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the parties, without any presumption against the party responsible for drafting any part of this Lease. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified,

provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word “including” or similar words shall not be construed to limit any general term, statement or other matter in this Lease, whether or not language of non-limitation, such as “without limitation” or similar words, are used.

34.3 Successors and Assigns.

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

34.4 Interpretation of Lease; Approvals.

Whenever the context so requires, the use of the singular shall be deemed to include the plural and vice versa, and each gender reference shall be deemed to include the other and the neuter. If there is more than one Tenant, the obligations and liabilities under this Lease imposed on Tenant shall be joint and several. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference and such captions in no way define or limit the scope or intent of any provision of this Lease. All approvals, consents or other determinations permitted or required by City hereunder shall be made by or through the General Manager unless otherwise provided in this Lease, subject to applicable Law. Except as otherwise specifically provided in the Lease, whenever the Lease requires an approval or consent by either City (acting in its proprietary capacity) or Tenant, such approval or consent shall not be unreasonably withheld, and each party shall at all times act in good faith.

34.5 No Third Party Beneficiaries.

This Lease is for the exclusive benefit of the parties hereto and not for the benefit of any other person and shall not be deemed to have conferred any rights, express or implied, upon any other person.

34.6 Real Estate Commissions.

City is not liable for any real estate commissions, brokerage fees or finder’s fees which may arise from this Lease. Tenant and City each represents that it engaged no broker, real estate agent or finder in connection with this transaction. In the event any broker, real estate agent or finder makes a claim, the party through whom such claim is made agrees to Indemnify the other party from any Losses arising out of such claim.

34.7 Counterparts.

This Lease may be executed in counterparts, each of which is deemed to be an original, and all such counterparts constitute one and the same instrument.

34.8 Entire Agreement.

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

34.9 Amendment.

Neither this Lease nor any of the terms hereof may be terminated, amended or modified except by a written instrument executed by the Parties.

34.10 Governing Law; Selection of Forum.

This Lease shall be governed by, and interpreted in accordance with, the laws of the State of California. As part of the consideration for City's entering into this Lease, Tenant agrees that all actions or proceedings arising directly or indirectly under this Lease may, at the sole option of City, be litigated in courts having situs within the State of California, and Tenant consents to the jurisdiction of any such local, state or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon Tenant wherever Tenant may then be located, or by certified or registered mail directed to Tenant at the address set forth herein for the delivery of notices.

34.11 Extensions by City.

Upon the request of Tenant, City may, by written instrument, extend the time for Tenant's performance of any term, covenant or condition of this Lease or permit the curing of any default upon such terms and conditions as it determines appropriate, including but not limited to, the time within which Tenant must agree to such terms and/or conditions, provided, however, that any such extension or permissive curing of any particular default will not operate to release any of Tenant's obligations nor constitute a waiver of City's rights with respect to any other term, covenant or condition of this Lease or any other default in, or breach of, this Lease or otherwise effect the time of the essence provisions with respect to the extended date or other dates for performance hereunder.

34.12 Attorneys' Fees and Costs.

If either party hereto fails to perform any of its respective obligations under this Lease or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Lease, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, reasonable Attorneys' Fees and Costs. Any such Attorneys' Fees and Costs incurred by either party in enforcing a judgment in its favor under this Lease shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be severable from the other provisions of this Lease and to survive and not be merged into any such judgment. For purposes of this Lease, the reasonable fees of attorneys of City's Office of 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 City Attorney's Office. The "prevailing party" shall be determined based upon an assessment of which party's major arguments or positions taken in the action or proceeding could fairly be said to have prevailed (whether by compromise, settlement, abandonment by the other party of its claim or defense, final decision, after any appeals, or otherwise) over the other party's major arguments or positions on major disputed issues. Any Attorneys' Fees incurred in enforcing a judgment shall be recoverable separately from any other amount included in the judgment and shall survive and not be merged in the judgment. The Attorneys' Fees shall be deemed an "actual pecuniary loss" within the meaning of Bankruptcy Code Section 365(b)(1)(B), and notwithstanding the foregoing, all Fees incurred by either party in any bankruptcy case filed by or against the other party, from and after the order for relief until this Lease is rejected or assumed in such bankruptcy case, will be "obligations of the debtor" as that phrase is used in Bankruptcy Code Section 365(d)(3).

34.13 Effective Date.

This Lease shall become effective on the date (the “**Effective Date**”) which is the later of: (i) the date on which the Parties have executed and delivered this Lease, and (ii) the effective date of a resolution by the City’s Board of Supervisors approving this Lease and authorizing the City’s execution.

34.14 Severability.

If any provision of this Lease, or its application to any person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Lease or the application of such provision to any other person or circumstance, and the remaining portions of this Lease shall continue in full force and effect, unless enforcement of this Lease as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Lease, in which case, the parties will negotiate in good faith a replacement provision which is not invalid to accomplish substantially the same intention as the provision held invalid.

34.15 Limitation on Liability.

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

[No further text this page.]

IN WITNESS WHEREOF, the Parties have executed this Lease as of the day and year first above written.

TENANT

FRIENDS OF GENEVA OFFICE BUILDING AND POWER HOUSE,
a California nonprofit corporation

By: _____
Its: _____

By: _____
Its: _____

CITY:

**CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation**

By: _____
PHILIP GINSBURG, General Manager
Recreation and Park Department

**APPROVED BY
RECREATION AND PARK COMMISSION
PURSUANT TO RESOLUTION NO. _____ DATED: _____**

Margaret McArthur, Commission Liaison

Board of Supervisors Resolution No. _____ Adopted on _____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By _____
Anita L. Wood, Deputy City Attorney

EXHIBIT A

Description of Premises

EXHIBIT B

Utility Responsibility Areas

EXHIBIT C

Sublease Conditions; Form of Indemnity